NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.273 of 2024
& I.A. No.912 of 2024

(Arising out of Order dated 05.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I in I.A. No.88 of 2020 in C.P.(IB) No.1386/MB/2017)

IN THE MATTER OF:

Telecom Regulatory Authority of India ... Appellant

Versus

Reliance Telecom Ltd. & Ors. ... Respondents

With
Company Appeal (AT) (Insolvency) No.355 of 2024

(Arising out of Order dated 19.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I in I.A. No.4124 of 2019 in C.P.(IB) No.1387/MB/2017)

IN THE MATTER OF:

Telecom Regulatory Authority of India ... Appellant

Versus

Reliance Communication Ltd. & Ors. ... Respondents

Present:

For Appellant	**:**	**Mr. Ankur Sood, Mr. Dhaman Trivedi, Advocates.**
For Respondent	**:**	**Mr. Krishnendu Datta, Sr. Advocate with Mr. Anoop Rawat, Mr. Saurav Panda, Ms. Shally Bhasin, Mr. Gaurav Arora, Mr. Udbhav Nanda, Ms. Mohana Nijhawa, Mr. Akhil, Advocates for R1-2**

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeal(s) are filed by Telecom Regulatory Authority of India, challenges order dated 05.12.2023 passed by National Company Law Tribunal, Mumbai Bench-I in I.A. No.88 of 2020 filed by Appellant and order dated 19.12.2023 passed by National Company Law Tribunal, Mumbai Bench-I in I.A. No.4124 of 2019 filed by the Appellant. By the above impugned orders, passed in two IAs respectively, the Adjudicating Authority has allowed the IAs in terms of the directions given in the order. The Appellant feeling aggrieved by the orders, has come up in this Appeal.

2. Both the Appeal(s) raises common question of facts and law and have been heard together. It shall be sufficient to refer to the facts and pleadings in Company Appeal (AT) (Insolvency) No.273 of 2024 for deciding both the Appeal(s). Brief facts of the case, giving rise to the Appeal are:

(i) The Appellant is a regulator constituted under Section 3 of the Telecom Regulatory Authority of India Act, 1997 (for short the "**1997 Act**"). The Appellant in exercise of jurisdiction under the 1997 Act has framed Regulations namely – Telecommunication Consumers Education and Protection Fund Regulations, 2007. The Appellant issued the Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone

Service Regulations, 2009 on 20.03.2009, prescribing quality of service parameters. The Appellant on 10.08.2009 directed all cellular mobile service providers, to submit their compliance report in respect of parameters specified in Regulation 5 of Quality of Service Regulations on quarterly basis in the specified format. By second amendment dated 08.11.2012, Regulation 5A and 9A in Quality of Service Regulations was inserted for imposition of financial disincentive on service providers for not complying with the parameters as specified in Regulation 5 and failure to submit compliance report as specified in Regulation 9.

(ii) The Appellant after giving opportunities and after issuing show cause notice, imposed financial disincentives totaling to Rs.85,10,000/-. The Respondent vide letter dated 29.11.2017 discontinued voice services to all existing subscribers w.e.f. 29.12.2017. On 13.12.2017, the Appellant directed the Respondent to furnish a monthly report of subscriber-wise information of unspent balance amount for all ported out prepaid subscribers and balance of all prepaid mobile numbers who could not be ported out till 31.01.2018. The Appellant issued direction on 19.01.2018 seeking refund of the unspent balance of the prepaid mobile subscribers who ported their numbers through the recipient operators, to whose network the subscriber have

ported and process the refund subscribers, who do not wish to port out their mobile numbers or are not able to port out by 31.01.2018. The financial disincentive of Rs.1,60,000/- was further imposed on 17.04.2018.

(iii) The directions imposed on 19.01.2018 and 22.01.2018 were challenged by the Respondent before the Telecom Dispute Settlement and Appellate Tribunal ("**TDSAT**"), which Appeal was dismissed on 29.11.2018, which order was also unsuccessfully challenged before the Hon'ble Supreme Court.

(iv) The Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor – Reliance Telecom Ltd. commenced on 15.05.2018 on an application filed by Ericsson India Pvt. Ltd. During the CIRP of the Corporate Debtor, the Appellant filed an IA No.88 of 2020 with the NCLT, seeking a direction against the RP to ascertain the unspent balance and security deposit payable to the subscribers and make provisions for the same in the Resolution Plan and further direction against the RP to allow the payments of statutory dues amounting to Rs.85,10,000/- to the Appellant. The RP filed affidavit in reply to the IA, which IA was heard by the Adjudicating Authority and allowed by order dated 05.12.2023, which is under challenged in the Appeal.

