IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 843 OF 2025

IN

COMMERCIAL SUIT NO. 10 OF 2025

IIFL Finance Limited ...Applicant

In the matter between:

IIFL Finance Limited ...Plaintiff

Versus

Asset Care & Reconstruction Enterprise Ltd & Ors. ...Defendants

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Mr. Soli Cooper, Sr. Advocate a/w Mr. Yohan Cooper, Ms. Bindi Dave, Mr. Ieshan Sinha, Ms, Dhruvi Mehta i/b Wadia Gandhy & Co. for Plaintiff/Applicant
Mr. Aspi Chinoy, Sr. Advocate, a/w. Udit Mendiratta, Ranjit Shetty, Rahul Dev and Risha Alva, i/b. Argus Partners for Defendant No.1

CORAM : ARIF S. DOCTOR, J.
RESERVED ON : 7th APRIL, 2025
PRONOUNCED ON : 9th May, 2025

P.C.:

1. The captioned interim application *inter alia* seeks an injunction restraining Defendant No. 1 (**"the Trustee"**) from acting as a trustee in respect of the "ACRE-110 Trust" (**"the Trust"**) and appointing an independent person or an

administrator/oversight committee with all the powers of the trustee to effectively discharge all the functions, duties and responsibilities of the trustee.

2. It is useful at the outset to set out the following facts for context :

i. The Plaintiff is a non-banking financial company (**"NBFC"**). Defendant No. 1 is an asset reconstruction company (**"ARC"**) and is engaged in the business of acquiring non-performing assets (**"NPA's"**) from banks and financial institutions and undertaking the process of their resolution, including acting as a trustee as per the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (**"SARFAESI Act"**) and the various guidelines and circulars issued by the Reserve Bank of India (**"RBI"**) from time to time.

ii. Defendant No. 1 had, vide a declaration of trust dated 21st August 2020 (**"Trust Deed"**), declared the Trust for the recovery and realization of various loans and financial assistance extended by the Plaintiff. The Plaintiff then, in two tranches, assigned to the Trust loans of seven corporate accounts and twenty-two thousand SME/retail accounts worth Rs. 1,397 crores for an aggregate purchase consideration of Rs. 1,085 crores. Against this, the Plaintiff received an upfront payment of Rs. 162.75 crores from Defendant No. 1, and in respect of the balance amount of Rs. 922.25 crores, was issued Security Receipts (**SR's**) amounting to 85%. The Defendant No. 1 held the balance of 15% of the SR's.

iv. The Trust Deed *inter alia* provided that Defendant No. 1 as Trustee would be entitled to receive remuneration in the form of (a) an upfront fee of 4% of the purchase price, (b) a management fee and (c) a recovery incentive of 10%. The Plaintiff and Defendant No. 1 also executed a Servicer Agreement (**"Servicer Agreement"**) by which the Plaintiff was to act as the recovery agent for Defendant No. 1.

v. In or about February 2023, disputes and differences arose between the Plaintiff and Defendant No. 1 with regard to the payment of the management fees. The Plaintiff, on the basis of guidelines dated 11th October, 2022, issued by the Reserve Bank of India (**"RBI"**). The Plaintiff contended that the management fees were not payable and thus sought a refund of the same.

vi. The Plaintiff thereafter stopped both the payment of management fees and also remitting the recoveries from the common pool as provided in the Servicer Agreement to Defendant No. 1. Defendant No. 1 then suspended the Plaintiff from acting as the recovery agent under the Servicer Agreement. Consequently, the Plaintiff filed a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (**"Arbitration Act"**), essentially seeking a refund of the management fees paid by the Plaintiff to Defendant No. 1. The Section 9 Petition was converted into an application under Section 17 of the Arbitration Act and was disposed of by an order dated 5th December 2023 (**"Section 17 Order"**).

viii. In March-April 2024, during the pendency of the abovesaid proceedings, disputes and differences between Defendant No. 3 and the Plaintiff arose in respect of a separate and independent transaction. Defendant No. 3 in May 2024 invoked arbitration against the Plaintiff under the Singapore International Arbitration Centre Rules (**"SIAC Arbitration"**) in which Defendant No. 3 sought emergency reliefs which were denied under vide an Order dated 5th June, 2024. Immediately thereafter, Defendant No. 1 terminated the Servicer Agreement executed with the Plaintiff.

x. The Plaintiff then amended its Statement of Claim and, in addition to reiterating its claim for a refund of management fees, also sought a declaration that Defendant No. 1 stood discharged as a Trustee by *inter alia* alleging breach of trust. The Arbitral Tribunal, vide an order dated 4th December 2024, after noting that the Plaintiff had included a prayer for breach of trust, held that the Arbitral Tribunal would not have jurisdiction to entertain the matter.

xi. Hence, the present suit was filed on 16th December 2024.

