

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

A.P.O.T No. 241 of 2025

IA No. ACO/1/2025

ACO/2/2025

OMKARA ASSETS RECONSTRUCTION PRIVATE LIMITED

VS.

ARCL ORGANICS LIMITED

For the Appellant : Mr. Sakya Sen, Sr. Adv.
Mr. Uttiyo Mallick, Adv.
Mr. Sayan Banerjee, Adv.
Ms. Pallavi Chatterjee, Adv.

For the Respondent : Mr. Ratnanko Banerji, Sr. Adv.
Mr. Kanishk Kejriwal, Adv.
Ms. Sristi Barman Roy, Adv.
Mr. P. P. Bishwal, Adv.

Hearing Concluded on : January 19, 2026
Judgement on : January 30, 2026

DEBANGSU BASAK, J.:-

1. Appellant has sought leave to prefer an appeal against the judgment and order dated June 30, 2025 passed in CA 136 of 2017.
2. Learned Senior Advocate appearing for the appellant has contended that, the appellant is a securitization company within the meaning of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. The

appellant has purchased the claim of Stressed Asset Stabilization Fund as against the respondent. He has contended that, the appellant is a secured creditor of the respondent.

3. Learned Senior Advocate appearing for the appellant has contended that, a scheme of compromise between the respondent and its secured creditors was sanctioned by the Hon'ble High Court on January 14, 2009. He has referred to the scheme of compromise. He has contended that, the respondent was liable to discharge its liabilities as sanctioned under the scheme to the secured creditors. Respondent has failed to do so. Consequently, the then secured creditor of the respondent on November 2, 2011 has issued a notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 to the respondent. The respondent has replied thereto on November 18, 2011.

4. Learned Senior Advocate appearing for the appellant has contended that, the respondent applied under Section 634 of the Companies Act, 1956 for execution of the scheme of compromise. He has referred to the execution petition. He has submitted that, in such execution petition, the impugned judgment and order dated June 30, 2025 was passed.

5. Learned Senior Advocate appearing for the appellant has contended that, the respondent invoked Section 634 of the Act of 1956 for executing the scheme of compromise sanctioned on January 14, 2009. He has pointed out that, the secured creditor filed a proceeding under the Recovery of Debts due to Bank and Bankruptcy Act, 1993 which was pending before the Debts Recovery Tribunal. Such proceedings had been filed prior to the scheme of compromise being sanctioned. The scheme of compromise has provided for disposal of such proceedings, in the event of full payment in terms of this compromise. He has contended that, the entire payment under sanctioned scheme was not made.

6. Relying upon **2000 Volume 4 Supreme Court Cases 406 (Alahabad Bank vs. Canara Bank and Another)** learned Senior Advocate appearing for the appellant has contended that, the provision of the Act of 1993 overrides the Act of 1956. Relying upon **2016 Volume 4 Supreme Court Cases 47 (Pegasus Assets Reconstruction Private Limited vs. Haryana Concast Limited and Another)** he has contended that, the provisions of the Act of 2002 overrides the provisions of the Act of 1956. He has contended that, a proceeding in respect of the secured assets of the secured

creditor is not maintainable in view of the provisions of the Act of 2002 when, a notice under Section 13 (2) was already issued.

7. Learned Senior Advocate appearing for the appellant has relied upon **2023 SCC OnLine SC 470 (Punjab and Sind Bank vs. Frontline Corporation Ltd.)** to contend that, the jurisdiction of the Civil Court is barred in respect of matters in which, a Debt Recovery Tribunal is empowered to determine.

8. Learned Senior Advocate appearing for the respondent has contended that, a scheme was sanctioned on January 14, 2009. He has referred to the scheme. He has contended that, the scheme was for payment of secured creditors. The appellant has claimed to be an assignee of one of the secured creditors conceived of in the scheme which was sanctioned. According to him, the respondent has paid all the secured creditors including the secured creditor through which, the appellant is claiming. All secured creditors excepting the secured creditors through which, the respondent is claiming, had issued No Objection Certificates.

9. Learned Senior Advocate appearing for the respondent has contended that the, predecessor-in-interest of the appellant did not file any application under Section 392 of the Act of 1956. He has contended that, the respondent was entitled to apply for

implementation of the Scheme of Arrangement under Section 634 of the Act of 1956 which the respondent did.

