

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD



ITEM No.302

IA/296(AHM)2026

in

C.P.(IB)/308(AHM)2023

Under Section 114 IBC r/w Rule 11 NCLT Rules, 2016

IN THE MATTER OF:

Nitin Om Kothari RP of Irfan Khan PG of Dmb Paper Mills
Pvt. Ltd

.....Applicant

V/s

.....Respondent

Mr. Irfan Khan

Order delivered on: 06/05/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-SD-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

IA/296(AHM)2026

In

C.P.(IB)/308(AHM)2023

*(Application under Section 114(1) of the IBC, 2016 r/w Rule 11
of the NCLT, Rules, 2016)*

MEMO OF PARTIES

Mr. Nitin Om Kothari

Resolution Professional of
Irfan Khan Personal Guarantor of
DMB Paper Mills Private Limited

Having office at:

51/301, Alica Nagar,
Lokhandwala Township,
Kandivali (E), Mumbai-400101

.... Applicant

VERSUS

Mr. Irfan Khan

Address 1: 02, Warsi Compound,
Lliyas Nagar, Dargah Road, K
Hajrana, Indore-452001

Address 2: 211, Shagun Building,
Vijay Nagar, AB Road,
Above Apna Sweets, Indore,
Madhya Pradesh-452001

.... Personal Guarantor/Respondent

In the Matter of: CP(IB) No. 308(AHM) 2023

Krishkan Investment Private Limited,

Having Its Office situated at



602, Sunteck Crest Plot 3 CTS No.189,
Mukund Nagar Rd., Andheri east,
Marol Naka, Mumbai,
Maharashtra-400059.

... Financial Creditor

VERSUS

Mr. Irfan Khan

(Personal guarantor of Corporate Debtor-
M/s. DMB Paper Mills Private Limited)

Residing at:-

211, Shagun Building,
Vijay Nagar, AB Road,
Above Apna Sweets,
Indore, Madhya Pradesh-452001.

... Personal Guarantor

Order Pronounced On: 06.05.2026

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant : Mr. Sumitra Chaturvedi, Advocate
a/w. Mr. Nitin Om Kothari, RP in
Person

For the Respondent/FC : Mr. Yuvraj Thakore, Advocate
a/w. Mr. Pankaj Yadav,
Authorized Person

For the PG : None

ORDER
(Per Bench)



1. This application has been filed on 26.02.2026 (through e-mode) by **Mr. Nitin Om Kothari**, appointed as the Resolution Professional in the Insolvency Resolution Process of Mr. Irfan Khan, Personal Guarantor to DMB Paper Mills Private Limited, (hereinafter as, "the **Applicant**") under Section 114(1) of the IBC, 2016 r/w Rule 11 of the NCLT, Rules, 2016 seeking following reliefs: -

- a. *To allow the present application*
- b. *To take the Report under Section 112 of the IB Code on record and further be please to Pass an appropriate order as per Section 114 of the IB Code;*
- c. *To Pass an order to close the Insolvency Resolution Process of. Irfan Khan along with liberty to initiate the Bankruptcy Process, as may be required, in accordance with law:*
- d. *To relieve the Applicant-Resolution professional of the Personal Guarantor in view that non- Receipt of Repayment Plan from the Guarantor:*
- e. *To grant any other relief or reliefs as may deem fit in the interest of justice;*

2. The Applicant has placed the facts through the I.A. and documents in the following manner: -

2.1. It is submitted that the present Interlocutory Application has been filed by the Resolution Professional under Section 114(1) of the Insolvency and



Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016, in the matter of insolvency resolution process of the Personal Guarantor, Mr. Irfan Khan, to the Corporate Debtor, DMB Paper Mills Private Limited.

- 2.2. It is submitted that the Financial Creditor had initially filed an application under Section 95 of the Code seeking initiation of insolvency resolution process against the Personal Guarantor, and pursuant thereto, this Tribunal vide order dated 02.01.2024 appointed the Applicant as Interim Resolution Professional for submission of report under Section 99 of the Code.
- 2.3. It is submitted that in compliance with the said order, the Interim Resolution Professional submitted a report recommending admission of the application, and thereafter, this Tribunal vide order dated 03.09.2024 admitted the application under Section 100 of the Code and commenced the Personal Insolvency Resolution Process against the Personal Guarantor.
- 2.4. It is submitted that pursuant to commencement of the process, a public announcement was made on 06.09.2024 in accordance with Section 102 of the Code, inviting claims from creditors, and copies of such publications were duly issued in newspapers as reflected in the record.
- 2.5. It is submitted that in response to the public announcement, only one claim was received, namely



from the Financial Creditor, and accordingly, the List of Creditors was prepared under Section 104 of the Code.