Submissions on behalf of the Plaintiff.

3. Mr. Cooper, Learned Senior Counsel appearing for the Plaintiff, made submissions essentially under the following three heads (i) Defendant No. 1 had a conflict of interest and hostility towards the Plaintiff (ii) Defendant No. 1 failed to discharge its duties as a trustee, and (iii) Defendant No. 1 had misappropriated and misused trust funds.

4. In support of his first contention, Mr. Cooper pointed out that Defendant No. 2 was not only the parent company and sponsor of Defendant No. 1 but was also the single largest shareholder of Defendant No. 1. He further pointed out that Defendant No. 2 was also the investment manager of Defendant No. 3 and that the

registered office address of Defendant Nos. 2 and 3 was also the same. He then pointed out that the registered office of the sole shareholder of Defendant No. 3 was the same as certain other entities which form a part of the Ares Group of Companies.

5. Mr. Cooper further pointed out that Defendant No. 2 had nominated one of its partners, namely Mr. Manish Jain i.e Defendant No. 4, to the board of Defendant No. 1, and two of its other partners, Defendant Nos. 6 and 7, to the board of Defendant No. 3. He submitted that it was therefore evident that Defendant No. 2 exercised significant control and influence over the actions of Defendant No. 1 through Defendant Nos. 4 and 5, and over Defendant No. 3 through Defendant Nos. 6 and 7.

6. Mr. Cooper then pointed out both the existence of hostility and conflict of interest on the part of Defendant No. 1 was apparent from the fact that in March/April 2024, Defendant No. 3 began levelling allegations against the Plaintiff regarding a separate transaction between the Plaintiff and Defendant No. 3, following which the SIAC Arbitration proceedings were initiated by Defendant No. 3 against the Plaintiff. He then pointed out that on the very same day that Defendant No. 3 failed to obtain emergency relief against the Plaintiff in the SIAC Arbitration, Defendant No. 1 terminated the Servicer Agreement with the Plaintiff. Mr. Cooper also pointed out that Defendant No. 2, being the investment manager of Defendant No. 3, had a vested interest in the ongoing dispute between the Plaintiff and Defendant No. 3 and was

causing Defendant No. 1 to abuse its position as trustee and to exert undue pressure on the Plaintiff.

7. Mr. Cooper submitted that it was well settled that a trustee who is hostile towards its beneficiaries and acts in furtherance of such hostility cannot continue as a trustee. In support of his contention he placed reliance upon the judgement of the Privy Council in the case of ***Letterstedt v. Broers & Anr***[1]., the judgment of the Madras High Court in the cases of *S.* ***Veeraraghava Acharirar v. V. Parthasarthy Iyengar***[2], and ***Rajagopal v. Balachandran & Ors***.[3]

8. Mr. Cooper, in support of his contention that Defendant No. 1 had failed to fulfil its duties as Trustee, submitted that no steps had been taken by Defendant No. 1 to recover dues from the approximately 22,000 retail accounts. He contended that Defendant No. 1's justification for the non-recovery, namely that Defendant No. 1 did not have the original documents, since the same were in the Plaintiff's possession, was also entirely untenable since recovery proceedings could have been initiated on the basis of copies of the documents. He then submitted that the Plaintiff had, in any event, handed over all the original documents to Defendant No. 1, and thus this reason was plainly untenable. Mr. Cooper further pointed out that the Plaintiff had, during its tenure as Servicer, successfully recovered Rs. 100 crores

1 (1984) UKPC 1
2 AIR 1925 MAD 1070
3 2002 (2) CTC 527

between June 2021 and May 2024, whereas Defendant No. 1, in contrast, had managed to recover only Rs. 80 lakhs in the subsequent period from June 2024 to September 2024.