10. Learned Senior Advocate appearing for the respondent contended that, although the notice under Section 13(2) of the Act of 2002 was issued by the predecessor-in-interest of the appellant and although, the respondent replied thereto on November 18, 2011, no proceedings under Section 13(4) of the Act of 2002 was held. Therefore, there was no impediment in the court exercising powers under Section 634 of the Act of 1956 as has been done by the impugned order.

11. The respondent had obtained credit facilities from various secured creditors including IDBI Bank. Respondent had mortgaged and hypothecated its assets for the purpose of securing the loan granted by IDBI Bank. The respondent had created charge in favour of IDBI Bank.

12. Appellant had made a reference to the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1995. By an order dated April 19, 1999, BIFR had declared the respondent as a sick industrial company within the meaning of the Act of 1995.

13. By notification dated September 30, 2004, Central government had notified Stressed Assets Stabilisation Fund (SASF) to take over and/or acquire the stressed assets of IDBI. Consequently, IDBI had assigned all its rights title and interest including the hypothecated and mortgaged securities in connection with the loan granted to the respondent to SASF.

14. SASF had filed a proceeding under section 19 of the Recovery of Debts Due to Banks and Bankruptcy Act, 1993 before the Debts Recovery Tribunal, Kolkata being OA No. 86 of 2005 which is still pending, against the respondent.

15. Respondent had approached SASF for settlement. During the pendency of such settlement discussions, respondent had approached the Company Court under section 391 (2) of the Companies Act, 1956 for sanction of a scheme of compromise between the respondent on one hand and its secured creditors including SASF on the other.

16. By an order dated January 14, 2009, the High Court at Calcutta had sanctioned the scheme of compromise between the respondent and its secured creditors including SASF.

17. ARCL had merged with the respondent herein pursuant to the order dated September 15, 2010 passed by the Hon'ble High Court at Calcutta in CA No. 441 of 2010 in CP No. 340 of 2010.

18. According to the appellant herein, the respondent had failed to pay the appellant in accordance with the sanctioned scheme dated January 14, 2009. By a letter dated February 8, 2011, SASF had informed the respondent that they did not pay in accordance with the sanctioned scheme and called upon the respondent to clear the defaults.

19. According to the appellant, the defaults continuing, SASF had by the letter dated March 19, 2011 recalled the one-time settlement and called upon the respondent to pay the outstanding amount. SASF had issued a notice under Section 13 (2) of the Act of 2002 on November 2, 2011. The respondent had replied thereto by a letter dated November 18, 2011.

20. The respondent had filed an execution case for executing the order dated January 14, 2009 under the provisions of Section 634 of the Act of 1956 being EC No. 566 of 2013 which was later numbered as CA No. 136 of 2017. In such execution petition, the respondent had prayed for issuance of a no objection certificate by

SASF since according to the respondent, it had paid in terms of the sanctioned scheme dated January 14, 2009.

21. During the pendency of the execution petition, SASF had entered into an assignment agreement dated August 31, 2024 with the appellant herein, assigning all rights, title and interest in respect of the secured assets in favour of the appellant herein.

22. By the impugned judgement and order, learned single judge has directed SASF to issue the no objection certificate to the respondent, as was prayed for in the execution petition.

23. The impugned judgement and order, apart from anything else, affects the rights, title and interest that the appellant may have in respect of the secured assets which were assigned to it, by SASF by the deed of assignment dated August 31, 2024.

24. In such view of the impugned judgement and order affecting the rights, title and interest of the appellant in respect of the secured assets, we have no hesitation in granting the appellant leave to appeal from the impugned judgement and order. After having informed the learned counsel for the parties as to our decision on the application for leave to appeal, filed by the appellant, we had proceeded to hear the parties on merits. The respective submissions

made on behalf of the appearing parties, on the merits of the appeal, have been recorded above.

25. On the merits of the appeal, the issue that has fallen for consideration case is, whether, the executing court possessed jurisdiction to pass the impugned judgement and order in view of the pendency of the proceedings before the Debts Recovery Tribunal, under the provisions of the Act of 1993 coupled with the fact that, SASF had invoked the provisions of the Act of 2002 in respect of the secured assets.

26. A proceeding under the Act of 1993 is pending before the Debts Recovery Tribunal in which, there are 3 respondents, namely, the respondent herein, a guarantor of the credit facilities enjoyed by the respondent and IDBI. Such proceedings were pending prior to the scheme of compromise being sanctioned by the High Court. In fact a number of proceedings under Section 19 of the Act of 1993 were pending before the Debts Recovery Tribunal, as against the respondent, filed by the secured creditors of the respondent. The sanctioned scheme took note of the pendency of the proceedings before the Debts Recovery Tribunal. The sanctioned scheme also provided that, in the event of payment, the liability of the guarantors would also stand discharged and revoked. The sanctioned scheme

required the individual secured creditor such as SASF to withdraw the proceedings before the Debts Recovery Tribunal.

