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

I.A. (IB) (Plan) No. 10/KB/2025
And
I.A. (IB) No. 734/KB/2025
And
I.A. (IB) No. 1727/KB/2024
In
Company Petition (IB) No. 39/KB/2024

IN THE MATTRE OF:
NIRMAL KANODIA

... Financial Creditor.

Versus

BALAJEE INGOT INDIA PRIVATE LIMITED

... Corporate Debtor.

And

IN THE MATTER OF:

I.A. (IB) (Plan) No. 10/KB/2025

An Application under Section 30(6) read with Section 31(1) of the Insolvency and Bankruptcy Code, 2016, read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, for the approval of the Resolution Plan.

IN THE MATTER OF:

NIRAJ KUMAR AGRAWAL

.... Resolution Professional/ Applicant.

And

IN THE MATTER OF:

I.A. (IB) No. 734/KB/2025

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

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

I.A. (IB) (Plan) No. 10/KB/2025
I.A. (IB) No. 734/KB/2025
I.A. (IB) No. 1727/KB/2024
In
Company Petition (IB) No. 39/KB/2024

IN THE MATTER OF:

NIRAJ KUMAR AGRAWAL
... Applicant/ Resolution Professional (RP).
Versus

NIRMAL KANODIA
... Respondent.

And

IN THE MATTER OF:

I.A. (IB) No. 1727/KB/2024

An application under Section 19(2) of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

NIRAJ KUMAR AGRAWAL
... Applicant/ Resolution Professional (RP).
Versus

1. BHARAT YADAV, Suspended Director of the corporate debtor.

2. SAURAVH KUMAR, Suspended Director of the corporate debtor.
... Respondents.

Date of Pronouncement: September 01, 2025.

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

APPEARANCES:
For Resolution Professional: **Mr. Shaunak Mitra, Adv.**
Mr. Riyanshu Agarwal, Adv.

IN THE NATIONAL COMPANY LAW TRIBUNAL
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I.A. (IB) (Plan) No. 10/KB/2025
I.A. (IB) No. 734/KB/2025
I.A. (IB) No. 1727/KB/2024
In
Company Petition (IB) No. 39/KB/2024

Niraj Kumar Agarwal, RP.

For Respondent: **Mr. Amandeep Singh, Adv.**
Ms. Tanuj Kakrania, Adv.

For the SRA: **Mr. Rishabh Kakrania, Adv.**
Ms. Surabhi Mehta, Adv.

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In
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COMMON ORDER

Per Cmde. Siddharth Mishra, Member (Technical):

1. The Court congregated through a hybrid mode.

I.A. (IB) (Plan) No. 10/KB/2025

2. We have heard Mr. Shaunak Mitra, assisted by Mr. Riyanshu Agarwal, Learned Counsel appearing on behalf of the Resolution Professional Mr. Niraj Kumar Agrawal.

A. Parties to the Proceedings:

3. This application has been preferred by Mr. Niraj Kumar Agrawal, the Resolution Professional of Balajee Ingot India Private Limited, under Section 30(6) read with Section 31 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code", and Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, for brevity "CIRP Regulations", for submission and final approval of the Resolution Plan submitted by the Resolution Applicant.

B. Prologue:

4. Mr. Shaunak Mitra, Learned Counsel appearing on behalf of the Resolution Professional (hereinafter referred to as "RP"/ "Applicant"), would submit that the Committee of Creditors, for brevity "CoC", at its 7th meeting convened on 21.04.2025, with 100% majority, approved the Resolution Plan dated 08.04.2025, annexed at pages 72-184 to the application, submitted by Aravali Goods & Suppliers Pvt. Ltd. (CIN: U51109WB1995PTC073144), hereinafter referred to as "Successful Resolution Applicant", for brevity "SRA", submitted on 12.04.2025 (as per the Compliance Certificate under Regulation 39(4) of the CIRP Regulations, in Form H, annexed at pages 53-71 to the application).

5. At the 7th CoC meeting convened on 24.04.2025, the CoC instructed the RP to issue Letter of Intent ("LoI") to the SRA – Aravali Goods & Suppliers Pvt. Ltd. upon approval of the resolution plan and authorized the RP to file necessary application with the resolution plan as approved by CoC for final sanction. The minutes of the 7th CoC meeting is annexed at pages 223-236 to the application.

C. Particulars of the Corporate Debtor:

6. The Corporate Debtor – Balajee Ingot India Pvt. Ltd. (U27310WB1989PTC139464) is a private limited company registered with the Registrar of Companies, Kolkata, incorporated on 07.12.1989, having registered office at 2/7, Sarat Bose Road, 6th Floor Vasundhara Building, Kolkata, West Bengal, Pin Code:

700020, carrying business of manufacturing and trading of iron and steel ingots.

D. Admission in Corporate Insolvency Resolution Process (CIR Process):

7. In 2022, the corporate debtor – Balajee Ingot availed a financial credit from its erstwhile director – Mr. Nirmal Kanodia, and on defaulting such financial credit to repay, Mr. Kanodia rushed to this Adjudicating Authority, vide a company petition preferred under Section 7 of the I&B Code, prayed for admission of the corporate debtor into CIR Process. On 25.06.2024, the petition was allowed by this Adjudicating Authority and Mr. Niraj Kumar Agarwal was appointed as Interim Resolution Professional ("IRP").

E. Public Announcement:

8. The IRP, in terms of Regulation 6 of the CIRP Regulations, made public announcement in Form A on 28.06.2024, for the invitation of claims from the creditors of the corporate debtor, and submit the claimed with proof on or before 09.07.2024 to the IRP.

F. Collation of claims and Constitution of Committee of Creditors (CoC):

9. Upon received claims from the various creditors, the IRP constitutes Committee of Creditors on 14.09.2024, in accordance with Section 18(1)(c) of the I& B Code read with Regulations 13(2)(d)

and 17(1) of the CIRP Regulations. The list of the financial creditors of the corporate debtor being the member of the CoC as constituted by the IRP, along with the distribution of voting share, is as under:

SN	Name of the Creditor	Amount claimed	Amount admitted	Nature of claim	Voting Share (%)
1.	Sipra Chouhan Das	Rs. 8,02,228/-	Rs. 8,02,228/-	Unsecured financial debt	100

10. As per the latest claim as on 26.03.2025 (Version 4) available with the IBBI official website, the list of unsecured financial creditors (other than financial creditors belonging to any class of creditors):

SN	Name of the Creditors	Amount claimed	Amount admitted	Nature of Claim	Voting share in CoC	Remarks
1.	Nirmal Kanodia	Rs. 1,28,44,966/-	Rs. 1,28,44,966/-	Unsecured Loan	0%	Related Party.
2.	Sipra Chouhan Das	Rs. 8,02,228/-	Rs. 8,02,228/-	Unsecured Loan	100%	-
	Total	Rs. 1,36,47,194/-	Rs. 1,36,47,194/-			

11. As per the latest claim as on 26.03.2025 (Version 4) available with the IBBI official website, the list of operational creditors (Government dues):

SN	Name of the Creditors	Amount claimed	Amount admitted	Nature of Claim
1.	GST-WB	Rs. 16,89,28,059/-	Rs. 16,89,28,059/-	Operational Creditor.
	Total	Rs. 16,89,28,059/-	Rs. 16,89,28,059/-	

12. As per the latest claim as on 26.03.2025 (Version 4) available with the IBBI official website, the list Operational creditors (other than Workmen and Employees and Government Dues):

SN	Name of the Creditors	Amount claimed	Amount admitted	Nature of Claim
1.	Bharat Iron Stores	Rs. 85,94,150/-	Rs. 85,94,150/-	Operation Creditor - Supplier.
2.	Krishna Steel Traders	Rs. 1,20,57,324/-	Rs. 1,20,57,324/-	Operation Creditor - Supplier.
3.	Nirmal Kanodia	Rs. 67,76,156/-	0 [Reason given by RP: Related party not in books and accounts of the corporate debtor]	Operation Creditor - Supplier.
	Total	Rs. 2,74,27,630/-	Rs. 2,06,51,474/-	

13. The IRP convened the 1st meeting of CoC on 20.09.2024, wherein the CoC with 100% voting majority approved the appointment of IRP as Resolution Professional ("RP").

G. Appointment of Registered Valuers and Transactional Auditors:

14. It is submitted that the RP in discharge his duty in terms of Regulation 27 read with Regulation 35 of the CIRP Regulations appointed two registered valuers on 01.08.2024 to determine the fair value and liquidation value of the corporate debtor in Plant and Machinery (P&M) and Securities & Financial Assets (SFA). The summery statement of valuation reports along with valuation reports furnished by the registered valuers is annexed at pages 239-292 to the application. The summery statement of valuation reports is as under:

ANNEXURE-M 239

SUMMARY STATEMENT OF VALUATION REPORTS

Corporate Debtor **Balajee Ingot India Pvt. Ltd.** **CP (IBC) 39/KB/2024**

Amount in Rs. Amount in Rs

Asset Class-P&M	VRIN	Report Date	Fair Value	Liquidation Value
Mr. Asim Maity IBBI/RV/04/2019/10999	236918	07-11-2024	3,53,050	3,03,408
Dr. Ananya Mukhopadhyay (IBBI/RV/02/2023/15221)	250670	01-11-2024	4,39,968	302000
Asset Class-SFA	**VRIN**	**Report Date**	**Fair Value**	**Liquidation Value**
Ritesh Kumar Gupta IBBI/RV/06/2019/11473	840905	02-12-2024	10,62,361	10,62,361
Pankaj Prakash IBBI/RV/06/2019/11409	996824	03-12-2024	10,62,361	1000340

15. It is submitted that the average fair value and the liquidation value of the corporate debtor as mentioned in Form H is as under:

a. Fair value = Rs. 10,62,361/-.

b. Liquidation value = Rs. 10,00,340/-.

