

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

*An Application under Section 60(5) of Insolvency and
Bankruptcy Code, 2016, read with Rule 11 of the National
Company Law Tribunal Rule, 2016.*

**IN THE MATTER OF:
STATE BANK OF INDIA**

... Financial Creditor.

Versus

REFORM FERRO CAST LIMITED

... Corporate Debtor.

And

IN THE MATTER OF:

ARUN KUMAR GUPTA,
Resolution Professional of Reform
Ferro Cast Ltd. (Corporate
Debtor), having Registration No.
IBBI/IPA-001/IP-P00013/2016-
2017/10037, having office at P-
15, Bentinck Street, 3rd Floor,
Kolkata – 700 001.

... Applicant/ Resolution Professional (RP)

Date of Pronouncement: August 21, 2025.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
CMDE. SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)**

APPEARANCE:

For the RP:

**Ms. Urmila Chakraborty, Adv.
Mr. Arun Kumar Gupta, RP in Person.**

ORDER

Per: Cmde. Siddharth Mishra, Member (Technical)

1. The Court congregated through a hybrid mode.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

2. Heard Ms. Urmila Chakraborty, Learned Counsel appearing on behalf of the Resolution Professional of the Corporate Debtor – Reform Ferro Cast Limited.

3. By way of the instant application, the Resolution Professional (RP) has sought for a relief to take on record the Transaction Audit Report to the Corporate Debtor, as prepared to comply with the Order passed by this Adjudicating Authority on 24.03.2024.

Facts in a nutshell:

4. By virtue of the Order dated 21.11.2022, the Corporate Debtor was admitted into CIRP, and Mr. Arun Kumar Gupta, Applicant herein, was appointed as the Interim Resolution professional (IRP), and on 12.01.2023, the CoC in its first meeting, confirmed the applicant as Resolution Professional (RP) of the corporate debtor.

5. At the 16th meeting convened on 17.02.2025, the CoC approved the resolution plan submitted by Algoquant Financials LLP. Subsequently, the LoI was issued by the RP to Algoquant Financials LLP (Successful Resolution Applicant) on 26.02.2025, which was unconditionally accepted on 27.02.2025. Further, upon an application being I.A. (IB) (Plan) No. 7/KB/2025 preferred on 03.03.2025 by the RP, this Bench on 24.03.2025 approved the resolution plan of Algoquant Financials LLP.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

6. While approving the resolution plan of Algoquant Financials LLP, this Bench observed that the Fair value (Average) of the Corporate Debtor is arrived at Rs. 12,37,88,787/- and the Liquidation Value (Average) is Rs. 9,44,59,496/-. The Successful Resolution Applicant - Algoquant Financials LLP has proposed to pay an amount of Rs. 9,67,08,353/- as Total Plan Amount against the total admitted claim of Rs. 3,13,60,10,637/- and the total amount claimed of Rs. 3,21,71,15,274/-. CIRP cost has been proposed to be paid in full as per the actual. Thus, the "haircut" in respect of the amount admitted by the RP is 97%.

7. It was noted that the RP appointed a Transactional Auditor namely Neha B Agarwal & Co. CA. to carry out the transaction audit of the corporate debtor under Sections 43, 45, 50, and 66 of the Code for the period from 21.11.2020 to 21.11.2022. The Transactional Auditor has submitted a report on 10.03.2023, observing that there are no avoidance transactions in the corporate debtor company.

8. In view of above observation, we directed the RP to examine the last 10 years Financial Statements, IT Returns, GST Returns, cash flow and fund flow statements in detail and place it before the CoC of the Corporate Debtor with appropriate justification and basis for forming an opinion that there were no avoidance transactions, in the form of a report. Further, we directed that if required, a forensic auditor can also be appointed by the RP. The fees for RP for this assignment and the appointment of a forensic auditor shall be borne by the financial creditors. A copy of the said report shall also be filed with this Adjudicating Authority.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

9. Further, we directed the R2 and R3 to the I.A. (IB) No. 72/KB/2023, to cooperate with the RP by providing all the documents as asked for by the RP within a week's time. Persistent non-cooperation, albeit this order shall be visited with a penalty.