- 2.6. It is submitted that immediately upon commencement of the process, the Resolution Professional called upon the Personal Guarantor to submit complete financial disclosures, details of assets and liabilities, income tax returns, statement of affairs, and a repayment plan under Section 105 of the Code.
- 2.7. It is submitted that despite repeated communications dated 06.09.2024, 17.10.2024, and several subsequent reminders issued between September 2024 to February 2025, the Personal Guarantor failed to submit the requisite disclosures, statement of affairs, or any repayment plan, and did not meaningfully cooperate in the process.
- 2.8. It is submitted that due to non-submission of the repayment plan, the Resolution Professional filed an application seeking extension of time; however, the said application came to be rejected by this Tribunal vide order dated 05.03.2025.
- 2.9. It is submitted that the Resolution Professional filed a Progress Report for the period from 04.09.2024 to 04.01.2025, which was taken on record by this Tribunal vide order dated 17.02.2025.
- 2.10. It is submitted that the First Meeting of the Committee of Creditors was convened on 18.01.2025, wherein it



was noted that only one claim had been received, the Personal Guarantor had failed to submit financial disclosures and repayment plan, and repeated reminders had yielded no response.

2.11. It is submitted that during the said meeting, the Committee of Creditors also deliberated upon conducting an asset tracing exercise to ascertain the financial position of the Personal Guarantor.

2.12. It is submitted that thereafter, the Second Meeting of the Committee of Creditors was held on 09.02.2026, wherein it was noted that no repayment plan had been submitted, statutory timelines had expired, and extension had already been declined by this Tribunal.

2.13. It is submitted that in the said meeting, the Committee of Creditors, having 100% voting share, resolved to file an application before this Tribunal seeking closure of the insolvency resolution process with liberty to initiate bankruptcy proceedings, if required.

2.14. It is submitted that under Section 106 of the Code, the repayment plan along with the Resolution Professional's report is required to be submitted within 21 days from the last date of submission of claims, however, in the present case, no repayment plan has been submitted till date.

2.15. It is submitted that in absence of any repayment plan, the Resolution Professional was unable to place any



proposal before the Committee of Creditors or conduct meaningful deliberations, thereby resulting in a procedural and statutory deadlock.

- 2.16. It is submitted that the insolvency resolution process cannot continue indefinitely in absence of a repayment plan, and continuation of the process would be contrary to the statutory framework and timelines prescribed under the Code.
- 2.17. It is submitted that the Corporate Debtor had availed financial facilities amounting to approximately Rs. 42.43 Crores from the erstwhile Financial Creditor, and the Personal Guarantor had executed a Deed of Guarantee dated 13.05.2016 to secure the said facilities.
- 2.18. It is submitted that the date of default is recorded as 30.11.2017, and thereafter the loan account was classified as Non-Performing Asset.
- 2.19. It is submitted that subsequently, the Corporate Debtor was admitted into CIRP vide order dated 24.11.2021, and upon failure of resolution, an order of liquidation was passed on 29.08.2023.
- 2.20. It is submitted that the debt of the Corporate Debtor was assigned by the erstwhile Financial Creditor (Union Bank of India) to the present Financial Creditor vide Assignment Agreement dated 12.04.2023.