3. We have heard Shri Ankur Sood, learned Counsel appearing for the Appellant; Shri Krishnendu Datta, learned Senior Counsel appearing for the Respondent.

4. Learned Counsel for the Appellant submits that Adjudicating Authority committed error in treating security balance of post-paid subscribers and unspent balances of pre-paid subscribers of the company and financial disincentive levied by the Appellant as 'operational debt', which decision is not in accordance with law. It is submitted that security deposit balance of post-paid subscribers and unspent balances of pre-paid subscribers of the Company are held by the telecom service provider, in which the beneficial interest therein continues to vest with the subscribers till the service is actually rendered. The TRAI had issued binding directions to Respondent to refund the entire excess amounts to subscribers. The excess amounts collected by the Respondent, which belong to the subscribers, cannot be appropriated by it and treated as mere 'operational debts' in the CIRP. The amounts are held by the Respondent only under a 'constructive trust' or 'contractual arrangement'. As per Explanation to Section 18(1)(f) of the IBC the above amount cannot be appropriated by the Respondent and used in the CIRP as the beneficial interest therein never came to be vested in the Respondent. In the alternative, it is submitted that in order to maintain its telecom license, the Respondent undertook to refund these amounts before and after commencement of CIRP. The amounts, therefore, ought to be treated

as CIRP costs in terms of Section 5(13)(c) of the IBC. It is further submitted that TRAI is a special law governing all aspects of the provision of telecommunications services in the country, whereas the IBC is a general law governing insolvency and is not specific to telecom companies. The provisions of TRAI Act and Regulations framed thereunder would prevail in respect of matters dealing with the regulation of telecom companies. The amount of Rs.85,10,000/-, which was levied as financial disincentive is required to be paid by the Respondent in preference to other dues under the CIRP. It is further contended that application filed by the Appellant before the Adjudicating Authority has to be read in entirety.

5. The learned Senior Counsel appearing for the Respondent refuting the submissions of the Appellant submits that security deposits and unspent balances of pre-paid subscribers were not held in trust by the CD. It is submitted that the above argument was the primary argument of the Appellant before the NCLT, which is clear from the pleadings in the application. The obligation to refund under Regulation 14(2) of MNP Regulations is a debt in terms of clause 3(11) of the IBC, which defines 'debt' as a liability or obligation in respect of a claim, which is due from any person and includes the financial debt and operational debt. The above amounts never held by the CD in trust; no separate trust account was created or opened by the CD to keep the amounts collected from the subscribers; and no demarcation/ segregation of the amounts collected from the subscribers; and

there was no restriction was imposed by the Appellant or the subscribers for usage of the said amounts by the CD for the business operations of the CD. The security deposit and unspent balance were reflecting as a liability in the books of the CD. It is submitted that financial disincentive is an operational debt in terms of the provisions of the Code. The submission of the Appellant that Act being a special law, would prevail over the provisions of IBC cannot be accepted. The Hon'ble Supreme Court has already held that Section 238 of the IBC has overriding effect over any other law. Hence, IBC shall prevail over the provisions of TRAI Act. The financial disincentives are in the nature of a penalty imposed by the Appellant in terms of the Quality of Service Regulations pertaining to the pre-CIRP period. The Appellant could have only assessed the quantum of the penalty and is prohibited from enforcement of the same by virtue of Section 14 of the IBC. These monies are statutory dues/ operational debt and therefore, the Appellant ought to have filed its claim with the RP regarding the same. It is submitted that no claim was filed by the Appellant and the RP after looking into the books of accounts and financial statements has admitted the claims as 'operational debt'. The Appellant did not file any claim, but filed an application to recover the pre-CIRP dues to circumvent the process of IBC, which is not permissible. The Resolution Plan, which is presently sub-judice before the NCLT, provides for provisions regarding payment to the operational creditors, the dues towards security deposit, unspent balance and financial disincentive, which are operational

debt, will be allocated payments under the Resolution Plan as an operational creditors in terms thereof. The learned Senior Counsel for the Respondent submits that the Appeal(s) deserve to be dismissed. It is further contended that applications filed by the Appellant before the NCLT, has been allowed by the Adjudicating Authority with certain directions and the Appellant could have not raised any grievance when the prayers made in the Applications are allowed.

