



IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH- I

IA(I.B.C)/4718/MB/2025

IN

CP(IB) No. 3143 of 2019

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

In the Application of

Mr. Pankaj Mahajan

...Applicant/Resolution
Professional

Versus

Ajay Mittal

...Respondent No.1

Arshiya Lifestyle Limited

... Respondent No.2

Ascendas Panvel FTWZ Private
Limited

... Respondent No.3

Capitaland India Trust (Singapore)

... Respondent No.4

In the matter of

Punjab National Bank

...Financial Creditor



Versus

Arshiya Limited

...Corporate Debtor

Order Delivered On : 08.04.2026

Coram:

Sh.Prabhat Kumar
Member (Technical)

Sh.Sushil Mahadeorao Kochey
Member (Judicial)

Appearances:

For the Applicant : Adv. Ayush Rajani a/w Adv. Mitali Bhatt,
Adv. Shruti Shukla and Adv. Vaidehi Gulhane
For Respondent No.1 & 2 : Adv. Nausher Kohli a/w Adv. Abhishek
Gupta, Adv. Chirag Naik, Adv. Noopur
Mathrawala and Adv. Ritisha Choudhary i/b
MZM Legal LLP
For Respondent No.3 & 4 : Adv. Nishant Upadhyay, Adv. Vivek Shetty
a/w Adv. Menezes a/w Adv. Raveer Veera
i/b AZB & Partners

Brief facts:

1. The present Interlocutory Application has been filed on 08.10.2025 by the Applicant under Section 60(5) read with Sections 20 and 25 of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Rules 11 of the NCLT Rules, 2016, praying the following directions against the Respondents:

"1. Consider the present IA 4718 of 2025 under the provisions of Section 60(5)(c) of the Insolvency & Bankruptcy Code, 2016 ("Code") read with Sections 20 and 25 of the Code and Rule 11 of National Company Law Tribunal ("NCLT") Rules, 2016 for passing appropriate Orders as sought in the present Application;



- 2. Pass necessary Orders directing the Respondent nos. 1, 2, and 3 to provide the details of the said transaction to the tune of Rs. 80 Crores in an Affidavit before the Adjudicating authority.*
 - 3. Pass necessary order directing the Respondent no. 2 to provide the copies of its audited balance sheet for the FY 2022-23, FY 2023-24 and till 31 March 2025 with relevant groupings and excerpts all the details with the said settlement transaction.*
 - 4. Direct the Respondent nos. 1, 2, and 3 to provide the copy of the settlement terms entered into between the parties with regard to the underlying transaction.*
 - 5. Direct the Respondent nos. 1, 2, and 3 to provide details on an affidavit as to the basis of arriving at the so-called non-compete of Rs. 80.09 Cr (Singapore \$ 12.8 million).*
 - 6. Direct the Respondent Nos. 1, 2, and 3 to clarify on an Affidavit whether the Master Lease Agreement between the Corporate Debtor and the Respondent No. 2 and 3 respectively, is still subsisting.*
 - 7. Direct the Respondent no. 2 to hold EGM and invite the Corporate Debtor (represented through the Applicant/ Resolution Professional) within 7 days from the date of the adjudication of the present Application.*
 - 8. Pass such other ancillary and consequential directions as this Adjudicating Authority may think necessary or expedite including directions to the Respondents regarding the time and place of the meeting to be held as vested in terms of provisions of section 98 of the Companies Act, 2013.*
 - 9. Direct the Respondent no. 1, 2, and 3 to provide all the necessary documents and relevant information with regard to the said transaction to the tune of Rs. 80 Cr.*
 - 10. Issue such other order(s)/ direction(s) as may be necessary in the matter.*
2. The Corporate Insolvency Resolution Process ('CIRP') commenced on 23.04.2024 in terms of the order passed by this Tribunal in the Company Petition C.P. (IB) 3143 of 2019 filed by Punjab National Bank (hereinafter referred to as the "Financial Creditor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) read



with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 against Arshiya Limited (hereinafter referred to as "Corporate Debtor") wherein Mr. Nitin Vishwanath Panchal was appointed as the Interim Resolution Professional ("IRP"). Thereafter, Mr. Pankaj Mahajan ("Applicant/Resolution Professional/RP") was appointed as the Resolution Professional vide order dated 25.09.2024 passed in terms of resolution passed in 1st CoC meeting held on 08.08.2024.