10. Comply with the above direction in I.A. (IB) (Plan) No. 7/KB/2025, the RP convened the 17th CoC meeting on 25.03.2025, wherein the CoC unanimously resolved to appoint the same transaction auditor i.e., Neha B Agarwal & Co., CA., to conduct the transaction audit in terms of Section 66 of the I&B Code for the period of 21.11.2012 to 21.11.2022.

Submissions advanced by the RP:

11. Ms. Urmila Chakraborty, Learned Counsel appearing on behalf of the RP would submit that the appointed transaction auditor reviewed the bank statements from 21.11.2012 to 21.11.2022, and further reviewed the accounts and the IT returns for the last ten years from the CIRP commencement date, however, no transaction hit the Section 66 of the I&B Code was determined.

12. It is submitted that the lead bank in the CoC – State Bank of India, having 99.935% voting shares, conducted a forensic audit of the corporate debtor in 2019 by one Raj Niranjana Associates, Chartered Accountants, and based on such report, the SBI issued a letter on 27.06.2019, annexed at page 156 to the application, declaring that “no fraud” was committed in the account of the corporate debtor.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

13. Further, it is submitted that at the 18th CoC meeting convened on 21.04.2025, the transaction audit report prepared by Neha B Agarwal & Co. CA., annexed at pages 116-154 to the application, was placed before the CoC for consideration, and based on such report, the RP expressed his opinion that no fraudulent transaction is reported under Section 66 of the I&B Code in respect of the corporate debtor. The CoC also agreed with the RP's opinion and accepted the transaction audit report. Further, the forensic audit report conducted in 2019, was also shared by the SBI in the same meeting.

14. During the course of argument, Ms. Chakraborty, Learned Counsel for the RP would take us through a chart, annexed at pages 15-16 to the application, which was presented by the SBI at the 18th CoC meeting convened on 21.04.2025, wherein the estimated and actual realization from the account of the corporate debtor and its personal/ corporate guarantor as on date for an amount of Rs. 36.24 Crore had been placed in detail, which is as under:

SL NO.	Name of the Property Owner	Actual Realization (Rs. In Cr.)	Estimated Realization (Rs. In Cr.)
1	Reform Ferro Cast Limited		10.49
2.	Reform Metaliks Pvt Ltd	5.97	
3.	U.K. Cement Pvt Ltd, a corporate guarantor in the said account		8.40
4.	Basant Saha, a personal guarantor		9.21
5.	Salland Developers Pvt Ltd		2.17
	Total	5.97	30.27

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

15. Thus, it is submitted that on a principal due of Rs. 101.40 Crore, the total recovery was estimated at 35.7% for the SBI, and the CoC resolved that the 'haircut' in respect of amount admitted by the RP is 97%, would not be a correct conclusion considering the other possible recoveries from the guarantors too.

16. Concerning the direction in the Section 19(2) application bearing I.A. (IB) No. 72/KB/2023, it is contended that the RP informed it to both the respondents by way of an email dated 25.03.2025 and by speed post delivered on 07.04.2025 on the R 2 and on 27.03.2025 on the R 3. However, no compliance of the said direction was done by any respondent and the same was noted by the CoC.

17. We have heard and considered the arguments advanced by the Learned Counsel for the RP and perused the records carefully.

Analysis and Findings:

18. Notably, the forensic audit conducted by the SBI in 2019, prior initiation of CIRP on 21.11.2022, in respect of the corporate debtor. We find that the forensic auditor in his observations (at page 177 to the application) stated that:

"1. Inflation of records: Given the facts as stated in the preceding pages, we have enough reason to believe that the management has inflated the sales values for financial years under audit. The crucial stock turnover ratio doesn't have any consistent trend."