27. The sanctioned scheme of compromise contemplated payment of a sum of Rs. 8,22,95,000/- to IDBI in full and final settlement. The appellant before us is the successor in interest of IDBI.

28. SASF had taken over all the stressed assets of IDBI. One of the stressed assets of IDBI had been taken over by SASF is that of the respondent herein. As noted above, SASF had issued a notice under section 13 (2) of the Act of 2002 on November 2, 2011 claiming default in payment in terms of the scheme. The respondent through its advocate had replied thereto by the letter dated November 18, 2011. In such a reply, the respondent had acknowledged that, the sanctioned scheme required the respondent to pay an aggregate sum of Rs. 8,22,95,000/- out of which, a sum of Rs. 5,66,92,094/- was paid leaving a balance of Rs. 2,56,02,906/-. Such letter had also acknowledged that, under the sanctioned scheme, the respondent was liable to pay interest at the rate of 8.5% on the outstanding settled amount and that, interest calculated up to November 15, 2011 amounting to Rs. 90,64,335/- was remaining outstanding.

29. By a letter dated February 23, 2012, the respondent through its advocate had contended that, in terms of the scheme, after adjusting the payments reflected therein, a sum of Rs. 87,74,129/- remained due and payable and that, the same along with interest of Rs. 21,95,480/- was the only amount that the respondent was liable to pay. By such letter, 13 bank drafts aggregating to a sum of Rs. 1,09,69,609/- were sent to SASF with the instructions to adjust and appropriate the same under section 59 of the Indian Contract Act, 1872.

30. Apparently, the bank drafts aggregating to a sum of Rs. 1,09,69,609/- have been encashed. Predecessor in interest of the appellant herein had by a letter dated September 5, 2013 contended that, the payments made were not in accordance with the sanctioned scheme and that, extent of default was much more than what, the appellant was admitting by payment.

31. Prior to the initiation of execution petition, there were disputes between the predecessor in interest of the appellant and the predecessor in interest of the respondent as to whether or not the respondent paid in terms of the sanctioned scheme.

32. In the context of the overriding effect of the provisions of the Act of 2002, ***Frontline Corporation Ltd (supra)*** has held that, any

matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. It has held that, the bar of civil court applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under section 13 (4) of the Act of 2002.

33. In ***Pegasus Assets Reconstruction Private Limited (supra)*** Supreme Court has held that, sections 9 and 13 of the Act of 2002 allows a secured creditor powers to enforce a security interest without the intervention of the Court or Tribunal. It has held that, since required provisions of the Act of 1956 have been incorporated in the Act of 2002, there was no plausible reason so as to take recourse to any provisions of the Act of 1956 to permit interference in the proceedings under the Act of 2002 either by the Company Court or the Official Liquidator. Primacy of the Act of 2002 over the Act of 1956 has been recognised therein.

34. In ***Allahabad Bank (supra)*** the Supreme Court having noted the various provisions of the Act of 1993 including section 19 thereof, and the provisions of the Act of 1956 has held that, no leave of the Company Court is necessary for initiating any proceeding

under the Act of 1993 nor can the Company Court transfer to itself the proceedings or otherwise interfere with such proceedings.

35. Learned single judge has relied upon **1979 Volume 3 Supreme Court Cases 54 (SK Gupta and another versus K P Jain and another)** to hold that, a scheme sanctioned under section 391 of the Act of 1956 is binding on all stakeholders and cannot be unilaterally revoked. With respect, such a judgement was rendered at a time, when, the Act of 1993 was not in being and therefore, the ramifications of a sanctioned scheme under the Act of 1956 vis-à-vis the rights that a secured creditor enjoys, under the Act of 1993 and the Act of 2002 could not fall for consideration therein.

36. The scheme sanctioned under Section 391 of the Act of 1956 is binding upon the persons covered by the scheme. Any modification under such scheme is required to be done only through the mechanism as enshrined under Section 392 of Act of 1956. In the facts and circumstances of the present case, the appellant before us is not seeking a modification of the scheme sanctioned under Section 391 of the Act of 1956 by the High Court. It is the contention of the appellant before us that, the respondent did not adhere to such sanctioned scheme and, therefore, committed a default thereunder. It is also the contention of the appellant that, by reason

of such defaults, the issue as to whether or not, the liability of the respondent towards the appellant stood satisfied has to be decided by the Debts Recovery Tribunal.