3. Respondent No. 2 is 100% subsidiary of the Corporate Debtor and Respondent No. 1 is director thereof and is also suspended board member of Corporate Debtor. Respondent No. 3 was earlier part of Arshiya Group, but later on was acquired by CapitaLand India Trust ("CLINT") ("Respondent No.4") as its wholly owned subsidiary.
4. During CIRP, a Writ Petition bearing No. 5285 of 2024 was filed by Respondent No.2 before the Hon'ble Bombay High Court, wherein the Corporate Debtor was arrayed as a party, however the lis was predominantly between Arshiya Lifestyle Limited ("Respondent No. 2/ALL") and Ascendas Panvel FTWZ Private limited ("Respondent No. 3/ANPL"). The said writ petition came to be withdrawn on 06.12.2024 pursuant to an alleged out-of-court settlement between these parties.
5. It is submitted by the Applicant that, upon perusal of the audited financial statements of CapitaLand India Trust ("CLINT") ("Respondent No.4") for the year ended 31.12.2024, he discovered a disclosure regarding payment of a non-compete fee of INR 80.09 Crores to the "Arshiya Group" in connection with termination of a master lease and takeover of warehousing operations in the following manner:

"1 (f) Notes to the Condensed Consolidated Financial Statements (Cont'd)

17. Intangible assets (Cont'd)

Impairment test for non-compete fees



The Group's subsidiaries, collectively known as Ascendas Panvel FTWZ Private Limited (Ascendas) and Anomalous Infra Private Limited (Anomalous), have terminated its master lease agreement with Arshiya Group as of 31 July 2024. The Group's subsidiaries took over the logistics operation. A non-compete fee of INR 800.9 million (S\$12.8 million) was negotiated to be paid to Arshiya Group to refrain from carrying out competing business and to facilitate the handover of the warehousing operations to the Group's subsidiaries.

Management carried out an internal assessment and concluded that there is no indication of impairment for it.

Amortisation

Non-compete fees will be amortised on a straight-line basis over an estimated useful life of 5 years from the date on which the assets are available for use."

6. The Applicant is stated to have addressed letters dated 28.02.2025 to the concerned entities and subsequently on 20.03.2025 to the auditors seeking clarification regarding the said transaction; however, no satisfactory response was received. It is further submitted that the communications dated 13.03.2025 elicited only evasive replies from the suspended management, thereby keeping the Applicant in dark as to whether the settlement between Respondent no.2 and 3 has any impact on the interest of the stakeholders of the Corporate Debtor herein.
7. It is case of the Applicant that it is essential to understand and get the copies of the relevant document, the settlement agreement entered into between these two parties as has been referred to in the withdrawal order before the Hon'ble High Court vide order dated 6 December 2024 and as to how this amount of Rs. 80 Crores has been arrived at and which entity is paying the said amount to which of the "Arshiya group entity" since Arshiya Limited i.e., the Corporate Debtor itself is flagship company of the group and hold 100% shareholding of the petitioner subsidiary i.e., Arshiya Lifestyle Limited to say the petitioner before the Hon'ble High Court.



8. It is further submitted that attempts were made on 20.03.2025 to convene an Extraordinary General Meeting of Respondent No. 2 in exercise of shareholder rights as Respondent no.2 is a wholly owned subsidiary of the Corporate Debtor; however, the same was resisted by the suspended management.
9. Respondent no.1, 2, 3, 4 filed their reply disputing the jurisdiction of this Tribunal to deal with this matter as well as applicant's prayer for provision of information pertaining persons other than Corporate Debtor, which are confidential in nature, and the prayer for reliefs which can be prayed and granted under Companies Act, 2013 from this Tribunal and not in terms of provisions of IBC.
10. We heard the Ld. Counsel and perused the material on record.
11. Respondent no.2 has stated in its reply that *it is an admitted position that Writ Petition No. 5285 of 2024 was filed not by the CD, but by ALL, an independent company. The CD was merely impleaded as a party to the said Writ Petition. It is pertinent to note that, despite being afforded an opportunity to raise any objection or dispute, if any, with respect to the dispute and/ or ensuing settlement, RP chose not to do so. On the contrary, the RP in his affidavit to the Writ Petition, has merely cited moratorium under Section 14 of IBC and further stated that no legal proceeding can continue against the CD and therefore, has remained silent on the issue concerning the dispute and / or the ensuing settlement. Per contra the Applicant has submitted that the no compete fee is purportedly paid to "Arshiya Group," of which the Corporate Debtor is the flagship entity, and the same is being paid for Arshiya Group to refrain from doing competing business, which will have a negative impact on the operations of the Corporate Debtor.*
12. It is noted that Respondent Nos. 1 and 2 have categorically stated that the dispute in question forming the subject matter of the Writ Petition No. 5285 of 2024 was between Respondent Nos. 1, 2 and 3 and the Corporate Debtor has no relationship with the dispute in question, consequently, settlement of such dispute has no bearing on



the Corporate Debtor and / or the CIR Process. Further, the Respondent No. 3 has also clearly stated that the March 17, 2025 Letter, suppressed by the applicant, clarifies that the sub-leases with Respondent No. 2 dated February 3, 2018, and with Arshiya Panvel FTWZ Services Private Limited dated March 28, 2022 were terminated with effect from July 31, 2024 (with valid notice), and not the Master Lease Agreements dated February 3, 2018 and July 26, 2019.

