

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT-III



I.A No. 5888/2024

In

CP No. 513 /2022

Under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016.

1. Mr. Avil Menezes

Resolution Professional of Future Enterprises Limited

106, 1st Floor, Kanakia Atrium 2; Cross Road A, Behind Courtyard Marriott, Chakala, Andheri East, Mumbai – 400093

... Applicant

Vs

2. Committee of Creditors of Future Enterprises Limited

Through Central Bank of India

SAM Branch, 346, Standard Building, 3rd Floor, Dr. D.N. Road, Fort, Mumbai - 400023

... Respondent

In the matter of

Foresight Innovations Private Limited

... Petitioner

Vs

Future Enterprises Limited

... Corporate Debtor

Order pronounced on: 02.05.2025

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati, Member (Technical)



Appearances:

- For Resolution Professional* : Pulkit Sharma a/w. Adv. Pooja Mahajan, Adv. Mahima Singh, Adv. Karan Vir Khosla, Adv. Rushab Chopra i/b. Chandiook & Mahajan
- For Committee of Creditors* : Adv. Abhishek Swaroop a/w. Adv. Shriraj Khambete, Adv. Naman Jain, Adv. Rounak Doshi i/b. Saraf and Partners L

Per: Sh. Charanjeet Singh Gulati, Member (Technical)

1. The Interlocutory Application (IA) bearing no. 5888/2024 has been filed by Mr. Avil Menezes (**Applicant**), the Resolution Professional of Future Enterprises Limited (**Corporate Debtor**) under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**I&B Code**) read with Rule 11 of National Company Law Tribunal (NCLT) Rules, 2016, seeking following reliefs:
 - a. *Allow the present application;*
 - b. *Permit and direct the Applicant/Resolution Professional to carry out the interim distribution of the proceeds from the sale of Category 1 assets of Future Enterprises Limited amongst the secured financial creditors and unsecured financial creditors in the agreed ratio of 70:30, after accounting for priority payments in Section 53 of the Code;*
 - c. *Pass such further order(s) and/or direction(s) as this Adjudicating Authority may deem fit and proper.*

2. **Facts as per the averments:**

- 2.1 The Corporate Insolvency Resolution Process (**CIRP**) was initiated against Future Enterprises Limited (**Corporate Debtor**) vide Order dated 27.02.2023 in CP/513/2022 and Mr. Jitender Kothari was appointed as the Interim Resolution Professional (**IRP**). The Committee of Creditors (**CoC**) was constituted on 22.05.2023.



- 2.2 The IRP issued Form-G inviting Expression of Interest (**EoI**) on 10.06.2023. Thereafter, in the 3rd CoC Meeting, the CoC resolved to appoint Mr. Avil Menezes as the Resolution Professional (**RP**) who was so appointed vide order dated 22.06.2023. Subsequently, a corrigendum to Form-G was published on 24.06.2023.
- 2.3 In the 11th CoC meeting held on 01.12.2023, the CoC decided to scrap the process initiated under Form G dated 10.06.2023 and decided to issue a fresh Form G. Accordingly, the RP issued a fresh Form G on 26.12.2023 for submission of resolution plans for one or more assets of the Corporate Debtor from the PRAs.
- 2.4 The CoC decided to run a parallel process for sale of unencumbered assets of the Corporate Debtor under Regulation 29 of the CIRP Regulations. The details of the identified clusters of assets for which resolution plans were invited are as follows:

A. CLUSTER 1

1. 0.51 % Equity stake of Future Enterprises Limited in Future Generali India Insurance Company Limited.
2. 25.18% Equity stake of Future Enterprises Limited in Equity Shares of Future Generali India Life Insurance Company Limited.
3. 49.81% Equity stake of Future Enterprises Limited in Sprint Advisory Services Private Limited, a special purpose vehicle previously holding 44.88% of the issued and paid-up share capital of Future Generali India Life Insurance Company Limited.
4. 49.82% Equity stake of Future Enterprises Limited in Shendra Advisory Services Private Limited, a special purpose vehicle holding 48.99 % of the issued and paid-up share capital of Future Generali India Insurance Company Limited.

B. CLUSTER 2

1. 39% Equity stake of Future Enterprises Limited in Apollo Design Apparel Parks Limited.
2. 39% Equity stake of Future Enterprises Limited in Goldmohur Design and Apparel Park Limited.

C. CLUSTER 3

1. Corporate Debtor (residual entity - without Cluster 1 and Cluster 2).

2.5 The details of the identified categories of assets for sale under Regulation 29 are as follows:

A. CATEGORY 1


1. 0.51 % Equity stake of Future Enterprises Limited in Future Generali India Insurance Company Limited.
2. 25.18% Equity stake of Future Enterprises Limited in Equity Shares of Future Generali India Life Insurance Company Limited.
3. 49.81 % Equity stake of Future Enterprises Limited in Sprint Advisory Services Private Limited, a special purpose vehicle previously holding 44.88% of the issued and paid-up share capital of Future Generali India Life Insurance Company Limited.
4. 49.82% Equity stake of Future Enterprises Limited in Shendra Advisory Services Private Limited, a special purpose vehicle holding 48.99% of the issued and paid-up share capital of Future Generali India Insurance Company Limited.