16. Further, it is submitted that in terms of Regulation 35A read with Regulation 39(2) of the CIRP Regulation, the RP has not found or determine any avoidance transactions (PUFE transactions) under Section 43, 45, 50 and 66 of the I&B Code.

H. CIR Process and its compliances:

17. Learned Counsel appearing on behalf of the RP would submit that in compliance of Regulation 36(1) of the CIRP Regulations, the RP prepared the Information Memorandum ("IM") and submitted to the CoC on 13.01.2025.

18. In compliance of the Regulation 36A (1) of the CIRP Regulations, the RP issued a public announcement on 22.11.2024, by way of "Form G" in the public newspaper for inviting the Expression of Interest ("EoI") from the Prospective Resolution Applicants ("PRAs").

19. It is submitted that in response of the Form G, twenty (20) Prospective Resolution Applicants expressed their interest and accordingly, the provisional list of resolution applicants was issued

in terms of Regulation 36A (10) of the CIRP Regulations on 10.01.2025 and in terms of Regulation 36A (12) of the CIRP Regulations, the final list of eligible Prospective Resolution Applicants was issued on 15.01.2025.

20. Further, it is submitted that in accordance with Regulation 36B (3) of the CIRP Regulations, the RP issued Request for Resolution Plan ("RFRP"), Evaluation Matrix ("EM") and Information Memorandum ("IM") on 17.01.2025. The last date of submission of the resolution plan was fixed on 22.04.2025.

I. Evaluations and Voting:

21. It is asserted that sole Resolution Applicant M/s. Aravali Goods & Suppliers Pvt. Ltd. submitted the resolution plan to the RP, in response to the EoI and RFRP and the same was put up for approval before the CoC at its 7th meeting convened on 21.04.2025, in terms of Section 30(6) of the I&B Code read with Regulation 39(4) of the CIRP Regulations. The Resolution Applicant furnished an amount of Rs. 10 Lakh as EMD which is accepted by the CoC at its 7th meeting.

22. At the 7th CoC meeting convened on 21.04.2025, the CoC, upon due deliberation and discussion, found the plan of M/s. Aravali Goods & Suppliers Pvt. Ltd. feasible and viable keeping in view the <u>fair value and liquidation value of the corporate debtor</u> and approved the Resolution Plan submitted by sole Resolution Applicant M/s. Aravali Goods & Suppliers Pvt. Ltd. by 100% voting

shares. Accordingly, the CoC declared M/s. Aravali Goods & Suppliers Pvt. Ltd. as Successful Resolution Applicant ("SRA").

23. It is resolved at the 7th CoC meeting that the Resolution Applicant will furnish a performance guarantee of 10% within 15 days after approval of the plan keeping in view the undertaking given by the Resolution Applicant. Further, the Resolution Professional is instructed to issue Letter of Intent ("LoI") to the SRA.

J. Compliances of the Resolution Plan submitted by the SRA with various provisions under the I&B Code and CIRP Regulations:

24. Learned Counsel appearing for the RP would contend that in terms of Regulation 39(4) of the Insolvency and Bankruptcy Code (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the RP has filed a Compliance Certificate in prescribed form i.e., Form "H", annexed at pages 53-71 to the application.

25. It is submitted that the Successful Resolution Applicant has met the criteria approved by the CoC having regard to the complexity and scale of operations of the business of the Corporate Debtor in terms of Section 25(h)(2) of the I&B Code.

26. Further, it is submitted that the Successful Resolution Applicant is eligible to submit a resolution plan in terms of Section 29A of the I&B Code and accordingly, a declaration has also been furnished by the SRA.

27. Learned Counsel for the Resolution Professional would submit the details of various compliances as envisaged within the I&B Code and the CIRP Regulations to which a Resolution Plan has been adhered to. Further, it is submitted that the Resolution Applicant has submitted its eligibility in terms of Section 30(1) of the I&B Code, 2016.

28. It is submitted that the resolution plan does not contravene any of the provisions of law for time being force.

29. It is further submitted that in terms of Section 30(2) of the I&B Code, 2016, (as amended vide Amendment dated August 16, 2019) the Resolution Plan, submitted by SRA provides the details of various compliances as under:

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Declarations with respect to compliances of provisions under Code and Regulations

I Niraj Kumar Agrawal hereby certify that-

(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) including the provisions and Regulations as per the table below:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Compliance (Yes / No)	Clause of Resolution Plan
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Yes	Clause C & Schedule 3 (III)
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Yes	Section (IV)
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes	Annexure-8
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	 Yes Yes NA	 Schedule -4 Sl no- A Schedule -4 Sl No- B- 3 & 4

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Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Compliance (Yes / No)	Clause of Resolution Plan
	(d) provides for the management of the affairs of the corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?]	Yes Yes No	NA Schedule -5 Schedule -3(VI) Declaration after clause D
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	Yes Yes	Clause-B Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Yes	Clause III, IV, V and VI of Schedule 3
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	Yes	Cluase A –(III)6
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Yes	Schedule -4
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such	No NA	Brief of RA-Declaration

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Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Compliance (Yes /No)	Clause of Resolution Plan
	non-implementation?]		NA
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Yes	Clause III, IV, V and VI of Schedule 3
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Yes Yes Yes Yes Yes	Claiuse(IX) Sch-3 Sch-5 Sch-3-(VI) Sch-3-(VII) Schedule 3 clause (III) and schedule 5
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	NA	NA
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	Yes	Annexure

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K. About the SRA:

30. The SRA - M/s. Aravali Goods & Suppliers Pvt. Ltd. is a private limited company, having registered office at Room No. 102, Gr. Floor, Model House, 40, Strand Road, Kolkata – 700001, is carrying its business of providing cargo handling and supervision service.

L. Financial Proposal proposed by the SRA:

31. The Resolution Plan submitted by the SRA contemplates a **Total Resolution Plan Amount** to the tune of **Rs. 20,00,000/-** against the total amount admitted by the RP to the tune of **Rs. 20,32,26,727/-** and against the total amount claimed to the RP of an amount of **Rs. 21,00,02,883/-,** leading to haircut of **99%** in respect of claim admitted by the RP.

32. It is stated that the payment of outstanding **"CIRP Costs"** will be **"at actual".** Further, an amount of Rs. 2 Lakh shall be kept for the contingent government liability, if required, for a period of 2 years from the final date which shall be 120 days from NCLT Approval Date or the date on which full and final payment is made whichever is earlier, otherwise to be invested in the business.

33. Schedule 4 of the Resolution Plan (at page 30 of the plan) provides the financial proposal for all the stakeholders which is as under:

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In
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SCHEDUL-4
FINANCIAL PROPOSAL FOR ALL STAKEHOLDERS

1. MANDATORY CONTENTS OF THE RESOLUTION PLAN

This Resolution Plan outlines the payment to be made to different classes of creditors and stakeholders of the Company in the following manner:

Sr No.	Category of Claims	Amount Claimed (INR)	Amount Admitted (INR)	Resolution Amount as part of the Resolution Plan(INR)	
	Total				
A	**CIRP Costs-A**	**On Actuals**			
B	**Payment towards claims**				
1	Workmen dues	NIL	NIL	NIL	
2	**Financial Creditors**	**13647194**	**13647194**	1600000	To be distributed in the ratio of claim admitted
	Nirmal Kanodia	12844966	12844966	1505947	
	Sipra Chouhan Das	802228	802228	94053	
3	**Operational Creditors (excluding workmen & Govt. Dues)**	**27427630**	**20651474**	0	**Nil**
	Bharat Iron Stores	8594150	8594150	0	
	Krishna Steel Traders	12057324	12057324	0	
	Nirmal Kanodia	6776156	0	0	
4	**Government Dues**	**168928059**	**168928059**	**400000**	
	GST WB	168928059	168928059	200000	
	Other contingent dues:- To be retained for 2 years from final date	0	0	200000	

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	itherwise to be invested in business				
	TOTAL	210002883	203226727	2000000+CIRP cost on actual	

Note:- Working capital will be introduced based on the requirement and financial planning

For the purposes of this Resolution Plan, the amounts relating to Admitted Financial Debt is as per List of admitted claim provided by RP.

34. The details of realisable amount under the resolution plan have been provided in Form H furnished by the RP as under:

7A. Realisable amount:

Sl. No.	Particulars	Description
1.	Total Realisable amount under the plan *(In case of real estate CDs, provide the monetary value of flats etc. given to allottees)*	20,00,000+CIRP cost
4.	Percentage (%) of realisable amount to Fair Value	188%
5.	Percentage (%) of realisable amount to Liquidation Value	200%
6.	Percentage (%) of realisable amount to Principal amount	2%
7.	Percentage (%) of realisable amount to Total admitted claims	1%
8.	Percentage (%) of realisable amount to Other than admitted Corporate Guarantee claims	2%

7B. Details of Realisable amount:*(Amount In Rupees)*

Stakeholder Type	Amount(s)				Payment schedule
	Amount Claimed	Amount Admitted	Realisable amount under the plan	Amount realizable in plan to amount claimed (%)	
Secured Financial Creditors – Creditors not having a right to vote under sub-section (2) of section 21 – Dissenting – Assenting	Nil	NIL	NIL	NIl	
Unsecured Financial Creditors—					
Creditors not having a right to vote under sub-section (2) of section 21-	12844966	12844966	1505946.614	12%	Within 120 days
Dissenting					
Assenting	802228	802228	94053	12%	Within 119 days
Operational Creditorss					

(i)Govt Dues	168928059	168928059	200000	0.12%	Within 119 days
(II) Workmen – PF dues – Other dues	0	0	0	00	
(iii) Employees – PF dues – Other dues	0	0	0	0	
(iv)Other Operational creditors	27427630	20651474	0	0.00%	
Other Debt & Dues Contigency			200000		
Shareholders	0	0	0	0	
Total	210002883	203226727	2000000		

M. Implementation of Resolution Plan:

35. The Resolution Applicant proposes to implement the resolution plan in the following manners (Implementation Schedule):