6. We have considered the submissions of learned Counsel for the parties and have perused the records.

7. We need to first notice the prayers made by the Appellant in the application. The Appellant by way of additional affidavit has brought on record IA No.88 of 2020 filed by the Appellant before the Adjudicating Authority. In the application the Appellant prayed the direction to RP to refund the unspent balances to the subscribers of the Corporate Debtor in compliance of the directions issued by the Appellant. Following was pleaded in paragraph 42 of the application:

> "42. Thus, the present application is filed before this Hon'ble Tribunal seeking appropriate directions against the Resolution Professional to refund the unspent balance to the subscribers of the corporate Debtor in compliance of the directions issued by the Applicant in accordance with the TRAI Act, and Regulations thereunder. Without prejudice to the aforesaid contentions it is stated that the unspent

balance and security deposit was in possession of the Corporate Debtor under trust and under contractual arrangement and therefore, the same cannot be included in the CIRP Process by the Resolution Professional."

8. The prayers made in the application are as follows:

"a. Pass an order directing the Resolution Professional to ascertain the unspent balance and security deposit payable to the subscribers and make provisions for the same in the resolution plan;

b. Pass an order directing the Resolution Professional to allow for payment of statutory dues amounting to Rs. 85,10,000/- to the Applicant; and/or

c. pass such other order / directions as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case."

9. We have already noticed above that the Appellant has not filed any claim in the CIRP of the Corporate Debtor. It appears that it having not filed a claim, a direction was sought as prayed in prayer (a) that RP should ascertain the unspent balance and security deposit payable to the subscribers and make provisions for the same in the Resolution Plan and further direction was sought to allow the payment of statutory dues amounting to Rs.85,10,000/- to the Applicant. The above were the only two prayers made in the application. The RP has filed an affidavit in reply. The RP in the reply affidavit has pleaded that Resolution Plan has already been approved by the CoC. It is pleaded by the RP that the Applicant has not filed any claim inspite of letter written by

the RP to the Applicant on 03.07.2019, asking the Appellant to file claim for any outstanding dues for period prior to CIRP. It was pleaded that Applicant cannot seek refund of any monies under an application filed before the Tribunal without following the due process prescribed under the Code. Pleadings in paragraph-6 of the affidavit is as follows:

> "6. In response to the aforesaid relief sought, I say that this application has been filed by the Applicant to bypass the resolution process as prescribed under the Insolvency and Bankruptcy Code, 2016 ("Code"). I say that the Applicant has not filed any claims before me till date, despite the letter dated 3rd July, 2019 addressed to the Applicant by me stating that the Applicant may file claims for any outstanding dues pertaining to the period before commencement of the corporate insolvency resolution process ("CIRP") of the Corporate Debtor. A copy of the letter dated 3rd July, 2019 addressed to the Applicant by me is annexed to the Miscellaneous Application as Annexure A-21. Therefore, the Applicant cannot seek refund of any monies under an application filed before this Hon'ble Tribunal, without following due process prescribed under the Code."

10. In paragraphs 8 to 10, the RP has raised his pleas with regard to unspent balances as well as security deposits of the subscribers, which are as follows:

> "8. The Applicant herein has claimed that the unspent balances as well as security deposits of the subscribers, which are lying with the Corporate Debtor, cannot form part of the corpus of the Resolution Plan and therefore, the said

amount ought to be refunded to the subscribers at the earliest.

9. I say that, in case of prepaid subscribers, the Corporate Debtor has not collected any security deposit. Security deposit has been collected only from post-paid subscribers. Dues of the subscribers on unspent balances and security deposits for the period prior to the insolvency commencement date, if any, would be required to be submitted as claims and would be dealt with in accordance with the provisions of the Code under a resolution plan.

10. I say that if any claims are submitted by the subscribers in respect of their dues and if so directed by this Hon'ble Tribunal, I shall duly verify such claims. Further, claims in this respect cannot be filed by the Applicant, but would be required to be filed by the subscribers themselves. The Applicant cannot, by way of an application under Section X 60(5) of the Code seek refund of monies to the subscribers, without following the process under the Code and therefore, the present application is not maintainable."