9. Mr. Cooper then submitted that Defendant No. 1 had been equally negligent in the discharge of its duties as a Trustee qua the corporate accounts. He submitted that in or about April 2024, prior to the suspension of the Servicer Agreement, the Plaintiff had obtained an offer of Rs. 110 crores from one Sikka Developers for the sale of a plot of land belonging to one of the defaulting creditors, namely Just About Movies (**"JAM"**), situated at Anand Vihar, New Delhi (**"JAM Plot"**). He pointed out that this offer was, however, not accepted by Defendant No. 1, but instead, Defendant No. 1 put the said plot up for auction with a reserve price of Rs. 120 crores.

10. Mr. Cooper pointed out that even after the auction had failed, the Sikka Group, along with the promoters of JAM in or about February 2024, approached the Plaintiff with an offer to revive the earlier proposal of Rs. 110 crores, for which purpose the Plaintiff directed them to approach Defendant No. 1. He submitted that despite various communications addressed by the Plaintiff to Defendant No. 1, impressing upon Defendant No. 1 both the need and the urgency to accept the offers given by Sikka Developers by 7th May, 2024, Defendant No. 1 failed to do so on the specious ground that sister concerns of the Sikka Group had defaulted in servicing their debt obligation. He pointed out that while this was the reason for rejecting the

offer, Defendant No. 1 had in its quarterly report stated that *"the proposal did not progress as the buyer backed out"*.

11. Mr. Cooper then submitted that Defendant No. 1 had similarly failed to act upon another offer of Rs. 140 crores submitted by one Nextra Developers in November 2024 for the JAM Plot. He pointed out that despite the fact that Nextra Developers had vide an email dated 29th January, 2025, and provided Defendant No. 1 with the necessary details, Defendant No. 1 had in its Supplementary Affidavit in Reply *inter alia* stated that Nextra Developers had failed to provide the proof of financial capability. He then pointed out that Nextra Developers had infact sent a further email dated 31st March, 2025, to Defendant No. 1 reiterating that offer and giving details of how the same would be financed. The email also set out that Nextra Developers were ready with 40-50% of the proposed consideration of Rs. 140 Crores, and the remaining funds would be arranged prior to the signing of the binding offer. Basis this, he submitted that it was apparent that Defendant No. 1 was deliberately avoiding the sale of the JAM Plot despite receiving firm and genuine offers.

12. Mr. Cooper also pointed out that the quarterly report prepared by Defendant No. 1 for the month of December, 2024, made no reference whatsoever to the offer received from Nextra Developers on 5th November, 2025. He submitted that this information was wilfully suppressed by Defendant No. 1, who was completely unresponsive to Nextra Developers and, notwithstanding its higher amount of Rs. 140

crores, had executed a binding term sheet with one Prathamesh Construction Company Limited on 10th December, 2024, for an amount of Rs. 110 Crores.

13. Mr. Cooper then submitted that Defendant No. 1 had deliberately not sold the JAM plot only to ensure that Defendant No. 1 continued to earn a higher management fee. He pointed out that the Trust Deed provided that upon Defendant No. 1 achieving a Threshold Internal Rate of Return ("IRR"), the management fee would cease to be 4% and would drop to 1% of the NAV. He pointed out that IRR had to be calculated as per the specific formula set out in clause 4.9.1 (ii) of the Trust Deed, which provided that once the Threshold IRR was reached, the management fee would drop to 1% of the NAV. Furthermore, he pointed out that the management fee of 1% would only be calculated from the amounts earned by the Trust and would not have to be paid by the Plaintiff. Accordingly, he submitted that Defendant No. 1 would also not be entitled to any interest or penalties on the management fees.