B. CATEGORY 2

1. 39% Equity stake of Future Enterprises Limited in Apollo Design Apparel Parks Limited.



2. 39% Equity stake of Future Enterprises Limited in Goldmohur Design and Apparels Park Limited.

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- 2.6 Pursuant to issuance of fresh Form G, the Resolution Professional received 12 EoIs for submitting resolution plans and 5 EoIs for sale under Regulation 29.
- 2.7 Subsequently, the RP issued the Request for Resolution Plan (RFRP) along with the Evaluation Matrix and the Information Memorandum to the PRAs for the Regulation 36B Process, and also issued the Process Note to the Potential Bidders for the Regulation 29 Process.
- 2.8 The Applicant also provided access to the virtual data room, in order to enable the PRAs/ Potential Bidders to carry out their due diligence of the Corporate Debtor.
- 2.9 It is submitted that the last date for submission of resolution plans/ bids for the specified Clusters/ Category of assets of the Corporate Debtor was 02.03.2024. By this date, the RP received 1 resolution plan for Cluster 1 assets and 2 resolution plans for Cluster 3 assets. Further, the RP received 2 bids for sale of Category 1 assets under Regulation 29. No resolution plan or bid was received for Cluster 2/ Category 2 assets in either of the processes.
- 2.10 The 16th meeting of the CoC was held on 04.03.2024 to, *inter alia*, discuss the receipt of resolution plans in the Regulation 36B Process and bids received in Regulation 29 Process. Thereafter, during the 17th CoC meeting held on 14.03.2024, the RP informed the members that the resolution plans and bids had certain conditionalities and the CoC requested the resolution applicants/bidders to submit their revised unconditional and holistic offer with upward revision in their financial proposal.
- 2.11 On 15.04.2024, the 18th CoC meeting was held wherein the RP apprised the members of the CoC that one of the bidders, being



Central Bank of India (Central Bank) had removed the conditionalities from its bid, but had not revised the bid amount. The RP further informed that the second bidder, Consortium of M Pallonji & Co Private Limited and True North Fund VII (Consortium) had removed only some of the conditionalities and had also not revised the bid amount.

- 2.12 The 19th CoC meeting was held on 29.04.2024 during which further discussions took place on the bids and resolution plans received for Categories/ Clusters of assets of the Corporate Debtor. As regards Category 1 assets, representative of one of the bidders, i.e. the Consortium informed the CoC that their commercial offer shall remain the same and the conditionalities in their bid cannot be removed either. Thereafter, the CoC members held discussions with the representative of the Central Bank regarding upward revision in their bid and it was decided that another meeting should be held for the purpose.
- 2.13 Pursuant thereto, the 20th meeting of the CoC was held on 03.05.2024 during which the CoC held discussions with Central Bank for upward revision of their bid amount for Category 1 Assets. Consequently, CBI submitted its final revised offer for Category 1 Assets and the CoC members sought some time before putting up the sale of Category 1 Assets for voting.
- 2.14 In the meantime, discussions were simultaneously held with respect to the resolution plans submitted by Uniworth Finlease Private Limited (Uniworth) and Orissa Metaliks Private Limited (OMPL) for Cluster 3 assets. In the 22nd CoC meeting held on 17.05.2024, the RP informed the members that the resolution plan of OMPL was found to be legally compliant, while certain non-compliances were noted in the resolution plan of Uniworth. Thus, the resolution plan of Uniworth was not tabled before CoC for further consideration and voting.



- 2.15 Further, during the said Meeting, the RP informed that the lenders, in the Joint Lenders Meeting (JLM), have decided to undertake distribution of proceeds between the secured financial creditors and unsecured financial creditors in the ratio of 70:30 after making the mandatory and priority payments to the other stakeholders as per the Code. After detailed discussions and deliberations on various issues, the CoC ultimately decided to vote on the approval of the sale of Category 1 assets, along with the resolution plan of OMPL for Cluster 3 assets and the distribution mechanism as agreed during the CoC meeting.
- 2.16 Meanwhile, litigation ensued around Cluster 3 assets of the Corporate Debtor on account of I.A. No. 2956 of 2024 filed by Uniworth and I.A. No. 2944 of 2024 filed by Yash Shares and Stocks Private Limited (YSSPL), followed by intervention applications (I.A. 3550 and I.A. 3551) filed by OMPL.
- 2.17 In the 24th CoC Meeting, discussions and deliberations were also held on the bid for sale of Category 1 Assets and pursuant thereto, the majority of the CoC decided to vote on a combined voting agenda for approving the sale of Category 1 Assets along with the agreed distribution mechanism and filing of application before this Tribunal for distribution of proceeds from the sale of Category 1 Assets under Regulation 29 of the CIRP Regulations.
- 2.18 Accordingly, e-voting commenced on 25.06.2024 which was extended from time to time at the request of CoC members. Pursuant to the e-voting and as per the provisions of Regulation 29 of the CIRP Regulations read with the terms of the Process Note, the CoC of the Corporate Debtor, with voting share of 90.68% approved the sale of Category 1 Assets to Central Bank of India for the final bid amount of Rs. 508 Crores (Rupees Five Hundred and Eight Crores only) and the manner of distribution of sale proceeds as discussed and agreed in the 24th CoC meeting held on 20.06.2024 and continued on 21.06.2024.