- 2.21. It is submitted that thereafter, the Financial Creditor issued a demand notice in Form B dated 21.07.2023 to the Personal Guarantor invoking the personal guarantee; however, despite service of the said notice, the Personal Guarantor failed to make payment.
- 2.22. It is submitted that consequently, the Financial Creditor filed an application under Section 95 of the Code on 12.12.2023 seeking initiation of insolvency resolution process against the Personal Guarantor.
- 2.23. It is submitted that the liability of the Personal Guarantor is co-extensive with that of the principal borrower under Section 128 of the Indian Contract Act, 1872, thereby entitling the Financial Creditor to proceed against the Personal Guarantor.
- 2.24. It is submitted that the Personal Guarantor has neither denied execution of the guarantee nor produced any evidence of repayment of the outstanding dues.
- 2.25. It is submitted that in view of continuous non-cooperation of the Personal Guarantor, absence of repayment plan, expiry of statutory timelines, and rejection of extension application, the process has reached a stage where no further purpose would be served by continuation of the insolvency resolution process.
- 2.26. It is submitted that the issue is no longer res integra and has been settled by this Tribunal in ***Iqbal Singh***



Gandhi (RP) v. Laxmi Devi Baid & Ors.
IA/1540(AHM)2025 in CP(IB)/143(AHM)2025, (Order
dated 05.01.2026), wherein it has been held that failure to submit a Repayment Plan within statutory timelines is equivalent to rejection under Section 114, and closure with liberty to initiate bankruptcy proceedings is warranted.

2.27. It is submitted that accordingly, the Resolution Professional has filed the present application seeking closure of the Personal Insolvency Resolution Process and for appropriate directions including liberty to initiate bankruptcy proceedings, in accordance with law.

3. In compliance of order dated 06.03.2026, the Applicant RP filed an additional affidavit on 23.03.2026 vide Inward No. D-2563 stating the following:

3.1. It is submitted that the present affidavit has been filed by the Resolution Professional pursuant to the Order dated 06.03.2026 passed by this Tribunal in IA No. 396 of 2026, whereby the Resolution Professional was directed to explain the delay in conduct of the Personal Guarantor Insolvency Resolution Process.

3.2. It is submitted that the Personal Insolvency Resolution Process was initiated against the Personal Guarantor, and the Resolution Professional has been conducting the proceedings in accordance with the provisions of



the Insolvency and Bankruptcy Code, 2016 governing personal guarantors.

- 3.3. It is submitted that after commencement of the process, the Resolution Professional issued several communications and reminders to the Personal Guarantor seeking submission of the statement of affairs, financial disclosures, and a repayment plan, as required under the Code.
- 3.4. It is submitted that despite repeated communications and reminders, the Personal Guarantor failed to submit the requisite financial information and repayment plan within the statutory timelines prescribed under the Code.
- 3.5. It is submitted that the continued non-cooperation of the Personal Guarantor materially affected the progress of the resolution process and constrained the Resolution Professional from placing any repayment plan before the Committee of Creditors.
- 3.6. It is submitted that during the First Meeting of the Committee of Creditors held on 18.01.2025, the Resolution Professional informed the Financial Creditor that multiple emails and communications had been sent to the Personal Guarantor; however, no response had been received even up to the said date.
- 3.7. It is submitted that the Resolution Professional further informed that the statutory timeline for completion of



the process had expired on 04.01.2025, and accordingly, an email was sent to the Financial Creditor seeking approval for extension of the process timeline.

- 3.8. It is submitted that thereafter, the Progress Report filed by the Resolution Professional for the relevant period was taken on record by this Tribunal vide order dated 17.02.2025.
- 3.9. It is submitted that the Resolution Professional had also filed an application seeking extension of time before this Tribunal; however, the said application came to be rejected vide order dated 05.03.2025.
- 3.10. It is submitted that during discussions in the Committee of Creditors, the Financial Creditor suggested that an asset tracing exercise be conducted to identify the assets and ascertain the financial position of the Personal Guarantor.
- 3.11. It is submitted that pursuant to such discussions and with the approval of the Financial Creditor, the Resolution Professional appointed CLA Global India Consulting as the Asset Tracing Agency vide email dated 13.02.2025, and the said appointment was subsequently approved in the First Committee of Creditors Meeting.
- 3.12. It is submitted that the Resolution Professional thereafter coordinated with the Asset Tracing Agency



and undertook follow-ups to ascertain the assets and financial position of the Personal Guarantor.