14. He then submitted that had the Plaintiff accepted the offer of Rs. 110 crores submitted by Sikka Developers in October 2023, there would have been enough funds to pay off the management fees as well as the distribution to Defendant No. 1 as per the agreement, which would have resulted in the Threshold IRR being met by December 2023. He pointed out that therefore the management fee would have dropped to 1% after December 2023 had the offer of Sikka Developers been accepted. Mr. Cooper reiterated that Defendant No. 1 had, after almost one and a half years, executed a term sheet for the sale of the JAM Plot at the same price of Rs. 110

crores offered by Sikka Developers despite the fact that the Plaintiff had an offer of Rs. 140 Crores from Nextra Developers. He thus submitted that the fact that Defendant No. 1 was ensuring that the Threshold IRR was not achieved so that Defendant No. 1 could continue to receive a higher management fee at the cost of the Plaintiff was plainly evident. He submitted that this conduct on the part of Defendant No. 1 amounted to a gross dereliction of duty and positive misconduct on the part of Defendant No. 1.

15. Mr. Cooper, learned Senior Counsel then submitted that the misconduct and dereliction in duty on the part of the Defendant No.1 in discharging its duties as a trustee was also apparent from the fact that Defendant No.1 had acted contrary to the R.B.I's Fair Practice Code (FBC). FBC clearly provided that in order to enhance transparency in the process of sale of secured assets, terms and conditions of sale of the secured assets may be decided in wider consultation with the Security Receipt Holders. He thus submitted that as per the FBC, the plaintiff as a security receipt holder had a right to be consulted in the process of sale of the secured assets. He submitted that Defendant No.1's failure to do so, therefore, clearly violated the FBC and thereby was clear misconduct and dereliction of the duty on the part of the defendant No.1. Mr. Cooper placed reliance upon the judgments in the case ***Shanti Vijay Vs. Princess Fatima***[4]***, M.V. Rammasubbai Vs. Manicka Narasimachari***[5] and

4 (1979) 4 SCC 622
5(1979) 2 SCC 65

Manhar Shivji Shethia Vs. Lilavati Madhusudan Shethia[6] in support of his contention that when trustee's discretionary powers are not exercised reasonably, such powers can be controlled by the Court.

16. Mr. Cooper further submitted that there had been an unexplained fall in the net asset value of the financial assets. He submitted that this was also clearly on account of the fact that Defendant No.1 was not faithfully discharging its duties as a trustee. In support of his contention that there had been a drastic unexplained drop in the net asset value of the financial assets, he pointed out the following:

NAV Declaration As on	**NAV Declared (Tranche 1)**	**NAV Declared (Tranche 2)**
30th September 2022	100%	100%
5th January 2023	100%	95%
31st March 2023	95%	95%
30th June 2023	95%	95%
30th September 2023	95%	95%
31st December 2023	95%	95%

6 200 (2) Mh. L. J. 341

31st March 2024	91%	75%
30th June 2024	50%	44%
30th September 2024	50%	44%
31st December 2024	50%	44%

He submitted that the above timelines and figures spoke for themselves. He pointed out that till December 2023, the NAV of the financial assets continued to be 95% for both tranches, but within six months of the termination of the Servicer Agreement, the NAV had drastically reduced to 50% for Tranche 1 and 44% for Tranche 2. He submitted that Defendant No. 1 had absolutely no cogent explanation to offer for this drastic reduction in the NAV except to contend that the fall in the NAV was attributable to the Plaintiff's failure to pay management fees. He submitted that this explanation was totally untenable since the total of the management fees which had been deducted from the recoveries was only a small portion of the total value of the assets.

17. Furthermore, he submitted that although the NAV was declared by an independent RBI-registered third-party credit rating agency on the basis of an objective formula set out at Clause 6.7 of each of the Offer Documents, the same was

evaluated by the said agency on the basis of the data and material provided by Defendant No. 1. He submitted that the same formula had been applied for the calculation of the NAV even when the Plaintiff was acting as a Servicer, at which time Defendant No. 1 was also providing the data to the said agency. He thus submitted that it was inconceivable that the net asset value of the same assets could have dropped by 50% in a span of 6 months. He submitted that there was no rational explanation forthcoming from Defendant No. 1 as to why there has been such a drastic reduction in the NAV.

18. Mr. Cooper then pointed out that such a drastic fall in the NAV would adversely impact the Plaintiff since the financial asset could then be sold for this reduced value, which meant that Defendant No. 1 could dispose off the assets at this undervalue. He submitted that given the hostility between the parties, it was highly likely that Defendant No. 1 would in fact do so only to prejudice the Plaintiff and pressurise the Plaintiff in the SIAC Arbitration.