- 2.19 Accordingly, the RP issued Letter of Intent (LoI) dated 20.08.2024 to the Central Bank which was accepted by Central Bank unconditionally, 15% of the bid amount was remitted on 21.08.2024 after adjusting earnest money deposit. This was also apprised to the CoC members in the 27th CoC meeting held on 29.08.2024.
- 2.20 The RP had also from time to time sought extensions and exclusions which are as follows:

Sr. No.	Application No.	Exclusion/ Extension	Date of Order of Tribunal
1	IA/4544/2023	Extension of 90 days and Exclusion of 101 days so that CIRP period gets extended till 04.03.2024	19.10.2023
2	IA/1071/2024	Extend the last date of CIRP till 03.05.2024	14.03.2024
3	IA/2600/2024	Extension by 90 days so that CIRP extends till 01.08.2024	05.06.2024
4	IA/4389/2024	Exclusion of 77 days	Pending

- 2.21 The RP submits that the Category 1 assets comprises of the equity stake held by the Corporate Debtor in Future Generali India Insurance Company Limited (FGIICL) and Future Generali India Life Insurance Company Limited (FGILICL). During the 28th meeting of the CoC held on 18.10.2024, the RP informed the CoC members that the Competition Commission of India (CCI) had approved the acquisition of shares of FEL in FGIICL and FGILICL by Central Bank. The CoC members were further apprised that the approval for the sale of Category 1 assets to Central Bank was expected soon from the Insurance Regulatory and Development Authority of India (IRDAI). The RP also informed that once the IRDAI approval is received, the Central Bank shall transfer the balance consideration for Category 1 assets, following which, the

shares held by FEL in FGIICL and FGILICL will be transferred to Central Bank.

- 2.22 Further, during the 28th CoC meeting, discussions were also held on the interim distribution of the sale proceeds from Category 1 assets. In this regard, the CoC members confirmed that the RP shall file an application before this Tribunal seeking interim distribution of the proceeds from the sale of Category 1 assets amongst the CoC members in the agreed 70:30 distribution mechanism, after accounting for priority payments as per Section 53 of the Code.
- 2.23 In the above factual backdrop, the RP has filed the present application seeking approval for interim distribution of the proceeds from the sale of Category 1 assets amongst the secured financial creditors and unsecured financial creditors in the agreed ratio of 70:30, after accounting for priority payments in Section 53 of the Code.

3. **Submissions of the RP**

- 3.1 The RP submits that during the CIRP period, the RP is running the Corporate Debtor as a going concern, and therefore, interim distribution of the funds, as proposed in the present application, would enable their productive utilization in the best interests of the ultimate beneficiaries i.e., the CoC members. It is submitted that in the event there is an excess amount paid to any creditor during the interim distribution, the same will be reversed to the Corporate Debtor by such creditor.
- 3.2 It is further submitted that since the CIRP of the Corporate Debtor has been pending since a long time due to various factors, including the peculiar nature of the business and assets of the Corporate Debtor and various litigations, and the conclusion of the entire resolution process is still likely to take further time, interim distribution of the funds as proposed in the present application

would enable their productive utilization in the best interests of the CoC members.

- 3.3 The RP submits that as per the terms of the RFRP, any cash balances retained in the Corporate Debtor at the time of the approval of the resolution plan by the Adjudicating Authority shall be for the sole benefit, and to the order of, the unrelated financial creditors and the distribution of such cash balances shall be decided by CoC at its sole discretion. Thus, the proposed interim distribution of the proceeds from the sale of Category 1 assets amongst the secured financial creditors and unsecured financial creditors in the agreed ratio of 70:30, after accounting for priority payments in Section 53 of the Code, is in accordance with the RFRP. It is further submitted that such interim distribution cannot be said to cause prejudice to any resolution applicant and/ or other stakeholders.
- 3.4 The effect of the interim distribution is that the claims of each creditor who receives any amount as part of the interim distribution shall stand extinguished to the extent of the amount received.
- 3.5 The RP relies on the order passed by NCLT, Hyderabad Bench in the case of M/s. KSK Mahanadi Power Company Limited [I.A. No. 1365 of 2024 in CP (IB) No.492/07/HDB/2019] wherein similar interim distribution of surplus funds has been allowed vide order dated 05.08.2024.
- 3.6 It is submitted that this Tribunal has the power and jurisdiction under Section 60(5) of the Code read with Rule 11 of the NCLT Rules to grant the reliefs as prayed for in this application.