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

2. Possibility of routing of sales realisations through other accounts: As put in the preceding pages to this report, **we have significant gap in the collections (realisations) of sales. Possible diversion of funds to other bank accounts cannot be ruled out though we don't have evidence at our end to confirm the same.**

3. Allotment of shares to many private entities: As listed out, we observe a long list of private parties from whom finances have been arranged. **The whole allotment process is subject to suspicion, and the angle of money laundering cannot be ruled out.**

4. The management has not provided access to any of their accounting records. We understand that **the records are at the factory site which has labour issues that is causing Impediments in retrieval of records.**

5. The capability of the management to commercially run the project was never demonstrated; *thereby creating such huge capacity is a question of mis-judgement.*

6. Potential red flag transactions in subsidiary company: As stated, **we have identified certain transactions in the subsidiary that are not well substantiated.**

7. The valuations and projections initially submitted to the bank are unreasonable.

Thereby we infer that there are gaps identified in our audit. Nevertheless, we don't have the complete available documentation at our end to conclude that there have been material lapses at the management's side that are Intentional in nature. Hence, we don't have the material evidence to classify this as fraud."

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

19. Thus, in view of the observation made by the forensic auditor, it is clear that there was gaps identified in the forensic audit and the forensic auditor while conducting the audit did not have the complete available documentation at their end. The forensic auditor had enough reason to believe that the management of the corporate debtor had inflated the sales value for the financial years under audit. The crucial stock turnover ratio did not have any consistent trend. Further, forensic auditor had experienced a significant gap in the collection and realizations of the sales and possible diversion of the funds to the other bank accounts could not be ruled out. Further, concerning the allotment of shares to many private entities, that there was a long list of private parties from whom the finances were arranged and whole allotment process is subject to suspicion, and accordingly, the forensics auditor observed that the angle of money laundering cannot be ruled out. Further, the forensic auditor observed that the management had not provided the access to any of their accounting records and the capacity of the management to commercial run the project was never demonstrated, creating such huge capacity was a question of misjudgment. Regarding the potential red flag transactions in the subsidiary company. The forensic auditor identified certain transactions in the subsidiary that were not well substantiated. Further the valuations and projections initially submitted to the bank was unreasonable. In view of such, the forensic auditor opined that there were gaps in their audit, and they did not have complete documentation at their end to conclude that there were a material lapses on part of the management of the corporate debtor herein which are intentional in nature, and thus,

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

the forensic auditor did not have the material evidence to classify this as fraud.

20. The term “**Fraud**” has been defined in *Black’s Law Dictionary* (8th ed.) as a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. A misrepresentation made recklessly without belief in its truth to induce another person to act. Further, “**Fraud**” is defined as an unconscionable dealing especially in contract law, the unfair use of the power arising out of the parties’ relative positions and resulting in an unconscionable bargain.

21. Further, the term “**Bankruptcy Fraud**” has been defined in *Black’s Law Dictionary* (8th ed.) as a fraudulent act connected to a bankruptcy case; especially, any of several proscribed acts performed knowingly and fraudulently in a bankruptcy case, such as concealing assets or destroying, withholding, or falsifying documents in an effort to defeat bankruptcy code provisions.

22. In ***Securities and Exchange Board of India and Ors. vs. Kanaiyalal Baldevbhai Patel and Ors.*** reported MANU/SC/1188/2017, the Hon’ble Apex Court had observed that:

“50. The definition of ‘**fraud**’, which is an **inclusive** definition and, therefore, has to be understood to be **broad** and **expansive**, contemplates even **an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce".

(Emphasis Added)

23. In **K.D. Sharma vs. Steel Authority of India Ltd. and Ors.** reported in (2008) 12 SCC 481: MANU/SC/3371/2008, the Hon'ble Apex Court has defined "Fraud" as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam.

24. In **U.P. Cooperative Federation Ltd. vs. Singh Consultants and Engineers (P) Ltd.** reported in (1988) 1 SCC 174 MANU/SC/0021/1987, and also, in **BSES Ltd. vs. Fenner India Ltd. and Ors.** reported in (2006) 2 SCC 728: MANU/SC/0741/2006, the Hon'ble Apex Court has laid down that the fraud must be of an egregious nature as to vitiate the entire underlying transaction.