STEP	ACTION	TIME
Step 1	***NCLT Approval Date*** - Reconstitution of the Board of the Company	X X+7
Step 2	***Final Date:*** - The Capital Reduction shall become effective - The Resolution Applicant shall infuse the Equity Commitment in the manner specified in Paragraph III of this Schedule - Other actions specified in Paragraph IV of this Schedule shall take effect - Payment to Creditors: • Payment of the CIRP Costs Payment of the Upfront ***(FULL & FINAL)*** Amount to the Financial Creditors	Within X+60 days Within X+119 days Within X+119 days Within X+119 days Within X+119 days

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36. The details of implementation of the resolution plan as provided Form H:

5. Details of implementation of resolution plan:

Sl. No.	Particulars	Description
1.	Amount of Performance Guarantee furnished by SRA (in Rs.) and its validity (attach document)	2,00,000/-
2.	Source of funds (in brief)	Internal reserve of RA
3.	Capital restructuring and management of CD post approval of resolution plan **(in brief including shareholding proposed to be transferred in favour of SRA)**	100% Cancellation of existing share capital and issue fresh share of Rs.1 Lakh. Further for new board will be appointed by the SRA and implemention of plan would be monitored by monitoring committee,
4.	Term and implementation of plan (in brief)	Payment as proposed in plan will be made to all the stakeholder in 120 days.
5.	Details of monitoring committee (in brief)	Consisting of 2 person 1 RP and one nominee of FC.
6.	Effective date of resolution plan implementation	From date of approval of resolution plan by AA

N. On PUFE Transactions:

37. It is submitted that in terms of Regulation 35A read with Regulation 39(2) of the CIRP Regulation, the RP has not found or determine any avoidance transactions (PUFE transactions) under Section 43, 45, 50 and 66 of the I&B Code.

38. Heard the Learned Counsel for the RP and perused the resolution plan submitted by the SRA and the documents on records carefully.

Analysis and Findings:

Discernible Facts:

39. Prior considering the resolution plan for approval and final sanction, certain facts, which have been discerned, require to be discussed that:

a. The average Fair Value of the corporate debtor is determined as Rs. 10,62,361/-.

b. The average Liquidation Value of the corporate debtor is determined as Rs. 10,00,340/-.

c. The total amount claimed by all classes of creditors to the RP is Rs. 21,00,02,883/-.

d. The total amount admitted by the RP is Rs. 20,32,26,727/-.

e. The total claimed admitted by the RP in respect of the Government (GST-WB) is to the tune of Rs. 16.89 Crore, against that the plan is proposed to allocate only Rs. 2 Lakh, resulting a recovery of **0.12%.** Further, an amount of another Rs. 2 Lakh has been retained for the contingent government liability, if any, comes within a period of 2 years from the final date which shall be 120 days from NCLT approval date or the date on which full and final payment is made, whichever is earlier.

f. The RP, upon verification, would assert that the GST Department Bihar has a claim of Rs. 1,39,62,077/- and the Income Tax Authority for the financial year of 2015-16, assessment year of 2016-17, has a claim of Rs. 76,52,027/-, however, such claims have not been submitted before the RP, and accordingly, prepared a list of "Contingent Liabilities" of the corporate debtor, as annexed at page 293 to the application.

g. The total resolution or realisable amount (except CIRP cost which would be paid at actual) under the resolution plan is **Rs. 20,00,000/-.**

h. Resulting a huge reduction or "Haircut" of **99%** compared to the claim admitted by the RP.

i. However, percentage of realisable amount to the fair value is 188%, and percentage of realisable amount to the liquidation value is 200%.

j. No PUFE transactions have been determined by RP.

40. Strangely, we have noted that the fair value as well as the liquidation value of the present corporate debtor is nearly Rs. 20 Lakh whereas, the amount admitted by the RP against the amount claimed by the various creditors including financial creditors, operational creditors, Government Bodies etc. is about 20 Crore, and against that huge amount claim, a plan has been received and approved by CoC thereon, realising an amount for resolution of the debtor to tune the tune of Rs. 20 Lakh, leading a huge haircut of 99%.

41. We find that the RP in terms of Regulation 27 read with Regulation 35 of the CIRP Regulations appointed two registered valuers on 01.08.2024 to determine the fair value and liquidation value of the corporate debtor in “Asset Class Plat and Machinery” (P&M) and further appointed two registered valuers on 01.08.2024 to determine the fair value and liquidation value of the corporate debtor in “Securities & Financial Assets” (SFA). The summery statement of valuation reports along with valuation reports furnished by the registered valuers is annexed at pages 239-292 to the application.

42. The summery statement of valuation reports furnished by the registered valuers is as under:

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ANNEXURE-M

SUMMARY STATEMENT OF VALUATION REPORTS

Corporate Debtor **Balajee Ingot India Pvt. Ltd.** **CP (IBC) 39/KB/2024**

Amount in Rs. Amount in Rs

Asset Class-P&M	VRIN	Report Date	Fair Value	Liquidation Value
Mr. Asim Maity IBBI/RV/04/2019/10999	236918	07-11-2024	3,53,050	3,03,408
Dr. Ananya Mukhopadhyay (IBBI/RV/02/2023/15221)	250670	01-11-2024	4,39,968	302000
Asset Class-SFA	**VRIN**	**Report Date**	**Fair Value**	**Liquidation Value**
Ritesh Kumar Gupta IBBI/RV/06/2019/11473	840905	02-12-2024	10,62,361	10,62,361
Pankaj Prakash IBBI/RV/06/2019/11409	996824	03-12-2024	10,62,361	1000340

Valuation Report dated 02.12.2024:

43. We find that the Valuation Report dated 02.12.2024, submitted by CA Ritesh Kumar Gupta, annexed at pages 274-281 to the application, recommends the realizable market value of the financial assets of the corporate debtor based on the status of financial assets as on 02.12.2024 as follows:

a. Fair Value = Rs. 10,62,361/-.

b. Liquidation Value = Rs. 10,62,361/-.

44. The relevant extract of the Valuation Report dated 02.12.2024, is reproduced hereunder:

Balajee Ingot India Private Limited

Annexure A

Realizable Value of the Assets of the Corporate Debtor based on Provision Balance Sheet as at 02nd December 2024

Situations / Particulars	Book Value as on 31/03/2023	Fair Value	Liquidation Value	Remarks
Financial Assets :				
Tangible Assets	15,83,479.00	4,39,968.00	4,39,968.00	Refer No. 1
Long Term Loans & Advances	25,28,433.00	-	-	Refer No. 2
Trade Receivables	3,18,52,620.00	-	-	Refer No. 3
Short Term Loans & Advances	12,00,630.00	6,20,211.00	6,20,211.00	Refer No. 4
Cash & Cash Equivalents	30,564.00	2,182.00	2,182.00	Refer No. 5
Other Current Assets	51,51,129.00	-	-	Refer No. 4
Realizable Value of Financial Assets	4,23,46,855.00	10,62,361.00	10,62,361.00	

Notes :-

Note No. 1 .	The Valuation of Plant & Machinery has been determined based on the valuation obtained from Registered Valuer - Eastern Resources (Dr. Ananya Mukhopadhyay - IBBI/RV/02/2023/15221) vide certificate dated ER/MC/VAL/0111/24 dated 01/11/2024. As discussed with IP Niraj Kumar Agarwal, the value of Factory Building & Shed & Office Building, Furniture & Fixtures, Vehicles does not exits or is not expected to fetch any value and hence the value has been considered as Nil.
Note No. 2 :	Long Term Loans & Advances mainly comprises of Deposits with different entities. Based on mail confirmation received from IP, the said amounts are not recoverable and hence the value as been considered as Nil
Note No 3	As discussed with IP, the Debtors are outstanding for more than 3 years and are Time barred in nature and hence it is assumed that the said Debtors is no more realisable and hence value has been considered as Nil
Note No. 4	Short Term Loans & Advances and Other Current Assets are mainly consist of Prepaid Expenses, Government receivables and Insurance Claim. As discussed with IP, the company is having a significant amount demand that is due to be paid to GST and Income Tax Department and hence the refund is not expected. Further, the insurance claim filled by the Company has been rejected by the Insurer and hence considered as Nil.
Note No. 5	As confirmed by IP, there is no Cash Balance as on date with the Company and hence it has been considered as Nil. Further, there has been no transaction in the Bank account and IP has shown his disability to share the Bank statement since the accounts of the Company is freezed. Hence the Bank Balance as on 31/03/2023 has been considered as the Bank Balance as on the date of this report.

Valuation Report dated 03.12.2024:

45. We also find that the Valuation Report dated 03.12.2024, submitted by Mr. Pankaj Parakh, annexed at pages 282-292 to the application, recommends the realizable market value of the financial assets of the corporate debtor based on the status of financial assets as on 03.12.2024 as follows:

a. Fair Value = Rs. 10,62,361/-.

b. Liquidation Value = Rs. 10,00,340/-.

46. The relevant extract of the Valuation Report dated 03.12.2024, is reproduced hereunder:

Certified True Copy

14. Valuation:

Assets			(INR In Lacs)	
Particulars	Book value as on 31.03.2023	Estimated Fair Value	Estimated Liquidation Value	Remarks
Non Current Assets				
Tangible Assets	15.83	4.40	4.40	Refer 14.1
Long term Loans & Advances	25.28	-	-	Refer 14.2

PANKAJ PARAKH

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M/s Balajee Ingot India Private Limited

Current Assets				
Trade Receivables	318.53	-	-	Refer 14.3
Cash & Cash Equivalent	0.30	0.02	0.02	Refer 14.4
Short term Loans & Advances	12.01	6.20	5.58	Refer 14.5
Other Current Assets	51.51	-	-	Refer 14.6
TOTAL	**423.46**	**10.62**	**10.00**	

14.1 Tangible Assets

14.1.1 The Valuation of Plant & Machinery has been determined based on the valuation obtained from Registered Valuer (Dr. Ananya Mukhopadhyay - IBBI/RV/02/2023/15221) vide certificate dated 01/11/2024. As discussed with the RP, the value of Factory Building & Shed & Office Building, Furniture & Fixtures, Vehicles is not expected to fetch any value and hence fair value and liquidation value has been considered as Nil.