ANALYSIS & FINDINGS



4. Heard Ld. Counsel for the parties and perused the records.
5. The Corporate Debtor herein, namely Future Enterprises Limited, was admitted into CIRP vide order dated 27.02.2023 passed in CP(IB)/513/2022 and Mr. Jitender Kothari was appointed as the Interim Resolution Professional (IRP).
6. Pursuant to the public announcement inviting claims from creditors of the Corporate Debtor, the IRP constituted the Committee of Creditors (CoC) on 22.05.2023. The IRP issued Form G inviting Expression of Interest (EoI) on 10.06.2023.
7. Thereafter, Mr. Avil Menezes was appointed as the Resolution Professional (RP) on 22.06.2023. At the 11th CoC Meeting held on 01.12.2023, the CoC decided to issue a fresh Form G which was accordingly issued on 26.12.2023 whereby Expression of Interests (EoI) were invited from Prospective Resolution Applicants (PRAs) for submission of resolution plans for the three clusters of assets of the Corporate Debtor as well as from Prospective Bidders for sale of unencumbered assets (Category 1 & Category 2) of the Corporate Debtor under Regulation 29 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**).
8. From the averments made in the application, we note that the RP received resolution plans for Cluster 3 Assets and simultaneously, bids were received for Category 1 Assets. It is observed that the RP has already conducted the sale of Category 1 Assets under Regulation 29 of the CIRP Regulations in favour of Central Bank of India who is one of the members of the CoC of the Corporate Debtor.



9. The Category 1 assets which has been sold to Central Bank of India is reproduced below:

CATEGORY 1 Assets

1. 0.51 % Equity stake of Future Enterprises Limited in Future Generali India Insurance Company Limited.
 2. 25.18% Equity stake of Future Enterprises Limited in Equity Shares of Future Generali India Life Insurance Company Limited.
 3. 49.81 % Equity stake of Future Enterprises Limited in Sprint Advisory Services Private Limited, a special purpose vehicle previously holding 44.88% of the issued and paid-up share capital of Future Generali India Life Insurance Company Limited.
 4. 49.82% Equity stake of Future Enterprises Limited in Shendra Advisory Services Private Limited, a special purpose vehicle holding 48.99% of the issued and paid-up share capital of Future Generali India Insurance Company Limited.
10. The above-stated assets were sold by the RP to Central Bank for a consideration of Rs. 508 crores under Regulation 29 of the CIRP Regulations, 2019. Regulation 29 of the CIRP Regulations is reproduced below:

“Regulation 29: Sale of assets outside the ordinary course of business.

“29. (1) The resolution professional may sell unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business, if he is of the opinion that such a sale is necessary for a better realisation of value under the facts and circumstances of the case:

Provided that the book value of all assets sold during corporate insolvency resolution process period in aggregate under this sub-regulation shall not exceed ten percent of the total claims admitted by the interim resolution professional.



(2) A sale of assets under this Regulation shall require the approval of the committee by a vote of sixty-six per cent of voting share of the members.

(3) A bona fide purchaser of assets sold under this Regulation shall have a free and marketable title to such assets notwithstanding the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature."

11. Regulation 29 of the CIRP Regulations empowers the RP, with the approval of the CoC with the requisite majority of 66%, to sell unencumbered assets of the Corporate Debtor which are not in the ordinary course of business. The purpose is for better realisation of the value of the assets of the Corporate Debtor.
12. For the applicability of Regulation 29, the following requirements are to be satisfied:
 - i. The assets proposed to be sold should be unencumbered;
 - ii. Such assets shall not be in the ordinary course of business of the Corporate Debtor;
 - iii. The book value of such assets shall not exceed 10% of the total claims admitted by the IRP; and
 - iv. The sale of such assets shall have the approval of the CoC by a vote of 66% of voting share of the members of CoC.
13. During the course of the hearing, this Bench had directed the RP to address on whether the investments covered under Category 1 Assets form part of ordinary course of business or not and whether the requirements of Regulation 29 of the CIRP Regulations have been satisfied.