11. In paragraphs 11, 12 and 13, the RP has made its pleas with regard to financial disincentives. Paragraph 11, 12 and 13 are as follows:

"11. The Applicant has sought for an amount of Rs. 85,10,000/- (Rupees eighty five lakhs ten thousand only) to be paid to the Applicant as "statutory dues". These dues have been imposed as financial disincentives by the Applicants on the Corporate Debtor under Regulation 5A of the Standards of Quality of Service for Basic Telephone Service and Cellular Mobile Telephone Service (Fourth Amendment) Regulations,

2015 and Mobile number Portability Regulations, 2009 vide various show cause notices and orders.

12. I understand that the said disincentives pertain to the period prior to the insolvency commencement date. As per the provisions of the Code, all creditors of the Corporate Debtor are required to file claims for dues prior as on the insolvency commencement date. As per the provisions of the Code, any governmental and/or statutory authority is also required to file claims for any dues pending to be paid to such authority. By way of letters dated 14th May, 2019 addressed to the Applicant by the Interim Resolution Professional and letter dated 3rd July, 2019 addressed to the Applicant by me, intimated the Applicant about the ongoing moratorium and claim process. I say that the Applicant has till date not filed any such claim before me for its dues.

13. I say that, payment of any amounts to the Applicant pertaining to the period prior to commencement of insolvency of the Corporate Debtor will be a contravention of the provisions under the Code, and would amount to a preferential treatment to one creditor over others."

12. The Adjudicating Authority in the impugned order in paragraphs 6.6 and 6.7 has issued following directions:

"6.6. We have no hesitation to hold that about of security deposit balances refundable to post paid subscribers and amount of un-spent balances in prepaid plans are the money collected in excess of the rates prescribed by TRAI. As this amount remains unpaid as on date of commencement of CIRP, this amount which is outstanding of the books of the Corporate Debtor as liability in aggregate is liable to be paid into

Telecommunication Consumers Education and Protection Fund in accordance with Regulation 3 of Telecommunication Consumers Education and Protection Fund Regulations, 2007. Accordingly, amount of Security Deposit, and unspent balance of Prepaid Subscribers shall be admitted as Operational Debt.

6. 7. As regards demand on account of financial disincentive levied by TRAI we of the considered view that the said amount is a nature of Operational Debt other than Government dues, as this dues are a nature of fine for non-maintenance of quality standards only. In this regard , we find that the Hon'ble Supreme Court at Para 49 has analysed the decision in the case of Rainbow Papers and held that

> *"Rainbow Papers (supra) did not notice the waterfall mechanism under Section 53 - the provision had not been adverted to or extracted in the judgment. Furthermore, Rainbow Papers (supra) was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the water fall mechanism providing/or the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of' secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the court in Rainbow Papers (supra) or was missed altogether. In any event, the judgment has not taken note of the provisions of the*

IBC which treat the dues payable to secured creditors at a higher footing than dues payable to Central or State Government."”

13. The above order was passed by Adjudicating Authority referring to judgment of this Tribunal in ***Puneet Kaur, through her Attorney Amrit Pal Singh vs. K V Developers Pvt. Ltd. – Company Appeal (AT) (Insolvency) No.390 of 2022*** taking the view that security deposit balance refundable to post-paid subscribers and amount of un-spent balances in prepaid plans are the money collected in excess of the rates prescribed by the TRAI and thus, the amount, which remained unpaid as on the date of commencement of CIRP, which is also outstanding in the books of the Corporate Debtor as liability in aggregate is liable to be paid into Telecommunication Consumer Education and Protection fund in accordance with Regulation 3.

14. Now, we come to the submissions, which have been pressed by the Appellant, challenging the decision of the Adjudicating Authority. One of the submission advanced by learned Counsel for the Appellant is that TRAI Act is a special law governing all aspects of the provisions of telecommunications service in the country, whereas the IBC is a general law governing insolvency, hence the provisions of TRAI Act would prevail in respect of matters dealing with the Regulations of the telecom companies. The IBC is a special law and latter enactment than to the TRAI Act, which was enacted in 1997, whereas IBC has been enacted in 2016. Section 238 of the IBC gives overriding effect

to the provisions of the IBC to all other laws. Section 238 of the IBC is as follows:

> "**238. Provisions of this Code to override other laws. -** The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