19. Mr. Cooper laid great emphasis on the fact that the fall in NAV had resulted in a situation whereby the potential recoveries had been slashed from Rs. 1002.54 crores as of 31st December 2024 to Rs. 429.05 crores. He pointed out that Defendant No. 1 had already recovered Rs. 193.24 crores as of October 2024 against an investment of Rs. 162.75 crores and had also claimed entitlement to Rs. 270 crores in management fees. At this rate, Mr. Cooper pointed out that over eight years,

Defendant No. 1 would have collected Rs. 500 crores in management fees, which far exceeded the projected recoveries of Rs. 429.05 crores.

20. Mr. Cooper then concluded by submitting that Defendant No. 1 had misappropriated trust funds in violation of Clause 6.5.2 of the Offer Documents by using them to pay for the legal expenses incurred in the arbitration proceedings and the present Suit. He emphasised that such expenses did not qualify as permissible reimbursements under Clause 6.5.2. He then pointed out that Defendant No. 1 had opted to exercise option (bb) under Clause 6.5.2, which deprived the Plaintiff of an opportunity to object or be informed of these expenditures, effectively keeping the Plaintiff in the dark. Finally, he submitted that Defendant No. 1 had never provided any 'proof of discharge', such as invoices or receipts, to justify the expenses incurred, which only confirmed the misuse of the trust funds.

21. Basis the above, he submitted that it was clear that there was hostility between the Plaintiff and Defendant No. 1 and that Defendant No. 1 was not discharging its duties as Trustee in a fair and *bonafide* manner. He thus submitted that the Plaintiff was entitled to the reliefs that had been prayed for in the Interim Application.

Submissions of on behalf of Defendant No. 1

22. Mr. Chinoy, Learned Senior Counsel appearing on behalf of Defendant No. 1, at the outset submitted that the present Suit plainly a subterfuge since the

Plaintiff had failed to obtain any relief in the arbitration proceedings against Defendant No. 1. He submitted that the claims of hostility and breach of trust were raised only after the Section 17 Order was passed.

23. Mr. Chinoy then pointed out that the Section 17 Order had determined the issue of payment of management fees by *inter alia* holding the Defendant No. 1 herein cannot be restrained from raising any further invoices upon the Plaintiff or appropriating any further monies towards the levy of management or upfront fees. He pointed out that although the Plaintiff had initially challenged the Section 17 Order by filing an application under Section 37 of the Arbitration Act, the said application was unconditionally withdrawn by the Plaintiff. He thus submitted that the issue of payment of management fees and the applicability of the RBI Circular stood conclusively determined by the Section 17 Order, despite which the Plaintiff continued to withhold payment of management fees to Defendant No. 1. He thus reiterated that the allegations of breach of trust and hostility were all made as an afterthought and only in an attempt to justify the Plaintiff's continued non-payment of management fees. He submitted that the Plaintiff was in breach of the Section 17 Order and was thus not entitled to any relief.

24. Mr Chinoy, then, in dealing with the allegations of misconduct and breach of trust, submitted that these were *ex facie* baseless. Regarding the sale of the JAM Plot he pointed out that Defendant No. 1 had not accepted the offer from Sikka

Developers since the same did not include any upfront payment but contemplated deferred payments. Similarly, he pointed out that the offer of Rs. 140 crores from Nextra Developers was also not accepted since there were serious doubts about the creditworthiness of Nextra Developers and the bonafides of their offer given their long-term deferred payment proposal. Additionally, he pointed out that the fact that both the said offers were entirely lacking in any sincerity was also plainly evident since neither of them had participated in the auction despite the fact that the reserve price for the JAM Plot had been reduced from 120 crores to Rs. 97.20 crores.

25. Mr. Chinoy then submitted that even the contention of misappropriation/misuse of Rs. 1.5 crores of trust funds for legal expenses was also untenable and of no merit. He pointed out from Clause 3.6(a) of the Trust Deed that the same expressly provided that the Trustee was entitled to appoint lawyers/solicitors "*for or in connection with acquisition, resolution, realisation, recovery, protection, preservation of the assets and all costs, expenses, charges and fees incurred towards the same shall form part of the Reimbursable Costs and Expenses*". He submitted that the phrase "*in connection with*" was of the widest possible amplitude and had been construed by the Courts as such. He submitted that since the proceedings initiated by the Plaintiff were aimed at obstructing Defendant No. 1's efforts at recovery and resolution of the financial assets, Defendant No. 1 was fully justified in using the Trust Funds to contest such proceedings.