14.2 Long Term Loans and Advances

14.2.1 Long Term loans and advances comprises of Deposits with different entities. As discussed and confirmation received from RP, the said amounts are not recoverable and hence the fair value and liquidation value has been considered as Nil.

14.3 Trade Receivables

14.3.1 As discussed and confirmed by the RP, the Debtors are outstanding for more than 3 years and are time barred in nature. Hence it is assumed that the said Debtors is no more realisable and the fair value and liquidation value has been considered as Nil.

14.4 Cash and Cash Equivalent

14.4.1 As discussed and confirmed by the RP, there is no transaction in the bank accounts of the company since last 2 yrs. Further the cash in hand as certified by the management is Nil. Hence the overall cash and bank balance has been considered as balance as on 31-03-2023.

14.5 Short Term Loans and Advances

14.5.1 Short term loans and advances comprises of prepaid expenses, TDS receivable, Service Tax advance and advances to Dipta Vanijya Private Limited. As per our discussion with the RP, short term loan to Dipta Vanijya Private Limited is fully expected to be realised and hence Fair value has been considered at full value. However, liquidation value has been considered after 10 percent discount on fair value. All other advances has not been considered as realisable based on the discussion with RP and the state of affairs of the company.

14.6 Other Current Assets

14.6.1 Other current assets comprised of Tax receivables (TCS, VAT, Service Tax) and Insurance Claim. As discussed and confirmed by the RP, there are huge GST and other taxes demand and hence the credit is non-recoverable. Further the Insurance claim has also been rejected. Hence the fair value and liquidation value has been considered as Nil.

15. CONCLUSIONS

In the light of the above and on consideration of all the relevant factors and circumstances as discussed outlined hereinabove earlier in this report, in our opinion, the fair value and liquidation value of the equity shares of the Company is as per details provided in para 14 above as on the date of CIRP proceedings which has been summarised as under:

Fair Value – Rs. 10,62,361/-

Liquidation Value – Rs. 10,00,340/-

Pankaj Parakh.

(Pankai Parakh)

47. We note that the Book Value of the realisable financial assets of the corporate debtor as on 31.03.2023 as recorded in both the Valuation Reports, is about Rs. 4.23 Crore, whereas the fair value and liquidation value as determine by the appointed Registered Valuers is about Rs. 10 Lakh. We further note that the Book Value of the "Long-Term Loans and Advances" as on 31.03.2023, as recorded in the Valuation Report is about Rs. 25.28 Lakh, whereas the fair value and the liquidation value of the same is determined as NIL. The appointed Registered Valuers have given justification in this regard that Long-Term Loans & Advances mainly comprises of deposits with different entities and based on the mail confirmation received from RP, the said amounts are not recoverable and hence the value has been considered as NIL.

48. Similarly, the Book Value of "Trade Recoverable" of the corporate debtor as on 31.03.2023, as recorded in the Valuation Report is nearly Rs. 3.19 Crore, and against that, the fair value and liquidation value of the same has been determined as NIL, by given a justification by the appointed Registered Valuers that as discussed with the RP, the debtors are outstanding for more than 3 years and the same are time-barred in nature and it is assumed the said debts are no more realisable and hence, value of the same has been considered as NIL.

49. Further, the Book Value of the "Other Current Assets" as on 31.03.2023, is noted as Rs. 51.51 Lakh, whereas the fair value and the liquidation value have been recommended NIL. Reason provided by the appointed Registered Valuers that Short-Term Loan & Advances and Other Current Assets are mainly consist of Prepaid Expenses, Government receivables, Tax receivables (TCS, VAT, Service Tax) and Insurance Claim. As discussed with the RP, the company has a significant amount demand that is due to be paid to GST and Income Tax Department and hence the refund is not expected and non-recoverable. Further, the Insurance claim filed by the Company has been rejected by the Insurer and hence, the value of the Other Current Assets has been considered as NIL.

50. We infer that:

<u>In respect of "Long-Term Loans and Advances"</u>:

50.1. ***Firstly***, if the **"Long-Term Loans and Advances"** comprises of deposits with the different entities, which is non-recoverable as confirmed by the RP, we are of the view that what initiatives or recourses was adopted by the corporate debtor prior initiation of CIR Process in respect of it to recover those deposits.

50.1.1. If no proper recourses in accordance with law as well as statutory provisions stipulated in Companies Act, 2013, had been taken by the corporate debtor to recovery the same, we are very clear of the view that the inaction on part of the corporate debtor indicates nothing but to help those entities to whom those deposits are secured or to construct an illegal path to secure those amounts for their personal benefit with an unlawful intend. We are also worried that how these claims have been dealt with in the balance sheets for the respective years of the corporate debtor and whether, the claim was written off in the respective balance sheets of the corporate debtor.

50.1.2. At this juncture, it is appropriate to go through Section 73(1) of the Companies Act, 2013, which stipulates that on and after the commencement of the Companies Act, 2013, no company shall invite, accept, or renew deposits under the Act, 2013, from the public except in manner provided under Chapter V of the Act, 2013. Further, the first Proviso of Section 73(2) of the Companies Act, 2013, provides that in a case where a company does not secure the deposits or secured such deposits partially, then, the deposits shall be termed as "unsecured deposits" and shall also be so quoted in every circular, form, advertisement, or in any document related to invitation or acceptance of deposits. Significantly, Section 73(3) of the Companies Act, 2013, states that every deposit accepted by a company under Section 73(2) of the Act, 2013, shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in Section 73(2). Pertinently, Section 73(4) of the Companies Act, 2013, empowers the depositors to prefer an application before the Tribunal having jurisdiction, where a company fails to repay the deposit or part thereof or any interest thereon under Section 73(3), for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

50.1.3. Further, we are of the view that why the Resolution Professional herein did not take any proper legal recourse for recovery of such deposits in accordance with law as well as statutory provisions stipulated in Companies Act, 2013. As per Section 25(2)(b) of the I&B Code, the RP, in discharge of his duty being an insolvency professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor, shall represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, *quasi*-judicial or arbitration proceedings. At least, the RP could have approached this Bench for the appropriate direction to recover of the said loans and advances, before coming to a conclusion that the said amount is not recoverable, and accordingly, assumed that the valuation of such would be NIL.

Concerning the "Trade Receivables":

50.2. ***Secondly***, concerning the **"Trade Receivables"** which is amounting to Rs. 3.19 Crore as per the book value as on 31.03.2023, it is assumed that the same is time barred and accordingly, non-recoverable in nature. Similarly, we are of the view that what legal action was taken by the corporate debtor when those trade receivables are within limitation.

50.2.1. If no proper action was adopted by the corporate debtor within the prescribed limitation, then it is very clear that this huge amount of claim is only for the undue benefit of the corporate debtor, and we are of the view that how these huge amount of claims have been dealt with in the respective balance sheets of the corporate debtor and whether, the claim was written off in the balance sheets of the corporate debtor.

50.2.2. Further, we are of the view that without having an effort to institute proper legal recourse and the outcome of such proceedings, how the RP decided that the same is time barred. It is trite, axiomatic, and settled law that the RP is not vested with adjudicatory powers as decided in the ***Swiss Ribbons Pvt. Ltd. vs. Union of India*** reported in (2019) 4 SCC 17, by the Hon'ble Apex Court and the role of the RP becomes vital to the efficient and transparent conduct of the CIRP process, as held in ***Mr. Umesh***

Kumar v. Mr. Narendra Kumar Sharma IRP, reported in (2024) ibclaw.in 88 NCLAT. Thus, the role of the RP is only to facilitate the insolvency proceedings, not having any adjudicatory jurisdiction to decide any claim or debt as time barred.

Regarding the "Other Current Assets":

50.3. ***Thirdly***, with regard to **"Other Current Assets"**, again the RP confirmed the appointed Registered Valuers that there are huge GST and other tax demand and thus, the credit is non recoverable. It is also stated that the Insurer rejected the insurance claim of the corporate debtor, and accordingly, the fair value and liquidation value of the same was determined upon consultation with the RP as NIL.

50.3.1. We are of the view that if there is a huge GST and other taxes demand against the corporate debtor, then, whether the said demand has been written off by the concerned Tax Authorities and whether the same has been indicated in the balance sheets for the respective years, and what action has been taken by the Tax or the concerned authorities in this regard.

50.3.2. Notably, GST Authority (West Bengal) submitted its claims to the tune of 16,89,28,059/- to the RP which has been admitted in 100%, however, against that admitted amount only 2 Lakh has been allotted in the resolution plan, leading a haircut of 99%.

50.3.3. Further, we would note that the RP has furnished a list of "Contingent Liabilities" of the corporate debtor, as annexed at page 293 to the application, which indicates that the GST Department Bihar has a claim of Rs. 1,39,62,077/- and the Income Tax Authority for the financial year of 2015-16, assessment year of 2016-17, has a claim of Rs. 76,52,027/-, however, such claims have not been submitted before the RP. We would note that another amount of Rs. 2 Lakh has been kept aside in the resolution plan for any claim received from any other governmental authorities within two years after approval of the plan, otherwise the same will be invested in the business.

50.3.4. As per Regulation 6A of the CIRP Regulations, 2016, the IRP shall send a communication along with a copy of public announcement made under Regulation 6 of the CIRP Regulations, to all the creditors as per the last available books of accounts of the corporate debtor through post or electronic means wherever the information for communication is available. Provided that where it is not possible to send a communication to creditors, the public announcement made under Regulation 6 shall be deemed to be the communicated to such creditors.