14. The RP filed his written submissions making the following submissions:

- i. It is submitted that Future Generali India Insurance Company Limited (**FGIICL**) and Future Generali India Life Insurance Company Limited (**FGILICL**) are joint ventures between the Corporate Debtor and Generali Participations Netherlands N.V. (**Generali**).
- ii. The shares of FGIICL were held by the Corporate Debtor and Generali directly and indirectly through Shendra Advisory Services Private Limited (**Shendra**) and the shares of FGILICL were held by the Corporate Debtor and Generali directly and indirectly through **Sprint**. It is submitted that both Shendra and Sprint are Special Purpose Vehicles (SPV) set up by the Corporate Debtor and Generali.
- iii. The current shareholding pattern of FGIICL and FGILICL are as follows:

FGIICL Shareholding Pattern

Sr. No.	Shareholder	No. of Shares held	Shareholding (%)
1	Future Enterprises Limited	61,09,261	0.51
2	Generali Participations Netherlands N.V.	60,93,06,396	50.51
3	Shendra Advisory Services Private Limited	59,09,89,283	48.98

FGILICL Shareholding Pattern


Sr. No.	Shareholder	No. of Shares held	Shareholding (%)
1	Future Enterprises Limited	65,43,80,445	25.18
2	Future Corporate Resources Private Limited	2,14,79,638	0.82
3	Generali Participations Netherlands N. V.	1,92,34,60,928	74.00

- iv. The RP submits that Shendra is currently undergoing a voluntary liquidation process under the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (Voluntary

Liquidation Regulations) and the assets of Shendra which includes the shares held by Shendra in FGIICL, are likely to be distributed to its shareholders which are as follows:


Sr. No.	Shareholder	No. of Shares held	Shareholding (%)
1	Future Enterprises Limited	13,50,29,966	49.82
2	Future Corporate Resources Private Limited	60,18,864	2.22
3	Generali Participations Netherlands N.V.	12,99,83,492	47.96

- v. It is submitted that in case the distribution of the assets of Shendra is completed prior to the present sale, the Corporate Debtor will directly hold 24.91% in FGIICL.
- vi. The RP submits that the investment made by the Corporate Debtor in FGIICL and FGILICL are long term investments. These are non-current financial assets which are not part of the inventory of the Corporate Debtor and therefore, the sale of these assets will not be in the ordinary course of business of the CD.
- vii. The Corporate Debtor runs factories at Tarapur, Karnataka and Mahadevapura, Maharashtra for the manufacture of garments. Notably, the main object of the CD (as per the Memorandum of Association) is to carry out the business of manufacturing and selling garments. At present, the RP has been running the garment business of the Corporate Debtor in the ordinary course and generates revenue from the same.
- viii. On the other hand, as part of other objects, the Corporate Debtor also holds investments in subsidiaries and joint ventures including insurance, textile manufacturing, supply chain and logistics. It is submitted that Corporate Debtor or the RP cannot run the business of FGILICL and FGIICL in ordinary course from such business since Corporate Debtor only holds part of the shareholding of these



companies. These entities are run by independent management and subject to the performance of FGILICL and FGIICL, their respective board of directors may declare a dividend which would be payable to the Corporate Debtor (as a shareholder).

- ix. However, the RP submits that there is no guarantee that the Corporate Debtor will receive any dividend from either FGILICL or FGIICL in any year. It is further submitted that the revenues of FGILICL and FGIICL do not form part of the Corporate Debtor's revenue. As per the notes to accounts to the Balance Sheet for the year 2021-22, the Corporate Debtor's revenue from operations was Rs. 1,517.01 Crore for the financial year 2021-22, and Rs. 915.22 Crore for the financial year 2020-21. The Corporate Debtor reported a dividend income of Rs. 2.47 Crore from its 'non-current investments', which includes all its investments in subsidiaries and joint ventures. For the financial year 2020-21, the Corporate Debtor did not report any dividend income from its 'non-current investments'.
- x. It is submitted that the Corporate Debtor's investments in subsidiaries and associates are long-term investments and are not part of its inventory of the CD. Instead, these investments are part of the non-current assets of the CD, as per the CD's balance sheet for the financial year 2021-22. Hence, these investments in subsidiaries and associates are not held by the Corporate Debtor for sale in the ordinary course of business.
- xi. It is further submitted that FGILICL and FGIICL are not listed entities and Corporate Debtor is not a public shareholder holding such shares for purposes of trade. The investment of Corporate Debtor in its joint ventures are not stock-in-trade or treasury investments which can be sold in the ordinary course. Moreover, the shares held by Corporate Debtor in FGILICL and FGIICL are not freely



transferable or saleable. The joint venture agreements entered into between Corporate Debtor and Generali restricts the rights of its shareholders to freely transfer its shares and provides the shareholders with a Right of First Offer ('ROFO'). Accordingly, the Corporate Debtor's shareholding (whether held directly, or indirectly through Sprint or Shendra) in FGILICL and FGIICL is not freely transferrable or saleable.