26. Mr. Chinoy next addressed the allegations of conflict of interest and hostility, asserting that it was the Plaintiff who had created the acrimony by refusing to comply with its contractual obligations to pay management fees. He submitted that the Plaintiff had not only failed to make payment of the management fees but had also then initiated both the Arbitration proceedings and the present Suit. He thus submitted that Defendant No. 1 had no option but to defend both under the terms of the Trust Deed and thus could not now be accused of hostility or conflict of interest towards the Plaintiff.

27. He further submitted that the SIAC arbitration was entirely independent and unrelated to these proceedings or to Defendant No. 1's role as a Trustee. He pointed out that the Plaintiff's allegations of breach of trust, claim for refund of management fees, and initiation of the arbitration all infact predated the commencement of the SIAC arbitration. He thus submitted that the Plaintiff's contention that the SIAC Arbitration made evident the hostility between the Plaintiff and Defendant No.1 was entirely without merit. He also denied that Defendant No. 2 exerted any control over Defendant No. 1.

28. Mr. Chinoy then submitted that the Plaintiff's contention that the reduction in the NAV was on account of Defendant No. 1 was both untenable and misconceived. He pointed out that the NAV was not fixed and was subject to multiple factors, including the resolution, recovery, and valuation of assets at a given point in

time. He submitted that all these factors were inherently influenced by market conditions and other factors beyond the control of Defendant No. 1. He also pointed out that the NAV was a notional figure, and the same was not indicative of any actual loss suffered by the Security Receipts Holders.

29. Without prejudice to the above, Mr. Chinoy clarified that the reduction in the NAV was, in fact, attributable to the Plaintiff's own actions since the Plaintiff by failing to pay the management fee as required, had forced Defendant No. 1 to recover the same from the Trust Funds, thereby increasing the liability of the Trust. He submitted that it was this which had resulted in the reduction of the NAV. He submitted that this was also reflected in the evaluation by the independent rating agency, particularly in its letters dated 28th February 2024 and 31st July 2024. Mr. Chinoy thus submitted that the Interim Application be dismissed.

Reasons and Conclusions

30. After having heard Learned Senior Counsel at length and also having considered the case law upon which reliance has been placed, I find as follows :

A. The undisputed position that emerges from the facts placed before me is that there exists hostility/acrimony between the Plaintiff, who is the major beneficiary of the Trust and Defendant No. 1, the Trustee. While it is the contention of Defendant No. 1 that this hostility/acrimony was the result of the Plaintiffs own doing, the fact that there is hostility is apparent and not denied by Defendant No. 1. *Also*, Defendant No. 1 has not denied the relationship between Defendant Nos. 1, 2 and 3 and that Defendant No. 2 is the investment manager of Defendant No. 3. Therefore, given the fact that Defendant No. 2 is the parent company and single largest shareholder (49%) of Defendant No. 1 and also is the Investment manager of Defendant No. 3. . Defendant No. 2 had nominated two of its partners on Defendant No.3's board and one of its partners on Defendant No.1's board. Thus, it is clear that Defendant No. 2 is *prima facie* in a position to exert influence, if not control over Defendant No.1. Thus, Defendant No. 1 would therefore *prima facie* be in a position of conflict qua the Plaintiff.

B. As held in ***Letterstedt (supra)*** and ***S. Veeraraghava Acharirar (supra),*** while hostility between the Trustee and beneficiaries is not itself a reason for the removal of the Trustee, if the hostility is grounded in the mode in which the trust is being administered, such hostility cannot be disregarded. It is trite law that the trust must necessarily be administered in a manner which best serves the object and purpose for which the Trust was established and in the best interest and welfare of the beneficiaries. In the facts of the present case, there is no doubt that the Trust Deed allows for Defendant No. 1 to recover a management fee of 4% of the NAV till the threshold IRR is achieved. However, such a provision cannot be used in a manner which is to the detriment of the beneficiary and defeats the very objective of the Trust so as to only benefit the Trustee.