- 3.13. It is submitted that the Asset Tracing Agency submitted its report dated 03.05.2025, along with annexures and supporting documents, and the same was placed on record.
- 3.14. It is submitted that even after receipt of the Asset Tracing Report and despite rejection of the extension application, the Resolution Professional remained in continuous communication with the Financial Creditor apprising it of the status of the process and seeking further instructions.
- 3.15. It is submitted that the Resolution Professional sought clarification from the Financial Creditor regarding the appropriate course of action, including whether the process should be proceeded towards closure or any further steps were required.
- 3.16. It is submitted that during this period, the Financial Creditor informed that it was internally deliberating upon the appropriate commercial decision to be taken in the matter.
- 3.17. It is submitted that thereafter, pursuant to continuous follow-ups, the Financial Creditor vide email dated 04.02.2026 advised the Resolution Professional to take appropriate steps in the matter.



- 3.18. It is submitted that immediately thereafter, the Resolution Professional convened the Second Meeting of the Committee of Creditors on 09.02.2026, wherein the Financial Creditor approved closure of the Personal Guarantor Insolvency Resolution Process and filing of appropriate application before this Tribunal.
- 3.19. It is submitted that the minutes of the Second Committee of Creditors Meeting dated 09.02.2026 have been duly recorded and placed on record.
- 3.20. It is submitted that pursuant to such decision, the Resolution Professional has filed the present application before this Tribunal seeking closure of the process with liberty to initiate bankruptcy proceedings, if deemed appropriate.
- 3.21. It is submitted that the Resolution Professional had also addressed an email dated 06.03.2026 to the Financial Creditor placing on record the complete sequence of events and seeking confirmation thereof.
- 3.22. It is submitted that the Financial Creditor responded vide email dated 18.03.2026, confirming the sequence of events and stating that discussions were held internally from time to time regarding the appropriate course of action.
- 3.23. It is submitted that the Financial Creditor further confirmed that deliberations on the Asset Tracing Report and other relevant factors were undertaken



before arriving at a decision regarding further steps in the process.

- 3.24. It is submitted that throughout the process, the Resolution Professional acted diligently and in good faith, and discharged all statutory duties in accordance with the provisions of the Code.
- 3.25. It is submitted that the delay in the process occurred due to circumstances beyond the control of the Resolution Professional, including non-cooperation of the Personal Guarantor and the time taken by the Financial Creditor in arriving at a commercial decision.
- 3.26. It is submitted that no willful negligence, inaction, or misconduct can be attributed to the Resolution Professional, and all necessary steps were taken promptly upon receipt of approvals and directions.
- 3.27. It is submitted that in view of the aforesaid facts and circumstances, it is respectfully prayed that this Tribunal may take the present affidavit on record and consider that the delay occurred due to unavoidable circumstances, and no adverse observations or disciplinary action be taken against the Resolution Professional.
4. In compliance with order dated 07.04.2026, the Financial Creditor/Krishkan Investment Private Limited filed its



Affidavit-of-Reply on 13.04.2026 vide Inward No. D-3198
stating the following:

- 4.1. It is submitted that the present affidavit has been filed by the Authorized Representative of the Financial Creditor, namely Krishkan Investment Private Limited, a Non-Banking Financial Company registered under Section 45A of the Reserve Bank of India Act, 1934, and the deponent is duly authorized and conversant with the facts of the present matter.
- 4.2. It is submitted that the Financial Creditor is the sole creditor in the present Personal Guarantor Insolvency Resolution Process, holding 100% voting share in the Committee of Creditors, and no other creditor has submitted any claim pursuant to the public announcement made by the Resolution Professional, thereby making the process non-adversarial and devoid of competing claims.
- 4.3. It is submitted that in such factual background, the present insolvency proceedings do not involve inter se disputes between multiple creditors nor do they affect any third-party rights.
- 4.4. It is submitted that the role of the Financial Creditor in the present proceedings has been limited to evaluation of the feasibility and viability of any repayment plan and to take a commercial decision based on the material placed before it, and accordingly, the



progression of the process was dependent upon cooperation from the Personal Guarantor and availability of complete financial disclosures.