- xii. The RP referred to the definition of 'ordinary course of business' as defined in the Black's Law Dictionary, 5th edition and submitted that any transaction which transpires as a matter of daily custom in business would be a transaction in the 'ordinary course of business'. In the present case, the proposed sale transaction for sale of shareholding of Joint Venture companies is not a transaction that would transpire as a matter of daily custom in the business of Corporate Debtor.
- xiii. The RP relies on the judgment of **Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited and ors, (2020) 8 SCC 401**, wherein the Hon'ble Supreme Court has held that a transaction would be 'ordinary course of business' if such transaction would be part of the 'undistinguished common flow of business done' and 'is not arising out of any special or particular situation'. Applying the aforesaid, it is contended that sale of shareholding by the Corporate Debtor in its joint ventures is not part of the 'undistinguished common flow of business' done by the Corporate Debtor, instead, such sale is arising out of a special or particular situation and is not a sale which is ordinarily carried out by Corporate Debtor as part of its business.
- xiv. Reliance is further placed on **Somanath Baraman and ors. v. Raja S. V Jagannatha Rao, 1972 SCC OnLine AP 90** wherein the Hon'ble Andhra Pradesh High Court has held that there must be a habit or



continuity for transactions to be referred to be in the ordinary course of business, and any stray or disconnected acts cannot be said to be in the ordinary course of business. Further, in **Seksaria Biswan Sugar Factory Ltd v. Commissioner of Income Tax Bombay, 1949 SCC Online Born 48**, the Hon'ble High Court of Bombay has held that merely because an activity was intra vires of a company, would not imply that the said activity would be in the normal course of business.

15. We have considered the explanation/clarification given by the RP in the written submissions justifying the sale of the Category 1 Assets under Regulation 29 of the CIRP Regulations. However, as already noted above, the sale is already concluded and the Category 1 Assets was purchased by the Central Bank of India for a consideration of Rs. 508 crores.
16. The RP has also issued a Letter of Intent (LoI) to Central Bank of India on 20.08.2024. The Central Bank of India paid Rs. 15% of the bid amount on 21.08.2024. It is the submission of the RP that the approval of IRDAI is awaited and once the approval is received, the Central Bank of India shall pay the balance consideration.
17. As regards the distribution of the sale proceeds, we note that the decision to distribute the sale proceeds of Category 1 assets in the ratio of 70:30 has been discussed and agreed upon amongst the members of the CoC in the 24th and 28th CoC meeting held on 20.06.2024. The relevant extract of the Minutes of the 24th CoC Meeting held on 20.06.2024 is reproduced below:

“The representative of Bank of India requested the Chairman to also take vote of the members on filing of an application before the Hon'ble NCLT seeking appropriate directions regarding distribution of proceeds from sale of Category 1 assets before resolution of Cluster 3 assets of the Corporate Debtor. The Chairman stated that this issue was discussed earlier and the members will also have to consider the priority payments which are required to be made as per the Code. The representative of



Bank of India suggested that since the numbers are known, distribution can be made to FCs after making priority payments. Representative of PNB concurred with this view. Representative of Central Bank of India suggested that after receipt of sale proceeds for Category 1 assets, the priority payments can be set aside and the remaining amount can be distributed.

The representative of HDFC Bank requested the Chairman to clarify the amount payable to a creditor who dissents to the Regulation 29 sale and the 70:30 distribution structure. The Chairman requested the CoC Legal Counsel for his views. The CoC Legal Counsel reiterated that there is no concept of a dissenting financial creditor for sale under Regulation 29 and the proceeds shall be distributed according to the agreed distribution structure, which in this case as proposed by the CoC is in the ratio of 70:30 split between secured and unsecured financial creditors respectively, after earmarking funds for priority payments as per the Code. However, in the event the Company goes into liquidation for any reason whatsoever, the dissenting financial creditors, who have dissented to the 70:30 distribution structure and the resolution plan shall be treated as per the provisions of section 53(1) of the Code. The representative of HDFC Bank requested the Chairman to record their objection that, in relation to the financial creditor who dissents to the Regulation 29 sale and 70:30 distribution structure, the distribution must be as per the waterfall specified under Section 53(1) of the Code.”

18. Thereafter, a combined voting was taken of the members of CoC for approval of sale of Category 1 assets under Regulation 29 of the CIRP Regulations along with 70:30 distribution structure and filing of an appropriate application before the NCLT for distribution of money after the receipt of Regulation 29 sale proceeds.
19. As far as filing of application before this Tribunal, the following resolution was passed by 90.68% voting by CoC Members:

“FURTHER RESOLVED THAT, Mr. Avil Menezes, Resolution Professional be and is hereby authorized to file appropriate application before the Hon'ble Adjudicating Authority and any other courts/tribunals/forums as is needed for early distribution of money after receipt of the proceeds of sale of Category 1 assets


under Regulation 29 of the 1881 (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (as amended).

FURTHER RESOLVED THAT, Mr. Avil Menezes, Resolution Professional be and is hereby authorized to take all necessary actions and execute all necessary documents as maybe necessary and/ or incidental hereto.”