25. In the present case, notably, the forensic auditor opined not to classify the conduct of the corporate debtor as fraud, as they did not have any material evidence to that effect as the forensic auditor while conducting the audit did not have the complete available documentation at their end. However, forensic auditor has made observation that there were gaps identified in the audit.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025
In
Company Petition (IB) No. 393/KB/2021

26. We would note that during CIRP, the RP appointed Neha B Agarwal & Co. CA for carrying out the transaction audit of the corporate debtor under Section 43, 45, 50, 66 of the Code for the period of 21.11.2020 to 21.11.2022. The Transactional Auditor has submitted a report on 10.03.2023 and the same has been circulated to the member of the CoC. As per the Transactional Auditor's report dated 10.03.2023, there is no avoidance transactions in the corporate debtor company.

27. We find that in compliance of our order dated 24.03.2025, the CoC appointed the same transaction auditor who was earlier appointed to determine avoidance transactions and who has failed to assert any avoidance transactions of the corporate debtor during ongoing CIRP. Thus, we are not inclined to accept the transaction report, which lacks any significant observation comparing with the earlier one, prepared by this auditor who was appointed previously in ongoing CIRP, and also appointed latter in compliance of our order dated 24.03.2025.

28. Thus, in view of the forensic audit conducted in 2019, we find that the forensic auditor indicated several inconsistencies and irregularities in the business and operations of the corporate debtor concerning inflation of records, routing of sales realisations through other bank, allotment of shares to many private entities, red flag transactions in subsidiary companies, valuations etc. and significantly, observed that the angle of money laundering cannot be ruled out. However, the forensic auditor made an observation that not material evidence was found to classify it as fraud. We note that

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

the management had not provided the access to any of their accounting records to the forensic auditor, while conducting the forensic audit, which clearly indicates that the non-cooperation on part of the suspended board of directors is not a new practice in ongoing CIRP, it is a wilful act of deliberate deception by them, which satisfies us for ordering an independent and fair investigation into the affairs of the company as well as the erstwhile management of the company by the government agency.

29. Concerning the position of law, we are aware that this Adjudicating Authority lacks jurisdiction to try any offence under Section 70 of the I&B Code, in terms of Section 236 of the I&B Code. In the regard, it would be apt to refer to Section 213 of the Companies act, read as under:

Section 213: Investigation into company's affairs in other cases. – The Tribunal may, —

(a) on an application made by—

xxx

xxx

xxx

*(b) on an application made to it by any other person **or otherwise, if it is satisfied that there are circumstances suggesting that—***

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

the company was formed for any fraudulent or unlawful purpose;

(ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

(iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company,

order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:

Provided that if after investigation it is proved that—

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

was formed for any fraudulent or unlawful purpose; or

(ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud,

then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.

30. We notice that the expression used under Section 213(b) of the Companies Act, 2013, i.e., “**or otherwise, if it is satisfied that there are circumstances suggesting that**” and “**after giving a reasonable opportunity of being heard to the parties concerned**”, that empowers this Tribunal to issue any direction to the effect of conducting an investigation into affairs and management of the company after giving a reasonable opportunity of being heard to the parties. We further notice that the Section 212(1)(c) of the Companies Act, enshrines the provision of investigation into the affairs of the company by Serious Fraud Investigation Office (SFIO), wherein the Central Government, without prejudice to the provision of Section 210 of the Act, may assign the investigation into the affairs of the company to the SFIO and its Director. Further, in terms of Rule 11 of the NCLT Rules, this Tribunal has an “inherent power” to make such order as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

31. To fortify the view, we would refer to the recent judgment rendered by the Hon'ble NCLAT in **Max Publicity & Communication Pvt. Ltd. v. Enviro Home Solutions Pvt. Ltd.**, order dated 15.05.2025, reported in (2025) ibclaw.in 363 NCLAT, wherein the Hon'ble NCLAT held that:

"11. When we look into Section 213 (b), it provides "on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that.....". Thus, the use of expression 'or otherwise' gives ample power to the Tribunal to issue any direction. However, for issuing direction for investigation under Section 213, there is one condition which also need to be fulfilled i.e. "after giving a reasonable opportunity of being heard to the parties concerned". Present is not a case where any investigation could have been ordered by the Tribunal under Section 213 since pre-condition for issuing any direction for investigation is giving a reasonable opportunity of being heard to the parties concerned. Thus, the above is another reason to hold that the observations and directions contained in paragraphs 65 and 66 cannot be held to be an order of investigation."