50.3.5. In case, the above claim has not been submitted to the RP, why the RP did not intimate the GST and IT Departments communicating the commencement of CIR Process and submission of claim. It is a settled position of law that the 'Government dues or claim' under the I&B Code is a "<u>secured debt</u>" and the Code does not prevent any Governmental Authority from treating them as a "secured creditor". We would refer to the judgment rendered by the Hon'ble Apex Court in ***State Tax Officer (1) vs. Rainbow Papers Limited*** reported in **(2023) 9 SCC 545: MANU/SC/1109/2022** wherein it has been held that Gujarat State Government is a secured creditor in view of special provisions in GVAT Act to that effect.

50.3.6. Further, as per Section 82 of the Central Goods and Services Tax Act, 2017 (CGST Act)/ West Bengal Goods and Services Tax Act, 2017 (WBGST Act), tax is to be the first charge on the property, save as otherwise provided in the I&B Code. This Bench in the case of ***Sandip Kumar Kejriwal, Professional (RP) of Indian Mining Works Private Limited*** reported in MANU/NC/3344/2024: (2024) ibclaw.in 582 NCLT, has held that there is nothing in the I&B Code to negate that position of the CGST Act being treated as secured debt. The provision of Section 82 of the CGST/ WBGST Act is referred to in verbatim:

> **"*Tax to be first charge on property.—*** *Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a* ***first charge*** *on the property of such taxable person or such person.***"**

50.3.7. Further, in ***Rainbow Papers Limited*** **(Supra),** the Hon'ble Apex Court observed that:

> "***52. If the Resolution Plan ignores the statutory demands payable to any State Government or a legal authority, altogether, the Adjudicating Authority is bound to reject the Resolution Plan***.
>
> *53. In other words, if a company is unable to pay its debts, which should include its statutory dues to the Government and/or other authorities and there is no plan which contemplates dissipation of those debts in a phased manner, uniform proportional reduction, the company would necessarily have to be liquidated and its assets sold and distributed in the manner stipulated in Section 53 of the IBC.*
>
> *54. In our considered view, the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any Government or Governmental Authority or for that matter, any other dues.*
>
> *xxx xxx xxx*
>
> *56. Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of the IBC. Under Section 53(1)(b)(ii), the debts owed to a secured creditor, which would include the State under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date.*

> *57. As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) of the IBC defines secured creditor to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law.* ***The definition of secured creditor in the IBC does not exclude any Government or Governmental Authority*****."**
>
> (Emphasis added)

50.3.8. Thus, in view of the proposition laid down in ***Rainbow Papers*** **(Supra),** the definition of a "secured creditor" under the I&B Code, 2016 includes the government or governmental authority and thus, the RP must be cautions while dealing with the tax demands and preparing the valuation reports.

50.3.9. Further, the Valuation Reports dated 02.12.2024 and 03.12.2024, indicates that the insurance claim has been rejected, why the same has not been assailed higher up before the appropriate forum in accordance with law, or at least could have approached this Bench to avail an appropriate remedy or a direction to initiate proceedings against such rejection before the proper forum.

On Avoidance Transactions:

51. Further, we would note that the CoC is comprised of a sole unsecured financial creditor with an admitted claim of Rs. 8,02,228/-, and the resolution plan provides an amount of Rs. 94,053/-, resulting a haircut of 88% comparing with its admitted claim. Further, the resolution plan provides an amount of Rs. 20

Lakh plus CIRP cost at actual, against the total admitted claim of Rs. 20,32,26,727/-, leading to a reduction of 99%.

52. Surprisingly, the RP has not found or determined any PUFE transactions in the present case, and further, we find that no transactional or forensic auditor has been appointed to that effect. Unless a transactional audit is done by an auditor to the accounts and conduct of the corporate debtor, at least for the period as stipulated under Sections 43(4), 46(1), 50(1) and 66 of the I&B Code, not finding any avoidance transactions it not justifiable.

53. This is trite, axiomatic, and settled position of law that I&B Code aims only not to protect the rights of the creditor on their dues and but also promotes an effective resolution of a defaulter. The Code caters to a speedy procedure to revolve the corporate persons, firms, and individuals by ensuring maximization of value of the assets, by promoting entrepreneurship, credit availability and most importantly, safeguard the interest of all the stakeholders of the corporate entity. Thus, having a stringent vigilance over the transactions of a corporate debtor during CIRP as well as pre-CIRP stage is highly required.

54. As per Section 43(1) of the Code the RP or liquidator shall determine the preferential transaction and shall apply to the NCLT for avoidance of preferential transactions. The look back period as per Section 43(4) for determining the preferential transactions for a related party (other than by reason only of being an employee), is <u>two years</u> preceding the insolvency commencement

date; and for a person other than a related party is one year preceding the insolvency commencement date. Further, Section 45 of the Code provides the provisions of undervalued transactions and the look back period for determining the undervalued transactions is one year for any person; and for a related party, it is two years preceding the CIRP commencement, in terms of Section 46. Moreover, Section 50 caters to the provisions of the extortionate credit transactions and look back period is two years; and as per Section 66, RP or liquidator finds any fraudulent transaction carried out by the corporate debtor, and accordingly, an application can be preferred and there is no look back period for determining the fraudulent transactions.

55. The Code envisages the duty of RP under Section 25(2)(j) of the Code to file application for avoidance of transactions in accordance with Chapter III of the Code. As per Regulation 35A (1) of the CIRP Regulations, on or before 75th day of CIRP, RP shall form an opinion whether the CD has subjected any transactions under Section 43, 45, 49, 50 & 66, and in terms of Regulation 35A (2) of the CIRP Regulations, on or before 115th day of CIRP, RP shall make a determination on such transactions and would also inform IBBI. Further as per Regulation 35A (3) of the CIRP Regulations, on or before 135th day of CIRP, RP shall make an application to AA for appropriate relief and order. Notably, as per Regulation 39(2) of the CIRP Regulations, the RP shall submit all the resolution plans along with all transactions under Section 43, 45, 49, 50 and 66 of the I&B Code observed, found, or determined by him. RP need to mention

details of application filed/pending or orders obtained in Form H (Compliance Certificate) along with submission of Resolution Plan before NCLT. Moreover, in terms of section 20(2)(a) of the I&B Code the IRP/RP shall have the authority to appoint transactional and forensic auditor to investigate the avoidance transactions as may be necessary.

56. In a similar circumstance, this Bench, on an earlier occasion, in ***Rachna Jhunjhunwala, RP of Power Max (India) Pvt. Ltd.***, reported in MANU/NC/2452/2024: (2024) ibclaw.in 522 NCLT, had directed the RP to form an opinion and determine avoidance transactions and direct the RP to examine the last 6 years Financial Statements, IT Returns, GST Returns, cash flow and fund flow statements in detail, as the resolution plan provides a huge haircut of more than 90% in respect of admitted claim. This Bench has further observed that the I&B Code casts huge responsibilities on the RP to deal with avoidance transactions and if the RP misses to determine the avoidance transactions and fail to file applications before the NCLT, then no way diverted or syphoned the funds if any can be got back and made available for distribution and insolvency resolution of the corporate debtor. The relevant extract of the decision is as under:

> "***On the PUFE Transactions:***
>
> *69. However, it is evident that the CoC has been constituted with only one member which is Indian Bank (Secure Financial Creditor). The claim received from Indian Bank is for Rs. 43.08 Crore that has been*

admitted in full by the Resolution Professional (RP).

70. We find that the amount allocated to Indian bank in the Resolution Plan of SRA is of Rs. 3.82 Crore only resulting in a huge reduction of 91.15%, compared to the admitted claim. Similarly, in the case of Government dues, against the admitted claim of Rs. 2.01 Crore, only Rs. 0.03 Crore has been provided resulting in massive reduction of 98%. Further, in case of Operational Creditors other than the employees, workman and Government dues, against the admitted claim of Rs. 3.09 Crore, only a Rs. 0.03 Crore has been allocated, again leading to large scale reduction of 99%.

71. We find that against total admitted claim from various creditors for Rs. 48.36 Crore, only Rs. 4.01 Crore has been proposed and allocated which is almost 92% "haircut". If we consider the total claims received as against the admitted claim, then the "haircut" is even more at 95%.

72. We find that the Resolution Professional in Form H as well as in the Supplementary Affidavit stated that no transactions were observed under Regulation 39(2) of the CIRP Regulations which envisages that the RP shall submit to the committee, all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him: (a) preferential transactions under section 43; (b) undervalued transactions under section 45; (c) extortionate credit transactions under *section 50; and (d) fraudulent transactions under section 66, and the orders, if any, of the adjudicating authority in respect of such transactions.*

73. The Insolvency and Bankruptcy Code, 2016 casts huge responsibilities on the Resolution professional to deal with avoidance transactions under Sections 43, 45, 50 and 66 during the corporate insolvency resolution process of a corporate debtor. In fact, the Code contemplates that it is the Resolution Professional alone who would form an opinion and determine avoidance transactions and take it up with the Adjudicating Authority by way of application for appropriate orders.

74. The members of the committee of creditors who participate in the CIR Process neither can devote their time on a full-time basis nor equipped to form an opinion and determine the avoidance transactions in a corporate debtor undergoing CIRP/ liquidation.

75. If the Resolution Professional misses to determine the avoidance transactions and fail to file applications before the Adjudicating Authority, then no way diverted or syphoned of funds if any can be got back and made available for distribution and insolvency resolution of the corporate debtor.

76. In the present case, we find that total admitted claims is of Rs. 48.36 Crore, the liquidation value is Rs. 4.08 Crore and the value of the Resolution Plan is of Rs. 4.01 Crore, leading to a "haircut" of about 92%.

77. It is the duty of the Resolution Professional to bring it to the notice of the CoC, as to where the borrowed funds have gone, particularly in case where the "haircut" is as high as 92% like in the present case.

78. We have noted that during the CIR Process, the RP has appointed a transactional auditor who has examined only two financials' years i.e., 2020-2021 and 2021-2022, and unaudited Trial Balance of 2022-2023, and came to conclusion that there are no avoidance transactions. While the look back period for fraudulent transactions under Sections 43, 45 and 50 is two years and there is no limit on look back period for fraudulent transactions under Section 66 of the I&B Code.