37. There is a proceeding under Section 19 of the Act of 1993 pending before the Debts Recovery Tribunal, inter alia, against the respondent. The sanctioned scheme under Section 391 of the Act of 1956, postulates that, in the event of payment as contemplated thereunder, the appellant will withdraw such proceedings before the Debts Recovery Tribunal. The issue as to whether or not, the respondent paid the appellant in terms of sanctioned scheme is an issue which can be decided by the Debts Recovery Tribunal in the proceedings pending under Section 19 of the Act of 1993. It is the Debts Recovery Tribunal which is empowered to decide whether or not, the claim of the appellant as against the respondent, stands satisfied and, therefore, the proceedings under Section 19 of the Act of 1993 needs to be disposed of in such manner.

38. Sections 18 and 34 of the Act of 1993 requires consideration. They are as follows:-

***“18. Bar of Jurisdiction.-** One and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a*

High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17:

[Provided that any proceedings in relation to the recovery debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 under the Multi-State Co-operative Societies Act, 2002 (39 of 2002) shall be continued and nothing contained in this section shall, after such commencement, apply to such proceedings.]

34. Act to have over-riding effect.- *(1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force in any instrument having effect by virtue of any law other than this Act.*

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984) [the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989)].”

39. Section 18 of the Act of 1993 bars the jurisdiction of the Civil Court to decide issues pertaining to Section 17 of the Act of 1993. Section 34 of the Act of 1996 postulates that the provisions of the Act of 1993 will override other law for the time being in force.

40. In the facts and circumstances of the present case, it is the executing Court, which exercised jurisdiction on an application

under Section 634 of the Act of 1956 to decide the issue as to whether or not, the respondent paid the appellant in terms of the sanctioned scheme. With the deepest of respect, Section 18 of the Act of 1993 bars the jurisdiction of the executing Court in deciding such issue particularly, when, there is a proceeding under Section 19 of the Act of 1993 pending.

41. Section 17 of the Act of 1993 vests the Tribunal established under the Act of 1993 jurisdiction, powers and authority to entertain and decide an application for recovery of debts due to banks and financial institutions. In the facts and circumstances of the present case, there is a proceeding pending under Section 19 of the Act of 1993 where the issue as to whether, the liability of the appellant, which is governed by the Act of 1993, stands satisfied by the respondent or not.

42. Section 34 of the Act of 2002 ousts the jurisdiction of Civil Courts to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under the Act of 2002 to determine. In the facts and circumstances of the present case, there is a notice under Section 13(2) of the Act of 2002 issued by the predecessor-in-interest of the appellant. The appellant herein is capable of proceeding under

the Act of 2002 in respect of the security interest existing in favour of the appellant, over the secured assets of the respondent.

43. Further and in any event the Debts Recovery Tribunal, in which, OA No. 86 of 2005 is pending, is required to dispose of such proceeding, by either recording satisfaction or proceeding against the respondent therein. In either of the two situations, the Debts Recovery Tribunal will be required to take into consideration the schemes sanctioned as also the payments claimed to be made thereunder. The issue as to whether or not, the respondent paid in terms of the sanctioned scheme for the appellant to withdraw OA No. 86 of 2005 or in the alternative for the Debts Recovery Tribunal to record satisfaction of the dues of the appellant, in OA No. 86 of 2005, needs to be decided by the Debts Recovery Tribunal.

44. Therefore, in any view of the matter, it's the Debts Recovery Tribunal who will be called upon to adjudicate as to whether or not the claim of the appellant as against the respondents stands satisfied.

45. In such circumstances, the issue framed in paragraph 25 herein, is answered by holding that, the executing Court did not possess jurisdiction to decide on the question of recovery of debts due to the appellant, as a financial institution, in view of the

provisions of the Act of 1993 and the Act of 2002. The issue framed thereafter is answered in favour of the appellant and as against the respondent.

46. The impugned judgment and order dated June 30, 2025 passed in CA 136 of 2017 is set aside.

47. In view of the discussion above, ACO 2 of 2025, by which, SASF seeks to withdraw from the instant appeal, is allowed. Appellant before us is the successor in an interest of SASF and, therefore, the presence of SASF is no longer required in this proceeding.

48. APOT 241 of 2025 along with other connected applications are disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

49. I agree.

[MD. SHABBAR RASHIDI, J.]