13. It was also argued that the consent terms entered between the parties being confidential in nature cannot be divulged with the parties' alien to such consent terms.
14. Upon consideration of the aforesaid submission it is clear that the concern of the Applicant in relation to impact of such consent terms on the corporate debtor's capacity to carry on warehousing business seems to be imaginary as the Corporate Debtor was not a party to such consent terms and any right of the Corporate Debtor could not be taken away by any third person, including the suspended board member i.e. Respondent No. 1 in view of Section 14 of the Insolvency and Bankruptcy Code, 2016. Nonetheless, the submissions of Respondent Nos. 1, 2 and 3 are clear in respect of this and requires no further elucidation on the aspects that the consent terms entered between Respondent Nos. 2 and 3 does not and cannot take away any right of the Corporate Debtor in any manner. We are of considered view that no direction can be issued to Respondent No. 1, 2 and 3 to share the consent terms with the Applicant. However, the Applicant shall be at liberty to require the respondent no.2 company to allow inspection of the books of accounts as is permissible under Section 136 of the Companies Act, 2013.
15. Indubitably, the Respondent no.2 is a 100% subsidiary of the Corporate Debtor and the Applicant herein, being the Resolution Professional, is vested with the powers of the Board of Directors of Corporate Debtor to exercise the rights vested in the Corporate



Debtor as a shareholder of another company, including the right to appoint/remove any person to/from the Board of Directors of Respondent No. 2 company by following the prescribed procedure, however, the Resolution Professional has not exercised such right so far and the persons appointed as directors on the board of Respondent No. 2 continues to exercise the powers of the Board. Nonetheless, such persons, being nominees of shareholders which in the present case is corporate debtor solely, are in fiduciary duty to the corporate debtor to protect its interest.

16. In our considered view, Respondent No. 1 being the Director of Respondent No. 2 is duty bound to act in a fiduciary manner and protect the interest of shareholder of Respondent No. 2, which is the Corporate Debtor only, failing which the shareholders i.e. Corporate Debtor has a right to remove Respondent No. 1 from the Board of the Respondent No. 2 Company and in addition thereto, has a right to appoint any other person on the board of Respondent No. 2 Company.
17. It is further noted that as per Section 100(4) of the Companies Act, 2013, if the Board of Director fails to proceed to call an Extra Ordinary General Meeting (EOGM) of a company requisition by its shareholder in terms of Section 100 (2) of the Companies Act, 2013, such shareholders can themselves call the EOGM within three months of their requisition which was not acted upon by the board. In our considered view, the Applicant ought to be conscious of this provision, as this provision does not require any intervention of this Tribunal.
18. As regards prayer for supply of financial statement of Respondent No. 2, it is noted that every company is required to provide a copy of financial statement to its shareholder and if, strangely, such financial statement has not been provided by the Respondent No. 2 or its Director to the Corporate Debtor, such act, in itself, constitute



an offence, which in our considered view Respondent No. 2 and its Director must refrain from continuing to indulge.

19. Further, the shareholders have a right to inspect the books of account of the company as well as to have copy of audited financial statement in terms of Section 136 of the Companies Act, 2013 and non-compliance of which is punishable under Section 136 of the Companies Act, 2013. In our considered view, the Resolution Professional ought to have asserted and made the board of Respondent No. 2 to allow such inspection, and in case of denial of such rights, the Corporate Debtor being a shareholder can approach this Tribunal to seek appropriate remedy under the provisions of the Companies Act 2013.
20. As the Application has been filed in terms of Section 60(5), read with Section 20 and 25 of IBC, we do not consider it appropriate to issue any direction in relation to rights available under Companies Act, 2013 to the Corporate Debtor or in relation to non-compliance of such provisions by Respondent no.2 as well as Respondent no.1 in his capacity as director of Respondent no. 2
21. In terms of above, the IA(I.B.C)/4718/MB/2025 is disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

MK

Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)