15. Learned Counsel for the Respondent has relied on the judgment of the Hon'ble Supreme Court in ***A. Navinchandra Steels Pvt. Ltd. vs. SREI Equipment Finance Ltd. & ors. – Civil Appeal Nos.4230-4234 of 2020*** decided on 01.03.2020. The Hon'ble Supreme Court in paragraph 14 of the judgment has held that IBC is a special statute, which must prevail in the event of conflict, but has a non-obstante clause contained in Section 238. Paragraph 14 of the judgment of the Hon'ble Supreme Court is as follows:

> "**14.** Having heard learned counsel for all the parties, it is important to restate a few fundamentals. Given the object of the IBC as delineated in paragraphs 25 to 28 of Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17 ["Swiss Ribbons"], it is clear that the IBC is a special statute dealing with revival of companies that are in the red, winding up only being resorted to in case all attempts of revival fail. Vis-à-vis the Companies Act, which is a general statute dealing with companies, including companies that are in the red, the IBC is not only a special statute which must prevail in the event of conflict, but has a non-obstante clause contained in Section 238, which makes it even clearer that in case of conflict, the provisions of the IBC will prevail."

16. In view of the clear pronouncement of the above law, submission of the Appellant that TRAI Act is a special statute and would prevail over the IBC, has to be rejected.

17. The disincentive, which has been imposed by the TRAI on the Corporate Debtor were in nature of penalty for non-compliance of Regulations 5A and 9A of Quality of Service Regulations 2009. It is also pleaded by the RP that in the books of account of the CD, outstanding dues were reflected. The payment towards the disincentive as imposed by the Appellant was liability of the Corporate Debtor, which remained outstanding on the date of commencement of the CIRP. Hence, the said amount has to be paid as per the Resolution Plan, in accordance with the IBC process. The prayer of the Appellant as made in IA 88 of 2020, which is levied as disincentive, dehors the IBC process, cannot be accepted. The Adjudicating Authority has rightly treated the liabilities as 'operational debt'. The learned Counsel for the Appellant has further contended that amount of security deposit, balance of post-paid subscribers and unspent balance of prepaid subscribers of the company are held in trust by the Corporate Debtor and they are not part of the assets of the Corporate Debtor, hence the said amount are to be returned.

18. The security deposit, which was given by post-paid subscribers, which remained unpaid is an outstanding liability of the Corporate Debtor. A reply affidavit has been filed by the RP in the Appeal, where Financial Statements of 2018-19 has been brought on the record. Note 2.16 dealt with 'Other

Current Liabilities', which are amounts due towards security deposit, advance from customers, statutory dues and book overdraft, was specifically mentioned. Note 2.16 of the Financial Statements, is as follows:

"**Note: 2.16** (Rs. in Crore)

Other Current Liabilities

	As at March 31, 2019	As at March 31, 2019
Income received in advance	13.25	14.67
Other Liabilities*	98.35	48.48
	111.60	63.15

*includes amounts due towards security deposit, advance from customers, statutory dues and book overdraft."

19. The Corporate Debtor, thus has accounted for liabilities, which includes security as well as statutory dues. We do not find any error in the order of the Adjudicating Authority, accepting the said outstanding dues as 'operational debt', to be paid as per the provisions of the Resolution Plan.

20. The learned Counsel for the Appellant has relied on judgment of the Gujarat High Court in ***Baroda Spg. & Wvg. Mills Co. Ltd. vs. Baroda Spg. & Wvg. Mills Co-operative Credit Society Ltd. & Ors. – (1976) 46 CompCas 1 (Guj)*** and a judgment of Madras High Court in ***Kodak Ltd. vs. South Indian Film Corporation – AIR 1937 Mad 833*** in support of his submission that beneficial ownership in the balance security deposit and unspent balances of prepaid subscribers are the amounts held by the CD only under a constructive trust. In the above case, the Gujarat High Court had

occasion to consider Sections 456, 511 and 530 of the Companies Act. In the facts of the above case, the amount, which was in the hands of the company, which came to it by way of deductions from the wages and salary payable to its employees, on the requisition of the society, of which the employees were the members. In paragraph 24, 25 and 26, following was observed:

> "24. If, as stated earlier, the company had neither legal nor the beneficial ownership in the property and it was merely a custodian till it remitted the amount to the society, and could not mix the amount with its own funds and had no liability to pay interest, undoubtedly, the amount in the hands of the company was impressed with a trust. No other conclusion in the facts and circumstances of this case is even possible.
>
> 25. If the amount in the hands of a company is impressed with trust, undoubtedly, it did not form part of the assets of the company, and the liquidator has to pay it out over any other claim before he undertakes distribution of the assets of the company. Where property in the hands of the company is impressed with a trust, it is unquestionable that it can be followed and recovered from the liquidator. Palmer's Company Law, 21st edition, at page 775, has the following observation :
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> > "Property which can be identified as belonging to or held by a company in trust, for other persons, may be followed and recovered from the liquidator."
>
> 26. Applying the principles to which reference has been made in this judgment, it is crystal clear that the amount, in the hands of the company, which came to it by way of deductions from the wages and salary payable to its employees, on the requisition of the society, of which the employees were the members, for satisfying the demand or debt which they owed to the society, was

> impressed with the character of a trust in the hands of the company, and the same can be recovered by the society from the liquidator before the liquidator proceeds to distribute the assets of the company. It must be paid over in full before any distribution of the assets of the company takes place."

21. The Gujarat High Court answered the question in the above facts that the above amount standing to the credit balance in the account of Co-operative Credit Society is trust money. The above case was on its own facts and has no application in the facts and sequence of the events in the present case.

22. The judgment of the Madras High Court relied by the Appellant was also on its own fact. We need to look into the facts of the present case to find out that whether the security deposit, which was given by the post-paid subscriber and unspent balance of prepaid subscribers, are not the assets of the Corporate Debtor and they are held in trust by the Corporate Debtor. An additional affidavit was filed by the RP to the application of the Appellant, where the RP has given the reasons as to why the balance of post-paid and prepaid subscribers cannot be treated to be held in trust by the Corporate Debtor. In paragraphs 14, 15, and 16, the RP in the affidavit has also given detailed facts with regard to refund of process adopted by Corporate Debtor for refund of security deposit of post-paid subscribers and unspent balance of prepaid subscribers.

23. It is also submitted by learned Counsel for the Respondent that the amount, which was received towards unspent balance and security deposit, were the amounts utilized in the business of the Corporate Debtor and there was no prohibition or any statutory regulation refraining the Corporate Debtor from utilizing the said amount in running of its business and liability to refund the security deposit and unspent balance was to be discharged in accordance with the terms and conditions.

24. Now, reverting back to the prayers made by the Appellant in its IA No.88 of 2020, the prayer (a) of the applications read as follows:

> "a. Pass an order directing the Resolution Professional to ascertain the unspent balance and security deposit payable to the subscribers and make provisions for the same in the resolution plan;"

25. The prayer made by the Appellant was to make provision in the Resolution Plan. In view of the directions issued by the Adjudicating Authority in the impugned order, the said prayer was addressed.

26. Coming to the prayer (b). The said prayer could not have been allowed by the Adjudicating Authority, hence, no directions to make payment of Rs.85,10,000/- to the Appellant was made, which was the amount levied by the Appellant as disincentives on the Corporate Debtor, which amount has to be dealt in accordance with the Resolution Plan. The prayer (b), thus, has rightly not been granted by the Adjudicating Authority.

27. The learned Counsel for the Appellant has relied on judgment of the Hon'ble Supreme Court in ***(2004) 3 SCC 137 – Sopan Sukhdeo Sable v. Assistant Charity Commissioner and Ors.*** wherein the Hon'ble Supreme Court held that the pleadings of the Appellant should have been read and understood in context and not viewed in isolation. There can be no dispute to the proposition laid down by the Hon'ble Supreme Court in the above case. The submission, which has been raised by the Appellant before the Adjudicating Authority in the application has also been reiterated before us, which we have considered in the above paragraph.

28. Insofar as coming to the alternative submission of the Appellant as noted above that amount towards security deposit balances of post-paid subscribers and unspent balances of prepaid subscribers by treated as CIRP cost. Section 5(13)(c), which has been referred to by the Appellant is cost, which is incurred by the RP in running the business of the CD as going concern. There is no material on record to accept the submission of the Appellant that the said amount of security deposit balances of post-paid subscribers and unspent balances of prepaid subscribers be accepted as CIRP cost. There is no foundation laid in the application, which was filed by the Appellant before the Adjudicating Authority regarding the CIRP cost and the submissions, which are sought to be advanced in these Appeal(s), cannot be accepted, it being not founded on any relevant materials.

29. In view of the foregoing discussions, we are of the view that no grounds have been made out to interfere with the impugned order in these Appeal(s). Both the Appeal(s) are dismissed. Pending IAs, if any, are also disposed of. There shall be no order as costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

6th November, 2024

Ashwani