- 4.5. It is submitted that it is an admitted position on record, as also reflected in the affidavit of the Resolution Professional, that despite repeated communications and opportunities, the Personal Guarantor failed to submit any Statement of Affairs or Repayment Plan within the timelines prescribed under the Insolvency and Bankruptcy Code, 2016.
- 4.6. It is submitted that in view of such continued non-cooperation, it became necessary to undertake an independent asset tracing exercise to ascertain the financial position and assets of the Personal Guarantor.
- 4.7. It is submitted that pursuant to deliberations with the Resolution Professional, an Asset Tracing Agency was appointed and an Asset Tracing Report dated 03.05.2025 was prepared along with supporting documents, which included identification of assets, verification of ownership details, and collation of financial information relating to the Personal Guarantor, and the same has been placed on record as Exhibit-D.
- 4.8. It is submitted that upon receipt of the said Asset Tracing Report, the Financial Creditor undertook a detailed internal evaluation of the findings, including



verification of data, assessment of recoverability prospects, and examination of overall feasibility of continuation of the insolvency process.

4.9. It is submitted that such evaluation was not a mere procedural formality but involved a bona fide commercial assessment, necessitated due to the absence of any repayment proposal and lack of cooperation from the Personal Guarantor.

4.10. It is submitted that upon completion of such evaluation and internal deliberations, the Financial Creditor, exercising its commercial wisdom, arrived at a conclusion that continuation of the Personal Guarantor Insolvency Resolution Process was not viable in the facts and circumstances of the case.

4.11. It is submitted that accordingly, in the Second Meeting of the Committee of Creditors held on 09.02.2026, the Financial Creditor resolved to seek closure of the process with liberty to initiate appropriate proceedings in accordance with law.

4.12. It is submitted that the aforesaid decision was taken bona fide and after due consideration of all material on record, and the time taken in arriving at such decision reflects the commercial decision-making process recognized under the Insolvency and Bankruptcy Code, 2016.



- 4.13. It is submitted that any apprehension that continuation of the process conferred undue benefit upon the Personal Guarantor is misconceived, inasmuch as the moratorium under the Code is statutorily circumscribed and co-terminus with the lifecycle of the process.
- 4.14. It is submitted that upon expiry of statutory timelines and in absence of any viable repayment plan, the process does not continue to confer any unintended protection upon the Personal Guarantor merely on account of pendency of proceedings.
- 4.15. It is submitted that at no point of time was any benefit intended to be conferred upon the Personal Guarantor by either the Financial Creditor or the Resolution Professional.
- 4.16. It is submitted that the time taken in the present matter arose solely due to non-cooperation of the Personal Guarantor and the necessity of undertaking a bona fide commercial evaluation by the Financial Creditor.
- 4.17. It is submitted that the Resolution Professional has acted diligently and in a bona fide manner throughout the process and has discharged all duties in accordance with the provisions of the Code, acting upon the directions and decisions of the Financial Creditor, and therefore no lapse or misconduct can be attributed to the Resolution Professional.



5. We have heard the submissions advanced by the Ld. Counsel appearing for the Applicant/Resolution Professional as well as the Ld. Counsel appearing for the Financial Creditor and have perused the material available on record including the application, additional affidavit, reply filed by the Financial Creditor and the documents annexed therewith.
6. It is observed that the present Interlocutory Application has been filed by the Resolution Professional under Section 114(1) of the Insolvency and Bankruptcy Code, 2016 ("the Code") seeking, inter alia, closure of the Personal Guarantor Insolvency Resolution Process and grant of liberty to initiate bankruptcy proceedings on the ground that no repayment plan has been received and the process has reached a deadlock.
7. It is further observed from the record that the insolvency process against the Personal Guarantor was admitted vide order dated 03.09.2024 and, therefore, the statutory timeline for completion of the process commenced from the said date. The Code mandates that such process is to be completed within a period of 120 days.



8. It is an admitted position that the process has continued for 534 days, resulting in a delay of 414 days beyond the statutory period. Such delay is substantial and contrary to the time-bound framework envisaged under the Code.
9. It is observed that the Resolution Professional has sought to justify the said delay on the ground of non-cooperation of the Personal Guarantor in not submitting the Statement of Affairs, financial disclosures, and repayment plan despite repeated communications.
10. It is further observed that the Financial Creditor has supported the said justification and submitted that the delay was also attributable to the time taken in conducting an asset tracing exercise and internal commercial deliberations.
11. It is, however, observed that while non-cooperation of the Personal Guarantor may pose practical difficulties, the same by itself cannot fully justify an inordinate delay of 414 days in completion of the process. The Code provides a structured and time-bound mechanism and does not contemplate indefinite continuation of proceedings.