79. Unless the audit period covers a period beyond two years, at least from the period when the corporate debtor starting making losses / default in payment of debts, we are of the view that no fraudulent transactions can meaningfully be found or unearthed. Further, the transactional audit report merely reports changes in various accounts when compared to the previous year.

80. Hence, we direct the Resolution Professional to examine the last 6 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 the basis for forming opinion that there were no avoidance transactions, in the form of a report. A copy of the said report

> *also be filed with this Adjudicating Authority.*"
>
> (Emphasis Added)

57. Further, in ***Sandip Kumar Kejriwal, RP of Indian Mining Works Private Limited*** **(Supra),** this Bench has observed that the resolution plan provides 99.92% haircut in respect of admitted claim and as per plan therein, SRA shall be beneficiary of the amount to be recovered in PUFE application which contravenes the provision of Section 36(3)(f) of the Code. Significantly, it was the one of the grounds to reject the plan.

Claim of Operational Creditors:

58. We have noted that there are three operational creditors of the corporate debtor namely, Bharat Iron Stores, Krishna Steel Traders and Nirmal Kanodia, and the total amount claimed by the operational creditors to the RP is 2,74,27,630/-, and the RP admitted to the tune of Rs. 2,06,51,474/-, against such claim. We see that in respect of such admitted claim of the operational creditors, the resolution plan proposes a NIL amount on the ground that the liquidation value is NIL for such category.

59. Prior considering the issue, we would refer to the provision of Section 30(2)(b) of the I&B Code, as under:

> **Section 30: Submission of resolution plan.**
>
> xxx xxx xxx

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the [payment] of other debts of the corporate debtor;

[(b) **provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than**-

(i) **the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53**; or

(ii) **the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53**,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.-For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.-For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

60. Further, Section 53 of the I&B Code stipulates that:

Section 53: Distribution of assets.

53. (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be

distributed in the following order of priority and within such period and in such manner as may be specified, namely: —

(a) the insolvency resolution process costs and the liquidation costs paid in full;

(b) the following debts which shall rank equally between and among the following: —

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) the following dues shall rank equally between and among the following:—

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

Explanation. - For the purpose of this section—

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and

> (ii) the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013.

61. In the landmark judgment rendered by the Hon'ble Apex Court in ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta*** reported in **(2020) 8 SCC 531: MANU/SC/1577/2019,** it was held that:

> "***80.*** *When it comes to the validity of the substitution of Section 30(2) (b) by Section 6 of the Amending Act of 2019, it is clear that the substituted* ***Section 30(2)(b) gives operational creditors something more than was given earlier as it is the higher of the figures*** *mentioned in sub-clauses (i) and (ii) of Sub-clause (b) that is now to be paid as a minimum amount to operational creditors.* ***The same goes for the latter part of Sub-clause (b) which refers to dissentient financial creditors. Mrs. Madhavi Divan is correct in her argument that Section 30(2)(b) is in fact a beneficial provision in favour of operational creditors*** *and dissentient financial creditors as they are now to be paid a certain minimum amount, the minimum in the case of operational creditors being the higher of the two figures calculated under sub-clauses (i) and (ii) of Clause (b), and the minimum in the case of dissentient financial creditor being a minimum amount that was not earlier payable. As a matter of fact, pre-amendment, secured financial creditors may cramdown unsecured financial creditors who are dissentient, the majority vote of 66% voting to give them nothing or next to nothing*

> *for their dues. In the earlier regime it may have been possible to have done this but after the amendment such financial creditors are now to be paid the minimum amount mentioned in Sub-section (2).* ***Mrs. Madhavi Divan is also correct in stating*** *that the order of priority of payment of creditors mentioned in Section 53 is not engrafted in Sub-section (2)(b) as amended. Section 53 is only referred to in order that a certain minimum figure be paid to different classes of operational and financial creditors.* ***It is only for this purpose that Section 53(1) is to be looked at as it is clear that it is the commercial wisdom of the Committee of Creditors*** *that is free to determine what amounts be paid to different classes and sub-classes of creditors in accordance with the provisions of the Code and the Regulations made thereunder*.**”**
>
> (Emphasis Added)

62. Thus, after perusal of the statutory provisions and the law laid down in ***Essar Steel*** **(Supra),** it is clear that in a resolution plan, a **minimum amount shall be paid to the operational creditors** towards its claim admitted by the resolution professional in a manner which **shall not be less than** the amount either to be paid in the event of a liquidation of the corporate debtor or the plan value to be distributed in accordance with the provision of Section 53 of the Code.

63. As per section 30(2)(b) of the I&B Code, in a resolution plan, the operational creditor and the dissenting financial creditor, shall be entitled to receive **either** the amount that would be payable

to such operational creditor in the event of liquidation and accordingly the distribution should be made as per section 53(1) of the Code **or**, the amount that would be receivable if the amount paid under the resolution plan is distributed in accordance with the order of priority in section 53(1) of the I&B Code, **whichever is higher.** The legislative intent as well as the validity of the amendment of Section 30(2)(b) of the Code, by Section 6 of the Amendment Act, 2019, as observed by the Hon'ble Apex Court in ***Essar Steel*** **(Supra),** is that the I&B Code binds the resolution applicant to allocate a minimum amount to the operational creditor, which is either the amount would be paid in an event of liquidation or the minimum amount, the operational creditor will receive if the resolution plan value is distributed in the order of priority mentioned in section 53(1) of the Code. Further, regulation 38(1) of the CIRP Regulations, 2016, mandates the resolution applicant to pay the operational creditor in priority over the financial creditors and also the financial creditor who is dissentient to the resolution plan in priority over the financial creditors who voted in favour of the plan. Thus, a conjoint reading of Section 30(2)(b) of the I&B Code and Regulation 38(1) of the CIRP Regulations, 2016, it can be drawn that the resolution plan must secure an amount, i.e., **the not less than** the liquidation value, should be paid in priority to the operational creditor as well as the dissenting financial creditors, and the same cannot be a NIL amount.

64. Further, the Hon'ble Supreme Court of India in ***DBS Bank Limited, Singapore vs. Ruchi Soya Industries Limited***

[Civil Appeal Nos. 9133 of 2019 and 787 of 2020] reported in **MANU/SC/0012/2024,** has dealt with the issue, as:

> **"***Whether Section 30(2)(b)(ii) of the Insolvency and Bankruptcy Code, 20161, as amended in 2019, entitles the dissenting financial creditor to be paid the minimum value of its security interest?***"**

The Hon'ble Apex Court has observed that:

> **"*44.*** *We would, for the above reasons, reject the submission on behalf of the Respondents that Section 30(2)(b)(ii) is unworkable because it involves deeming fiction relating to liquidation, which is inapplicable during the CIRP period. This would be contrary to the legislative intent and is unacceptable.***'**
>
> **"*45.*** *Respondent No. 2 - CoC has submitted that the Appellant has dissented because it did not approve the manner of distribution of the proceeds under the resolution plan. The Appellant did not dispute the resolution plan itself. Accordingly, Section 30(2)(b)(ii) is not applicable. The argument is fallacious and must be rejected. Section 30(2)(b)(ii) relates to the proportion of the proceeds mentioned in the resolution plan or the amount which the dissenting financial creditor would be entitled to in terms of the waterfall mechanism provided in Section 53(1****), if the corporate debtor goes into liquidation.*** *The dissenting financial creditor does not have any say when the resolution plan is approved by a two-third majority of the CoC. The resolution plan will be accepted when*

approved by the specified majority in the CoC. The dissenting financial creditor cannot object to the resolution plan, but can object to the distribution of the proceeds under the resolution plan, when the proceeds are less than what the dissenting financial creditor would be entitled to in terms of Section 53(1) if the corporate debtor had gone into liquidation. ***This is the statutory option or choice given by law to the dissenting financial creditor. The option/choice should be respected*****.'**

"*46.* *Respondent No. 2 - CoC had referred to the objections referred to in the CoC meetings dated 15.04.2019 and 23.04.2019. We are of the view that the objections raised by the Appellant relate to the distribution of the proceeds in terms of the liquidation plan. According to them, they were entitled to money of value not less than the amount that they would have received Under Section 53(1) of the Code.***'**

"*47.* *It is also argued that the NCLAT had rejected the first appeal on the ground that the Appellant had only challenged the distribution of the pay-out under the plan inter se the financial creditors of the corporate debtor and not the resolution plan. Accordingly, the amendment to Section 30(2)(b) vide the Amendment Act of 2019 was not applicable. We have already rejected this argument, for the reasons set out above. In our opinion, the contention that the Appellant is not the dissenting financial creditor is to be rejected***.'**

"*48.* *The contention on behalf of the Respondent that there is conflict between*

Sub-section (4), as amended in 2019, and the amended Clause (b) to Sub-section (2) to Section 30 of the Code does not merit a different ratio and conclusion. Section 30(4) states that the CoC may approve the resolution plan by a vote not less than 66% of the voting share of the financial creditor. It states that the CoC shall consider the feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors Under Sub-section (1) to Section 53, including the priority and value of the security interest of the secured creditors, and other requirements as may be specified by the Board. These are the aspects that the CoC has to consider. It is not necessary for the CoC to provide each assenting party with liquidation value. However, a secured creditor not satisfied with the proposed pay-out can vote against the resolution plan or the distribution of proceeds, in which case it is entitled to full liquidation value of the security payable in terms of Section 53(1) on liquidation of the corporate debtor. ***The conflict with Sub-clause (ii) to Clause (b) to Sub-section (2) to Section 30 does not arise as it relates to the minimum payment which is to be made to an operational creditor or a dissenting financial creditor. A dissenting financial creditor does not vote in favour of the scheme. Operational creditors do not have the right to vote.***"