(Emphasis Added)

32. Further, the Hon'ble NCLAT in **Max Publicity (Supra)**, while arriving at the conclusion, would render that:

"32. After having noticed the relevant precedents relied by the Counsel for the parties, we arrive on following conclusion:-

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

(i) *The Adjudicating Authority while exercising jurisdiction under Section 9 of the IBC also exercise jurisdiction of NCLT under the Companies Act, 2013.*

(ii) **Adjudicating Authority in exercise of powers under Section 213 of the Companies Act, 2013 can direct for investigation but the said investigation can be directed after complying the pre-condition i.e. affording a reasonable opportunity to the parties concerned.** The order passed by the Adjudicating Authority in paragraphs 65 and 66 cannot be held to be an order directing any investigation.

(iii) **NCLT can also exercise inherent jurisdiction under Rule 11 in a case where NCLT is of the view that copy of the order need to be forwarded to the relevant statutory authorities, it can forward the copy for doing needful.** The direction under Section 212 to carry out any investigation of company's affairs by SFIO can be made only in accordance with the statutory provisions of Section 212 and Adjudicating Authority while exercising jurisdiction under the Companies Act 2013 cannot issue any direction to SFIO for carrying out investigation."

(Emphasis Added)

33. Further, the Hon'ble Apex Court in ***State Bank of India vs. Consortium of Murari Lal Jalan and Florian Fritsch***, reported in 2024 INSC 852, has held that:

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

“163. We are of the considered view that where there exists extraordinary circumstances warranting the exercise of such powers in order to ensure that the very salutary purpose of the Code, 2016 is not frustrated, then the Court would be well-within its prerogative to exercise them to secure the object of the IBC, 2016. If the proposition that there ought to be no exercise of the inherent powers where a procedure is laid down were to be blanketly accepted then it may have a very chilling effect whereby the very purpose of vesting this Court with inherent powers under Article 142 and Tribunals with Rule 11 of the NCLT Rules would be rendered otiose and meaningless.”

(Emphasis Added)

34. Further, in **Mr. M. Srinivas v. Smt. Ramanathan Bhuvaneshwari RP**, reported in (2019) ibclaw.in 339 NCLAT, the Hon’ble NCLAT laid down that:

“16. From Clause (b) of Section 213 of the Companies Act, 2013, it is clear that on an application made to it ‘by any other person’ or ‘otherwise’, if Tribunal/Adjudicating Authority is satisfied that there are circumstances suggesting that the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive to any of its members, or that the company was formed for any fraudulent or unlawful purpose and that the person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

fraud, misfeasance or other misconduct towards the company or towards any of its members or the members of the company have not given all the information with respect to its affairs which they might reasonably expect, and that the affairs of the company ought to be investigated, after giving a reasonable opportunity of being heard to the parties concerned, the Tribunal/Adjudicating Authority has power to refer the matter to the Central government for investigation into the affairs of the company.

17. Apart from the power conferred by **Section 213 of the Companies Act, 2013**, the **‘National Company Law Tribunal’** has inherent powers under **Rule 11** of National Company Law Tribunal Rules, 2016. Therefore, **in public interest**, it is **always open to the ‘National Company Law Tribunal’ after giving a reasonable opportunity of being heard to the parties concerned refer the matter to the Central Government for investigation, if the Tribunal/Adjudicating Authority forms a prima facie opinion that acts of fraud have been committed by company or group of companies or its Director(s) or officers.** In the present case ‘Forensic Audit Report’ alleged that the members of the ‘Corporate Debtor’ and its ‘Group Companies’ along with officers of the ‘Bank of Maharashtra’ have committed certain fraud, which, inter alia, suggest that a sum of Rs. 3,172.25 Lakhs are receivable by the ‘Corporate Debtor’. The Appellant and others were given reasonable opportunity of hearing by Adjudicating Authority. As such no interference is called for against the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

*impugned order. In absence of any merit, the
appeal is dismissed. No cost."*

(Emphasis Added)

35. In the present case in hand, it is recorded that the plan approval application was heard on 06.03.2025, and I.A. (IB) No. 72/KB/2023 filed under Section 19(2) of the I&B Code by the RP, was heard on 07.03.2025.