- 12.** It is observed that the Code provides sufficient mechanisms to address situations of non-cooperation. Regulation 22 of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 specifically empowers the Resolution Professional to approach this Adjudicating Authority for appropriate directions in cases where the Personal Guarantor fails to cooperate. The extract of the said Regulation is as follows:

“22. In the event of non-cooperation of the guarantor at any time during the resolution process period or during the implementation of the repayment plan, the resolution professional shall prepare a statement to this effect and file the same with the Adjudicating Authority for appropriate directions.”

- 13.** It is further observed that despite availability of such statutory remedy, the Resolution Professional has failed to demonstrate that any timely application was moved as has not placed on record any material to demonstrate that any timely application was moved before this Adjudicating Authority seeking directions against the Personal Guarantor for ensuring cooperation. The failure to invoke Regulation 22 at an appropriate stage indicates lack of due diligence on part of the Resolution Professional, as the said provision is



specifically intended to address situations of non-cooperation.

14. It is also observed that the Resolution Professional is not merely a facilitator but is an officer of the Court, entrusted with statutory duties and responsibilities, and is expected to act with utmost diligence, promptness, and adherence to the provisions of the Code
15. It is, therefore, observed that mere issuance of reminders and communications, without invoking available legal remedies, may not be sufficient to constitute due discharge of duties cast upon the Resolution Professional.
16. It is further observed that if there was any delay or inaction on the part of the Financial Creditor in taking a commercial decision, it was incumbent upon the Resolution Professional to approach this Adjudicating Authority seeking appropriate directions for expeditious progression of the process.
17. It is also observed that the Resolution Professional, being the custodian of the process, cannot remain a passive spectator and attribute the delay either to the Personal Guarantor or to



the Financial Creditor, without taking proactive steps under the framework of the Code.

18. It is a matter of record that an application seeking extension of time was filed by the Resolution Professional, which came to be rejected by this Adjudicating Authority vide order dated 05.03.2025.
19. It is observed that despite such rejection, which clearly indicated that the process must adhere to statutory timelines, the Resolution Professional permitted the process to continue for a prolonged period without seeking appropriate directions or adopting corrective measures.
20. It is observed that the conduct of the Resolution Professional, in allowing the process to continue in violation of statutory timelines without invoking available remedies, raises concerns regarding adherence to the statutory framework and timelines prescribed under the Code.
21. It is further observed that such conduct, prima facie appears not to be in consonance with the standards expected from an Insolvency Professional under the Code and attracts



disciplinary proceedings by the Insolvency and Bankruptcy Board of India (IBBI).

22. It is also observed that the Resolution Professional, being an officer of the Court, is answerable to this Adjudicating Authority and is under an obligation to ensure that the process is conducted strictly in accordance with law and within the prescribed timelines.
23. It is observed that the Financial Creditor has sought to justify the delay on the ground of internal commercial evaluation; however, such explanation cannot override the statutory mandate of time-bound completion of the process.
24. It is further observed that Section 60(5)(c) of the Code confers wide jurisdiction upon this Adjudicating Authority to adjudicate issues arising out of insolvency proceedings and to take corrective measures in cases where material irregularity is established.
25. It is observed, in light of the judgment in ***Roseland Buildtech Pvt. Ltd. v. Vihaan 43 Reality Pvt. Ltd. & Ors., (2026) ibclaw.in 18 HC***, that Section 60(5)(c) confers broad



jurisdiction on the NCLT to adjudicate any question of law or fact arising out of or in relation to insolvency resolution or liquidation proceedings. The relevant extract of the said judgment is as follows:

“66. Generally, on the interpretation of Section 60(5)(c), the following conclusions may safely be drawn from the discussion above—first, under Section 60(5)(c) of the IBC, the NCLT has the jurisdiction to adjudicate upon any dispute having a nexus with the insolvency of the corporate debtor; and second, the power so recognised under Section 60(5)(c) must be incidental and ancillary to an explicitly provided provision under the IBC.”