"**49.** *In view of the aforesaid discussion, and as we are taking a different view and ratio from India Resurgence ARC Private Limited (supra) on interpretation of Section 30(2)(b)(ii) of the IBC, we feel that it would be*

> *appropriate and proper if the question framed at the beginning of this judgment is referred to a larger Bench. The matter be, accordingly placed before the Hon'ble the Chief Justice for appropriate orders*."
>
> (Emphasis Added)

65. We have already expressed our view in the ***Suasth Healthcare Foundation*** reported in **(2023) ibclaw.in 1000 NCLT** upon examination of the implication of Section 30(2)(b) of the Code in the light of the decision of the Hon'ble Apex Court in ***Essar Steel (Supra).*** It is reproduced hereunder:

> "***53. On careful examination of Section 30(2)(b) of the I&B Code, 2016 in our view, two legal propositions emerge:***
>
> ***53.1.*** *Reference to Section 53(1) of the I&B Code is only for the purpose of calculating the amount payable to operational creditors and dissenting financial creditors. Otherwise, there is no place for Section 53 (1) when it comes to the resolution of a corporate debtor under the CIR Process*.'
>
> "***53.2.*** *The provision of some amount should be made for operational creditors as well as dissenting financial creditors, and the amount so provided cannot be NIL*."
>
> "***54.*** *This being a beneficial amendment as observed by the Hon'ble Apex Court, **in our view code contemplates a scenario where a provision made to an operational creditor or dissenting financial creditor in a Resolution Plan***

could be lesser than what they would have got in the event of liquidation in terms liquidation value as per section 53(1). In such a situation the code provides for provision as per liquidation value.**'**

"*55.* *In fact, in the case of operational creditors the code says that they will have to be paid as per the value provided to them as per the resolution plan, or liquidation value or the amount that would have been paid to them in the plan as if the resolution plan value had been distributed in accordance with the order of priority mentioned in sub-section (1) of Section 53 whichever is higher.***'**

"*56.* *Therefore, we are of the view, that is the reason for the word "not less than" used in Section 30(2)(b). If the legislature wanted to restrict the amount payable to them to liquidation value at the most, then the words "not more than liquidation value" would have been used.***'**

"*57.* *In view of the above analysis, we are of the view that the code contemplates mandatory allocation to dissenting financial creditors and to operational creditors and the allocation would be the amount provided in the plan or liquidation value whichever is higher and the contention that such creditors can be paid NIL value because liquidation value for them is NIL, would defeat the very purpose of the beneficial amendment made in Section 30(2) of the I&B Code. Such contention made by Ld. Senior Counsels, in our view, will not be correct proposition in a CIRP proceedings, though the same would be*

> *correct in a liquidation proceeding under Section 53(1) of the I&B Code*.**"**
>
> (Emphasis Added)

66. We find that decision in ***Suasth Healthcare Foundation*** **(Supra)** has been upheld by the Hon'ble NCLAT on 14.05.2025 in ***Hari Vitthal Mission v. Ravi Sethia and Ors.,*** reported in (2025) ibclaw.in 386 NCLAT and ***Shankar Mukherjee and Anr. v. Ravi Sethia RP and Ors.,*** reported in (2025) ibclaw.in 385 NCLAT.

67. Similarly, we have taken a view in ***Export-Import Bank of India and Ors. vs. Eastern Silk Industries Pvt. Ltd. and Ors.*** reported in **MANU/NC/0042/2024** that:

> **"***After careful examination and interpretation of the statutory provisions enshrined in the I&B Code, 2016 along with the leading judgments discussed above, we are of the considered view that:*
>
> ***33.1.*** *Section 30(2)(b) of the Code envisages that the Resolution Professional shall examine the plan received by him to confirm that the resolution plan allocates the payment of debts of Financial Creditors either secured or unsecured in such manner as may be specified by the Board which shall not be less than the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the*

> *order of priority in sub-section (1) of section 53, whichever is higher.*
>
> ***33.2.*** *Thus, the Committee of Creditors cannot turn volta face by allocating "No" payment towards the "Unsecured Financial Creditor" who is "not related party", against its admitted claim by quoting a reason that the total admitted claims of the Secured Financial Creditors is more than the Liquidation Value of the Corporate Debtor and therefore, in the case of liquidation of the Corporate Debtor, the Applicant herein being an Unsecured Financial Creditor as per Section 53 of the Code, shall be entitled to NIL value*."
>
> **(Emphasis Added)**

68. Thus, we can conclude after analysing the statutory provisions as well as the legal positions laid down in ***Essar Steel*** **(Supra),** ***DBS Bank Limited*** **(Supra),** ***Suasth Healthcare*** **(Supra) and** ***Eastern Silk Industries (Supra)*** that Section 30(2)(b) of the I&B Code enumerates that the resolution plan must ensure the amount to the Operational Creditor which will **not be less than** the amount to be paid in the event of the liquidation value or the amount that would have been paid to them in the plan as if the resolution plan value had been distributed per the order of priority mentioned in sub-section (1) of Section 53 whichever is higher. We are of the view that the legislative intent to provide the word "not less than" in the first line of Section 30(2)(b) of the I&B Code is contemplating a mandatory allocation to the operational creditors and the dissenting financial creditors. Further, the allocation would be the amount provided in the resolution plan or liquidation value whichever is

higher and at any event, such creditors can be paid NIL value because the liquidation value is NIL for them, which would defeat the very purpose of the beneficial amendment made in Section 30(2) of the I&B Code.

69. This view, we have already taken in the matter of ***Sandip Kumar Kejriwal, Professional (RP) of Indian Mining Works Private Limited*** reported in MANU/NC/3344/2024: (2024) ibclaw.in 582 NCLT.

"Commercial Wisdom" of the CoC:

70. We are conscious of the legal position that the **"Commercial Wisdom"** of the CoC is supreme and cannot be interfered with when it comes to approving a resolution plan, yet it is incumbent upon this Adjudicating Authority to restrict itself to the four corners of the statute keeping the legislative intent intact and not to render a decision contrary to the view and established as propounded by the Hon'ble Apex Court, when it comes to allocation of an amount to a particular class of creditor. We reiterate that the observation of the Hon'ble Apex Court in the ***Essar Steel*** **(Supra)** and in ***DBS Bank Limited*** **(Supra)** to frame our view.

71. The Hon'ble High Court of Judicature at Madras in ***The National Sewing Thread Co. Ltd. v. The Superintending Engineer TANGEDCO and Anr.*** in **W.P. No. 29845 of 2022,** has observed that:

"***(e) Operational Creditors & Right to Property***

21. In a free country where every individual citizen is endowed with the fundamental right to do any lawful business under Article 19(1)(g) of the Constitution, all those who engage in different businesses are free to make their commercial decisions. Some succeed and some fail, and hence loss in business is an inevitable consequence attached to the vagaries of commerce. When misfortune strikes like a hurricane it lands some businesses in bankruptcy. And, every time a debtor loses, his or its creditors also lose.

22.1 The object of the IBC evidently is to minimize the loss of various categories of creditors even as it attempts to salvage the corporate debtor from its commercial extinction. Appreciable it is, but it may not be let to gloss over the fact that ***every claim of the operational creditors involves a right to their property under Article 300 A of the Constitution, which the Supreme Court now reads it as a facet of human right and as integral to the right to life under Article 21 of the Constitution*** *vide the ratio in* ***Lalaram Vs Jaipur Development Authority*** *[(2016) 11 SCC 31] read alongside the ratio in* ***Tukaram Kana Joshi Vs MIDC*** *[(2013)1 SCC 353], and approved in* ***Vidya Devi Vs State of H.P.****, [(2020)2 SCC 569)]. This is the major premise.*

22.2 Every right to property has its adjunct rights shadowing it. ***Kolkata Municipal***

***Corporation Vs Bimal Kumar Shah** [2024 SCC OnLine SC 968]*

> *"26……. The binary reading of the constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub-rights weave themselves into each other, and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole, and not just one or many of its strands."*
>
> *This necessarily includes the right to enforce or secure the right to property, which we commonly understand as right of action. Ordinarily, a person with a claim has the right of action to enforce the claim before a neutral arbiter, be it the Court or a tribunal, both of which are positioned equidistantly from opposing claims. This is the minor premise.*"

xxx xxx xxx

"*(k) Duty of the Adjudicating Authority*

*46. From the **Essar Steel case** to the **Rainbow Papers case** and other decisions, the Adjudicating Authority has been told <u>that its duty is limited to satisfying itself of the due compliance of Sec.30(2) requirement by</u>*

*the CoC when the latter approved the resolution plan. The **Essar Steel** in particular has held that the Adjudicating Authority shall not substitute its sense of fairness and equity to replace the commercial wisdom of the CoC. The **Rajagopalan** effect, it must be stated, does not stop with bringing in clarity in understanding the expression 'commercial wisdom' of the CoC, but also has interfered to realign the understanding of the duty of the Adjudicating Authority. **Therefore, even though the Adjudicating Authority may not sit in appeal over the commercial wisdom of the CoC, still it is required to exercise a jurisdiction, akin to a revisional jurisdiction, to ascertain the correctness of what has been done before and by the CoC. And, this may have to be appreciated in the backdrop of the Constitutional need to constitute the Adjudicating Authority as a neutral tribunal to save IBC** from facing embarrassing moments in view of the law declared in the **Madras bar Association case**. Set on this plane and based on the discussion hereinabove made, it could be now derived that **the Adjudicating Authority may refuse to give his approval to a resolution plan as approved by the CoC in the following circumstances**:*

a) if the information which forms the basis for the CoC for according its assent to a resolution plan is incomplete and exhibits lack of due diligence on the part of the RP to collect and collate information. This includes failure of the suspended Board of the Corporate