20. Further, in the 28th CoC Meeting held on 18.10.2024, it was reiterated in the Minutes of the Meeting that:

“The Chairman informed the members that basis the discussions held in the 24th CoC meeting, members had voted in favour of 70:30 distribution mechanism for proceeds from sale of Category 1 assets and also decided to file an appropriate application for an interim distribution of such proceeds amongst the members to the Hon’ble NCLT upon receipt of the entire sale consideration. The Chairman requested members that even though the 70:30 distribution mechanism had been approved by the CoC: members should discuss if changes are needed in the distribution mechanism. He reminded members that Fixed Deposit holders ("FD Holders") had been raising grievances before various authorities. Further, certain FD Holders had been invited to the 27th CoC meeting and had made a proposal for a 100% pay out of their claims. Subsequent to the 27th CoC meeting, the FD Holders were seeking feedback on the CoC's decision on their proposal for payment of 100% of their dues.

Similar requests have also been made on behalf of the Individual Financiers - Invoice Discounting at KredX platform and secured debenture holders of ATSL for higher pay outs under the resolution process. The members deliberated that since they had already received approvals for the 70:30 distribution mechanism from their management committees, consideration of the proposals from FD Holders, Individual Financiers - Invoice Discounting at KredX platform and debenture holders of A TSL at this stage would delay the process and shall need fresh approvals. Accordingly, their request for additional payment shall be deliberated and considered at the time of distribution of proceeds from the sale of Cluster 2 and Cluster 3 assets. The authorised representative of the FD holders requested the members to consider the proposal of the FD holders in the said meeting itself since they were retail investors. The CoC members took note of the same and reiterated that the same shall be considered at the time of evaluating the resolution plans of Cluster 3 assets once the litigation concludes.



The Chairman summarized that members had unanimously agreed that the RP would file an application before the Hon'ble NCLT seeking interim distribution of the proceeds from the sale of Category 1 Assets amongst the CoC members in the agreed 70:30 distribution mechanism, after accounting for priority payments in Section 53 (2) of the Code.”

21. On this factual backdrop, the present application has been filed seeking this Tribunal's approval for interim distribution of the sale proceeds of Category 1 assets in the agreed ratio of 70:30 after accounting for priority payments under Section 53 of the Code.
22. We do not consider it necessary to look into the merits of the sale under Regulation 29 of the CIRP Regulations since the sale has already been concluded by the RP with the approval of the CoC in its 24th CoC meeting held on 20.06.2024 by 90.68% of voting, which satisfies the mandate under Regulation 29 of the CIRP Regulations, 2016.
23. As regards the CoC's decision to distribute the sale proceeds in the ratio of 70:30 between the secured creditors and unsecured creditors after paying out the priority payment under section 53 of the Code, we are of the view that the issue relating to inter se distribution of proceeds amongst the members of CoC comes within the realm of the commercial wisdom of the CoC.
24. The Hon'ble NCLAT in **Devi Trading & Holding Pvt. Ltd. Vs. Mr. Ravi Shankar Devarakonda RP and Ors. [Company Appeal (AT) (Ins) No. 308/2023]**, decided on 16.10.2023, has held that: -

“17. It is the case of the Appellant that the ‘Business Decision’ of the CoC means a ‘considered’ decision taken by CoC with reference to the commercial interest and this wisdom is not a matter of rhetoric but denotes only a ‘well-considered’ decision by the CoC. The Learned Senior Counsel for the Appellant argued that each and every aspect relating to the Resolution Plan and more particularly its financial layout has to be before the CoC before it can ‘consider’ its



decision on its commercial wisdom and therefore, in the facts of this matter as the 'Financial Layout' was not there before the CoC, the CoC could not have filled the lacunae left behind by the Resolution Applicant in its Plan and determine the same itself. So, the point for consideration here is whether the CoC is empowered to decide the distribution methodology. The Hon'ble Supreme Court in the matter of '**Amit Metaliks**' (Supra) has held in Para 17 that 'thus, what amount is to be paid to different classes or subclasses of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest'. The Hon'ble Apex Court has concluded in Para 22 in '**Amit Metaliks**' (Supra) as follows:

"It needs hardly any emphasis that if the propositions suggested on behalf of the appellant were to be accepted, the result would be that rather than insolvency resolution and maximisation of the value of assets of the corporate debtor, the processes would lead to more liquidations, with every secured financial creditor opting to stand on dissent. Such a result would be defeating the very purpose envisaged by the Code; and cannot be countenanced. We may profitably refer to the relevant observations in this regard by this Court in Essar Steel as follows:-

"85. Indeed, if an "equality for all" approach recognising the rights of different classes of creditors as part of an insolvency resolution process is adopted, secured financial creditors will, in many cases, be incentivised to vote for liquidation rather than resolution, as they would have better rights if the corporate debtor was to be liquidated rather than a resolution plan being approved. This would defeat the entire objective of the Code which is to first ensure that resolution of distressed assets takes place and only if the same is not possible should liquidation follow." "

18. It is crystal clear from the aforementioned proposition that the distribution/amount to be paid to different classes or sub-classes of Creditors in accordance with the provisions of the Code essentially lies within the domain of the commercial wisdom of the CoC. Therefore, the question as to whether the proposed Resolution Applicant has suggested the distribution Plan or whether the CoC has proposed and decided the distribution pattern, is of no relevance as far as it is within the four corners of Section 30 (2) of the Code and is supported by the commercial wisdom of the CoC. Needless to add, the CoC in its 41st Meeting held on 22/11/2022 discussed that the distribution mechanism to be either based on the ratio of



admitted Claims or as per Section 53 of the Code, taking into account the value and priority of security interest of each of the Creditors, as provided for under Section 30 (4) of the Code. It is pertinent to note that the Appellant who had been a part of the CoC meetings did not raise any objections regarding the distribution methodology even when the distribution mechanism was voted by a majority of 93.43 %, to be done as per Section 53 of the Code, on 13/12/2022.