26. It is further observed, as reiterated in ***Mr. Amit Sangal v. Mr. Kairav Anil Trivedi and Ors., (2025) ibclaw.in 130 NCLAT***, that fraud or collusion by Resolution Professional with the Corporate Debtor, or any other stakeholder involved in the CIRP concealment of material facts, non-adherence to significant CIRP Regulations etc. constitutes a material irregularity. If a material irregularity is established, the Adjudicating Authority is empowered under the IBC to take corrective measures. The relevant extract of the said judgment is as follows:

“>Fraud or collusion by the resolution professional with the corporate debtor, or any other stakeholder involved in the CIRP



concealment of material facts, non-adherence to significant CIRP Regulations etc. also constitutes a material irregularities. Any act of misrepresentation, concealment, or fraudulent conduct undermines the transparency and fairness of the process.

Similarly, mismanagement of the corporate debtor during the CIRP can give rise to material irregularity. The resolution professional is entrusted with the responsibility of managing the affairs of the corporate debtor in a manner that preserves its value. Any instance of mismanagement, including diversion of funds, dissipation of assets, or any conduct that is detrimental to the corporate debtor, may be considered a material irregularity.

➤ If a material irregularity is established, the Adjudicating Authority is empowered under the Code to take corrective measures. Such measures may include setting aside decisions taken during the CIRP, directing an investigation into the conduct of the resolution professional, or imposing sanctions on the parties involved.”

27. Applying the aforesaid principles, it is observed that the delay of 414 days, coupled with failure to invoke remedies such as filing an application under Regulation 22 for non-cooperation of the Personal Guarantor or approaching this Tribunal in case of delay attributable to the Financial Creditor, constitutes a material irregularity in conduct of the insolvency process.

28. It is also observed that the submission of the Resolution Professional that failure to submit a repayment plan



warrants automatic closure of the process with liberty to initiate bankruptcy proceedings cannot be accepted in a mechanical manner as requires careful consideration in light of the conduct of the process, particularly when the process itself has been conducted in violation of statutory timelines.

- 29.** While Section 114 of the Code contemplates appropriate orders in absence of an approved repayment plan, such power must be exercised in consonance with the conduct of the process. Where the process itself is vitiated by material irregularity and non-compliance with statutory timelines, the Adjudicating Authority is not bound to mechanically proceed towards closure or bankruptcy, and may instead exercise its jurisdiction under Section 60(5) to pass appropriate corrective orders.
- 30.** It is further observed that permitting such relief in the present case would amount to condoning procedural lapses and would dilute the discipline envisaged under the Code.
- 31.** It is, therefore, observed that the Resolution Professional cannot be permitted to take advantage of a situation arising



out of its own inaction and failure to take timely recourse to remedies available under law.

32. It is also pertinent to examine the conduct of the parties in entirety. From the sequence of events on record, including prolonged delay, absence of meaningful steps for resolution, and continued pendency despite rejection of extension, this Adjudicating Authority is constrained to observe that the insolvency proceedings have not been pursued in a bona fide manner consistent with the object of the Code.

33. It is observed that the manner in which the process has been conducted, coupled with inaction and unexplained delay, gives rise to a reasonable inference that the proceedings under Section 95 of the Code were initiated and continued with a preconceived and malicious intent, contrary to the very object and spirit of the Code, which is to ensure time-bound resolution and not to enable misuse of the insolvency framework.

34. It is further observed that such misuse of the insolvency mechanism cannot be permitted, and this Adjudicating Authority, in exercise of its jurisdiction under Section 60(5) of



the Code, is empowered to take appropriate corrective measures to prevent abuse of process.

35. In this regard, reliance is placed on ***Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr., (2018) ibclaw.in 158 NCLAT***, wherein it has been held that upon dismissal of proceedings under the Code, all consequential orders including moratorium and appointment of the Resolution Professional stand set aside and the entity is released from the rigour of the insolvency process. The relevant extract of the said judgment is as follows:

"11. In effect, order (s), passed by the Adjudicating Authority appointing 'Resolution Professional', declaring moratorium, freezing of account, and all other order (s) passed by the Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by Respondent under Section 9 of the I&B Code, 2016 is dismissed. The Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' (company) is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect."