36. During ongoing CIRP, the RP has been heard on a several occasions, and the lead bank in the CoC – SBI furnished its "No Fraud" declaration dated 27.06.2019, which was presented before the CoC and approved the same to place before us. During the course of argument on the application seeking for final approval of resolution plan, we heard the RP, and notably, in compliance of the Order passed by this Bench on 24.03.2025, this application was preferred by the RP upon instruction of the CoC and the same was heard *in extenso*. We have already noted that during ongoing CIRP, due to non-cooperation on part of the suspended board, a Section 19(2) application bearing I.A. (IB) No. 72/KB/2023, was filed by the RP, on which this Bench, on 24.03.2025, directed the Respondent (Suspended Board of erstwhile management of the company) to cooperate with the RP by providing all the documents as asked for within a week's time. We find that despite several intimations, the suspended board has not responded to the RP, and the same was noted by the CoC in its 18th meeting convened on 21.04.2025.

37. We have noted that in the resolution plan, against the total admitted claim of Rs. 313.60 Crore, an amount to the tune of Rs. 9.67 Crore has been provided as total resolution plan amount,

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

which leads a huge haircut of 97%. Arguably, against the corporate debtor and its guarantors, on a principal due of Rs. 101.40 Crore, the total recovery was estimated to the tune of Rs. 36.24 Crore which is at 35.70% for SBI. Thus, the CoC opined that 'haircut in respect of the amount admitted by the RP is 97%', would not be a correct conclusion in light of the other possible recoveries from the guarantors too.

38. We would note that in present case, SBI is the only secured financial creditor in the CoC, who is lead bank too, and others are the unsecured financial creditors, and notably, recovery through this resolution plan towards the unsecured financial creditors is 1%. Similarly, for the operational creditors – including government authorities, recovery by way of this plan is significantly below 1%. If the guarantee has been invoked, it can be only by the SBI, being secured financial creditor in the CoC.

39. It is a settled position of law that the "Insolvency and Bankruptcy Code, 2016" has been enacted with an aim to restructure the business of the debtor by resolving its insolvency and bankruptcy in a time bound manner by ensuring the value maximization for the assets and promote entrepreneurship, with increasing the availability of credit, and balancing the interests of all stakeholders, including the government dues. Maybe, the SBI being the lead bank in the CoC is satisfied by the realization against its total due with the corporate debtor, with an estimated recovery of 35.70%, leading a reduction of 64.30%, but such a course would not be in the interests of justice vis-à-vis the other stakeholders in accordance with the objective of the Code, specifically when they

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 701/KB/2025

In

Company Petition (IB) No. 393/KB/2021

have a huge amount of admitted claim in CIRP and recovery is below 1%.

40. In view of above, to meet the ends of justice and in public interest in terms of Section 70 of the I&B Code, read with Section 213 and 212 of Companies Act, 2013, read with Rule 11 of the NCLT Rules, by applying our inherent power, we deem it fit to refer the matter to the Regional Director, Eastern Region, MCA, Kolkata, to conduct an independent and fair investigation into the affairs and erstwhile management of the corporate debtor company, by the Serious Fraud Investigation Office (SFIO) or any other government agency, as may be deemed fit in accordance with law.

41. The Joint Registrar of this Bench is directed to serve a copy of this order upon the Regional Director, Eastern Region, MCA, Kolkata, with an urgent basis.

42. In view of above findings and directions, the application is **disposed of**.

43. Certified copy of the orders, if applied for with the Registry, be supplied to the parties upon compliance with all requisite formalities.


Mr. Siddharth Mishra
Member (Technical)


Bidisha Banerjee
Member (Judicial)

This Order is signed on 21st Day of August 2025.

Bose, R. K. [LRA]