C. Also, Section 11[7] of the Indian Trust Act, 1882 ("Trust Act"), and Section 7 (2A)(a)[8] of the SARFAESI Act *inter alia* mandate that the Trustee is bound to fulfil the purpose/object of the Trust, obey the directions of the author of the Trust given at the time of creation of the Trust, and hold the assets of the Trust for the benefit of the holders of the security receipts. Equally, the Fair Practices Code for Asset Reconstruction Companies issued by the RBI on 16th July 2020, which has been incorporated into the Trust Deed, also provides that the terms and conditions of the sale of secured assets may be decided in wider consultation with the Security Receipts holders.

D. Though the Plaintiff has also alleged misconduct on the part of Defendant No. 1 and sought removal of Defendant No. 1 as Trustee by contending that (i) Defendant No. 1 is attempting to intentionally decimate the NAV of the Trust (ii) Defendant No. 1 is attempting to dispose of assets at a gross undervalue and (iii) Defendant No. 1 has misused Trust Funds, I am

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7 **11. Trustee to execute trust**.—The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.
Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction.
Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

8 **7. Issue of security by raising of receipts or funds by asset reconstruction company**.— (1) …
(2) …
(2A) (a) The scheme for the purpose of offering security receipts under sub-section (1) or raising funds under sub-section (2) may be in the nature of a trust to be managed by the 1 [asset reconstruction company], and the 1 [asset reconstruction company] shall hold the assets so acquired or the funds so raised for acquiring the assets, in trust for the benefit of the 2 [qualified buyers] holding the security receipts or from whom the funds are raised.

presently unable to affirmatively come to a finding on any of these aspects given the explanation offered by Defendant No. 1. Hence, for the present, the question of removal of Defendant No. 1 as a Trustee does not arise.

E. However, given the admitted existence of hostility between the Plaintiff and Defendant No. 1 and the fact that Defendant No. 1 is in a position of conflict of interest, as observed above, basis the provisions of Section 49[9] of the Trust Act and the law laid down in the case of ***Shanti Vijay*** *(Supra)*, ***M.V. Rammasubbair*** *(supra)*, and also in ***Manhar Shivji Shethia*** *(Supra)* whereby both the Hon'ble Supreme Court and this Court have exercised control over the powers of a Trustee hence , I find that a case for the grant of limited relief has been made out.

F. Hence, for the aforesaid reasons, I pass the following order:

i I appoint Mr. Abizer Diwanji, Founder of Neostrat Advisors LLP as an Independent Observer (**"Independent Observer"**)

ii. The Plaintiff shall be at liberty to put forward to the Independent Observer any suggestions in respect of the servicing and / or recovery of any of the loan amounts and/or in carrying out any activities with regard to the administering, recovery of the loan amounts;

9 **49. Control of discretionary power** – Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.

iii. The Plaintiff shall also be at liberty to forward all proposals for sale or settlement of any of the financial assets to the Independent Observer, who shall forward the same to Defendant No. 1 for consideration.

iv. The Independent Observer shall be entitled to make appropriate suggestions to Defendant No. 1 in connection with administering, servicing and/or recovering, any of the assets.

v. Defendant No. 1 shall provide details of the Trust's financials, asset disposals, and key decisions to the Independent Observer and the Plaintiff as and when called upon by the Independent Observer.

vi. The remuneration of the Independent Observer shall be borne by the Plaintiff and Defendant No. 1 jointly, failing which, from the Trust Fund.

vii. The Independent Observer shall submit a report to the Plaintiff and Defendant No.1 after 6 (six) months from taking charge in respect of the aspect of the discharge of the duties of Defendant No. 1.

31. The Parties are at liberty to apply to this Hon'ble Court in respect of any clarifications or difficulties that may arise in the working of this Order.

32. Before parting, I must make two things clear. The *first* is that this order should not in any manner be construed to mean that the powers of Defendant No. 1

to act as trustee have in any manner been circumscribed, and the *second* is that this order should also not in any manner be construed to mean that the Plaintiff is in any manner justified in withholding the management fees payable to Defendant No. 1.

33. Needless to state that nothing in this order shall affect the rights and obligations of the parties.

34. The Interim Application is thus disposed of accordingly, with liberty as aforesaid.

[ARIF S. DOCTOR J.]