19. *A deliberated ‘Business Decision’ of the CoC includes deliberations on the feasibility and viability, the financial and operational aspects of the Corporate Debtor, and therefore, the question of only ‘considering’ the proposal put forth by the Resolution Applicant cannot be viewed in a ‘rigid manner’. The CoC is a pivotal decision-making body which decides all critical decision-making functions regarding Resolution Plans, Liquidation, Management etc., essential to the success of the CIRP. Though the IBC does not have a specific Provision that uses the term ‘Business Decision’ of the CoC, the Code contains several provisions that detail the powers and functions of the CoC, which encompass various decision-making responsibilities relating to the Insolvency Resolution Process, which definitely includes distribution methodology of the Resolution Plan. To say that only the Resolution Applicant should ‘propose’ the distribution and the CoC can only ‘consider’ it, is viewing the ‘Business Decision’ making capacity of the CoC in its commercial wisdom, in a very ‘narrow compass,’ thereby defeating the very scope and objective of the Code.”*

25. Though the above observations pertains to the distribution of proceeds under a Resolution Plan, however, the legal principle that got settled was that the CoC, in its commercial wisdom, has the necessary power to decide on the distribution of the proceeds amongst the creditors of the Corporate Debtor.
26. The main issue before us is whether the distribution as agreed by the CoC can be permitted to be made at this stage when the resolution plans for the clusters of the Corporate Debtor is still awaited approval.
27. Ld. Counsel for the RP submits that interim distribution of the funds would enable productive utilization of the amounts in the best interests of



the ultimate beneficiaries. Reliance is placed on M/s. KSK Mahanadi Power Company Limited [I.A. No. 1365 of 2024 in CP (IB) No.492/07/HDB/2019] wherein interim distribution of surplus funds was allowed by NCLT, Hyderabad.

28. The prayer made in the present application pertains to interim distribution of the sale proceeds of Category 1 assets during the continuation of the CIRP process. We observe that the IBC does not provide any express provision relating to interim distribution of funds during the CIRP at a time when no resolution plan stands approved.
29. In **Union of India vs. Infrastructure Leasing and Financial Services Ltd. & Ors. [Company Appeal (AT) No. 346/2018]**, the Hon'ble NCLAT permitted for interim distribution of funds before the final resolution of the Company to protect the interest of all the creditors. However, it was also held that such interim distribution shall be subject to the final resolution.
30. We note that in the present case, it is submitted by the RP that any excess amount paid to any creditor during the interim distribution shall be reversed. It is further submitted that the interim distribution shall be done after making the priority payments under section 53 of the Code.
31. Further, the sale proceeds which amounts to Rs. 508 crores, instead of remaining idle in the account of the Corporate Debtor, shall be utilised productively if distributed to the creditors subject to priority payments under section 53 of the Code.
32. We note from the minutes of the 24th CoC meeting that there were dissenting views with respect to the sale under Regulation 29 and the subsequent 70:30 distribution of the sale proceeds. However, there is no objection before us challenging the sale process or the proposed distribution.



33. As far as the manner of distribution is concerned, we note that the Code envisaged distribution of money amongst the various stakeholders of Corporate Debtor:
- (i) In the event of approval of resolution plan under section 31 of the Code, as per the proposal given in the Plan and duly approved by the CoC by requisite majority complying with the provisions of section 30 of the Code.
 - (ii) In the event of failure of resolution plan leading to liquidation of the Corporate Debtor, as per the provisions of section 53 of the Code.
34. However, none of the above two circumstances have arisen in this case so far. Therefore, and in the facts and circumstances of the case, we consider it unnecessary to interfere with the interim distribution of the sale proceeds of Category 1 assets in the ratio as resolved by the CoC in their commercial wisdom, however, the same shall be subject to the mandatory payments to be paid in priority as envisaged under section 53 of the Code. Needless to say, the same is merely an interim distribution and would be subject to the final entitlement of the creditors as per section 30 of the Code (in case of resolution plan) or as per section 53 of the Code (in case of liquidation), and undertaking to reverse any excess amount paid to any creditor.
35. With the above observations, the IA/5888/2024 stands **disposed of**.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Uma, LRA

Sd/-

Ms. Lakshmi Gurung
Member (Judicial)