36. Though the aforesaid decision rendered in the context of corporate insolvency, the underlying principle regarding consequences of invalid proceedings is considered. Therefore,



applying the aforesaid principle, it is observed that continuation of the present proceedings cannot be sustained and the same is liable to be terminated with immediate effect on account of material irregularity in conduct of the process and violation of statutory timelines.

37. It is further observed that once the very initiation of the insolvency proceedings is found to be flawed and contrary to the object of the Code, all consequential actions taken pursuant thereto cannot be allowed to survive.

38. Accordingly, this Adjudicating Authority holds that the insolvency proceedings initiated under Section 95 of the Code against the Personal Guarantor are liable to be terminated from their inception, and all consequential effects including moratorium shall stand ceased and set aside.

39. In view of the foregoing, this Adjudicating Authority is of the considered opinion that:

- i. the insolvency process has been conducted in violation of statutory timelines;
- ii. the delay of 414 days is unjustified;
- iii. the justification of non-cooperation is insufficient in absence of timely invocation of remedies under Regulation 22;



- iv. the Resolution Professional has failed to act with due diligence expected under the Code;
- v. such conduct warrants scrutiny and may invite disciplinary proceedings by the Insolvency and Bankruptcy Board of India; and
- vi. the case involves material irregularity warranting exercise of jurisdiction under Section 60(5) of the Code.

40. Accordingly, this Adjudicating Authority holds that the present Interlocutory Application is devoid of merit and is liable to be **dismissed**.

41. In view of the detailed observations and findings recorded hereinabove, and upon dismissal of the present Interlocutory Application, this Adjudicating Authority proceeds to issue the following directions in exercise of its powers under the Insolvency and Bankruptcy Code, 2016:

- i. The present Interlocutory Application bearing **IA/296(AHM)2026** stands **dismissed**, being devoid of merit and for the reasons elaborately recorded in the preceding paragraphs.
- ii. The insolvency proceedings initiated under Section 95 of the Insolvency and Bankruptcy Code, 2016 against the Personal Guarantor are hereby **terminated ab**



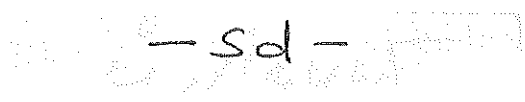
initio, being vitiated by material irregularity and having been initiated and conducted in a manner contrary to the object of the Code.

- iii. In consequence of the above, all actions taken pursuant to initiation of the said insolvency proceedings, including appointment of the Resolution Professional, conduct of meetings, reports, and all ancillary steps undertaken during the process, stand **set aside**.
- iv. The moratorium declared in the present matter shall **stand terminated forthwith and cease to have any effect**, and all legal rights and remedies of the parties shall stand restored as they existed prior to initiation of the proceedings.
- v. It is observed that the Resolution Professional has failed to discharge his statutory duties with the degree of diligence expected under the Code, and has allowed the process to continue far beyond the prescribed timeline without invoking available remedies under law, including seeking directions from this Adjudicating Authority in cases of non-cooperation or delay.
- vi. In view of the aforesaid conduct, this Adjudicating Authority deems it appropriate to direct the Registry to forward a copy of this order to the Insolvency and Bankruptcy Board of India for consideration of appropriate action, if deemed fit to initiate appropriate disciplinary proceedings against the Resolution

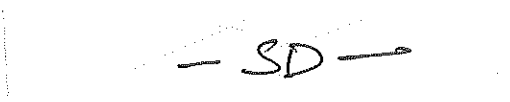


Professional, Mr. Nitin Om Kothari, in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the applicable regulations governing insolvency professionals.

- vii. The Resolution Professional stands discharged from his role in the present process, subject to compliance with the directions contained herein and without prejudice to any disciplinary proceedings that may be initiated by the Insolvency and Bankruptcy Board of India.
 - viii. The Registry is directed to communicate this Order to all concerned parties, including the Resolution Professional, the Financial Creditor, and the Personal Guarantor, forthwith.
- 42.** With the above directions, the present application i.e. **IA/296(AHM)2026** in C.P.(IB)/308(AHM)2023, is hereby disposed of.


SANJEEV SHARMA
MEMBER (TECHNICAL)

Jeel/LRA


SHAMMI KHAN
MEMBER (JUDICIAL)