> *debtor to make full disclosure of its affairs, which the IRP or the RP could have discovered with due diligence;*
>
> *b) where there is lack of transparency vis-a vis the correctness of the information to the knowledge of the operational creditors;*
>
> *c) where the CoC does not provide for the minimum payment which the operational creditors would have received in case of liquidation of the corporate debtor;*
>
> *d)* ***where despite providing for the minimum, the operational creditors are not fairly and equitably treated in terms of Explanation I to Sec.30(2), such as where fairness and equity might have permitted payments above the minimum. To repeat, the Adjudicating Authority may not substitute the commercial wisdom of the CoC with its sense of equity and fairness, but can always refuse his assent to a resolution plan for breach of Explanation I to Sec.30(2) of the IBC*****.”**
>
> (Emphasis Added)

72. In ***Sandip Kumar Kejriwal, Professional (RP) of Indian Mining Works Private Limited*** **(Supra),** this Bench relying on the ratio held in ***The National Sewing Thread*** **(Supra),** laid down the gist of the principles, which could be culled out from the judgment rendered by the Hon’ble Madras High Court supra, would be thus:

"*i. The object of the I&B Code is to minimize the loss of various categories of creditors even as it attempts to salvage the corporate debtor from its commercial extinction.*

ii. Every claim of the operational creditors involves a right to their property under Article 300A of the Constitution of India, which would be read as a facet of 'Human Rights' and an integral part of the 'Right to Life' under Article 21 of the Constitution.

iii. However, having limited scope to challenge the commercial wisdom, the Adjudicating Authority is required to exercise a revisional jurisdiction to ascertain the correctness of what has been done before and by the CoC.

iv. The Adjudicating Authority may refuse a resolution plan as approved by the CoC if it is incomplete and exhibits a lack of due diligence on the part of the RP, and a lack of transparency in the information of the operational creditors.

v. Further, the Adjudicating Authority may not accept the plan if a minimum amount has not been allocated to the operational creditors which they would have received in case of liquidation of the corporate debtor and the operational creditors are not fairly and equitably treated under Explanation I to Section 30(2), in where the fairness and equity might have permitted payments above the minimum."

(Emphasis Added)

73. In the present case in hand, the NIL allocation against the total admitted claim of the Operational Creditors of about Rs. 2,06,51,474/-, according to us, does not conform to the requirements referred to in Sub-section (1) of Section 31 of the I&B Code.

The Resolution Plan herein does not conform with the requirements of Section 31(1) of the I&B Code:

74. As per Sub-sections (1) and (2) of Section 31 of the I&B Code, there are certain requirements need to be met to approve a resolution plan by the Adjudicating Authority such as:

Firstly, the resolution plan must be approved by the CoC by the requisite voting shares.

Secondly, the **plan meets the requirements as referred to in Sub-section (2) of Section 30 of the Code**.

Thirdly, the resolution plan shall be binding on the corporate debtor and its employees, members, **creditors**, including the **Central and State Government,** or any local authority **to whom a debt in respect of the payment of dues** arising under any law in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Fourthly, the resolution plan shall have a clause of its effective implementation.

75. We would refer to Section 31(1) and 31(2) of the Code reproduced verbatim hereinbelow:

Section 31: Approval of resolution plan.

Section 31 (1):

If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 **meets the requirements as referred to in sub-section (2) of section 30,** it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, **creditors**, [including the **Central Government, any State Government** or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]

Section 31 (2):

Where the Adjudicating Authority is satisfied that the resolution plan **does not confirm to the requirements referred to in sub-section (1),** it may, by an order, **reject** the resolution plan.

76. In ***Ebix Singapore Private Limited and Ors. vs. Committee of Creditors of Educomp Solutions Limited and Ors.*** reported in **(2022) 2 SCC 401: MANU/SC/0628/2021**, the Hon'ble Apex Court observed that:

> **"***147. In terms of Regulation 39(4), the RP shall endeavour to submit the resolution plan approved by the CoC before the adjudicating authority for its approval Under Section 31 IBC, at least fifteen days before the maximum period for completion of CIRP. Section 31(1) provides that the* ***adjudicating authority shall approve the resolution plan if it is satisfied that it complies with the requirements set out Under Section 30(2) IBC.*** *Essentially,* ***the adjudicating authority functions as a check on the role of the RP to ensure compliance with Section 30(2) IBC and satisfies itself that the plan approved by the CoC can be effectively implemented as provided under the proviso to Section 31(1) IBC****. Once the resolution plan is approved by the adjudicating authority, it becomes binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan....***'**
>
> xxx xxx xxx
>
> *157. [...] the Adjudicating Authority Under Section 31(2) of the IBC can only examine the validity of the plan on the* ***anvil of the grounds stipulated in Section 30(2) and either approve or reject the plan****. The Adjudicating Authority cannot compel a CoC to negotiate further with a successful*

> *Resolution Applicant. A **rejection** by the Adjudicating Authority is followed by a direction of mandatory liquidation Under Section 33. Section 30(2) does not envisage setting aside of the Resolution Plan because the Resolution Applicant is unwilling to execute it, based on terms of its own Resolution Plan.***"**
>
> (Emphasis Added)

77. Further, in***. Rainbow Papers Limited*** **(Supra),** the Hon'ble Apex Court laid down that:

> *41. Section 31 of the IBC which provides for approval of a Resolution Plan by the Adjudicating Authority makes it clear that the Adjudicating Authority can approve the Resolution Plan only upon satisfaction that the Resolution Plan, as approved by the Committee of Creditors (CoC), meets the requirements of Section 30(2) of the IBC. When the Resolution Plan does not meet the requirements of Section 30(2), the same cannot be approved.*
>
> *xxx xxx xxx*
>
> *43. The learned Solicitor General rightly argued that when a grievance was made before the Adjudicating Authority with regard to a Resolution Plan, the Adjudicating Authority was required to examine if the Resolution Plan met the requirements of Section 30(2) of the IBC. The word "satisfied" used in Section 31(1) contemplates a duty on the Adjudicating Authority to examine the Resolution Plan - The Resolution Plan cannot be approved by way of an empty formality.*

xxx xxx xxx

*45. As rightly argued by the learned Solicitor General, there can be no question of acceptance of a Resolution Plan **that is not in conformity with the statutory provisions of Section 31(2) of the IBC. Section 30(2) (b) of the IBC**, casts an obligation on the Resolution Professional to examine each resolution plan received by him and **to confirm that such resolution plan provides for the payment of dues of operational creditors, as specified by the Board**, which shall not be less than the amount to be paid to such creditors, in the event of liquidation of the Corporate Debtor Under Section 53, or the amount that would have been paid to such operational creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in Sub-section 2 of Section 53, whichever was higher, and provided for the payment of debts of financial creditors, who did not vote in favour of the resolution plan, in such manner as might be specified by the Board.*

46. Under Section 31 of the IBC, a resolution plan as approved by the Committee of Creditors Under Sub-section (4) of Section 30 might be approved by the Adjudicating Authority only if the Adjudicating Authority is satisfied that the resolution plan as approved by the Committee of Creditors meets the requirements as referred to in Sub-section (2) of Section 30 of the IBC. The condition precedent for approval of a resolution plan is that the resolution plan should meet the requirements of Sub-section (2) of Section 30 of the IBC.

xxx xxx xxx

*48. **A resolution plan which does not meet the requirements of Sub-section (2) of Section 30 of the IBC, would be invalid** and not binding on the Central Government, any State Government, any statutory or other authority, any financial creditor, or other creditor to whom a debt in respect of dues arising under any law for the time being in force is owed. Such a resolution plan would not bind the State when there are outstanding statutory dues of a Corporate Debtor.*

*49. **Section 31(1) of the IBC which empowers the Adjudicating Authority to approve a Resolution Plan uses the expression "it shall by order approve the resolution plan which shall be binding..."** subject to the condition that the Resolution Plan meets the requirements of Sub-section (2) of Section 30. If a Resolution Plan meets the requirements, the Adjudicating Authority is mandatorily required to approve the Resolution Plan. On the other hand, Sub-section (2) of Section 31, which enables the Adjudicating Authority to reject a Resolution Plan which does not conform to the requirements referred to in Sub-section (1) of Section 31, uses the expression "may".*

*50. Ordinarily, the use of the word "**shall**" connote a mandate/binding direction, while use of the expression "**may**" connotes discretion. If statute says, a person may do a thing, he may also not do that thing. Even if Section 31(2) is construed to confer*

> *discretionary power on the Adjudicating Authority to reject a Resolution Plan, it has to be kept in mind that discretionary power cannot be exercised arbitrarily, whimsically or without proper application of mind to the facts and circumstances which require discretion to be exercised one way or the other.*
>
> *51. If the established facts and circumstances require discretion to be exercised in a particular way, discretion has to be exercised in that way. If a Resolution Plan is ex facie not in conformity with law and/or the provisions of IBC and/or the Rules and Regulations framed thereunder, the Resolution would have to be rejected. It is also a well settled principle of interpretation that the expression "may", if circumstances so demand can be construed as "Shall".*
>
> ***52. If the Resolution Plan ignores the statutory demands payable to any State Government or a legal authority, altogether, the Adjudicating Authority is bound to reject the Resolution Plan*.”**
>
> (Emphasis added)

78. Further, in ***Ghanshyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*** reported in **(2021) 9 SCC 657**, the Apex Court has observed that**:**

> **“***64. It could thus be seen, that the legislature has given paramount importance to the commercial wisdom of CoC and the scope of judicial review by adjudicating authority is limited to the extent provided Under Section 31 of the I&B Code and of the*

appellate authority is limited to the extent provided Under Sub-section (3) of Section 61 of the I&B Code, is no more res integra.

65. Bare reading of Section 31 of the I&B Code would also make it abundantly clear that once the resolution plan is approved by the adjudicating authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in Sub-section (2) of Section 30, it shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is revival of the corporate debtor and to make it a running concern.

66. The resolution plan submitted by the successful resolution applicant is required to contain various provisions viz. provision for payment of insolvency resolution process costs, provision for payment of debts of operational creditors, which shall not be less than the amount to be paid to such creditors in the event of liquidation of the corporate debtor Under Section 53; or the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in Sub-section (1) of Section 53, whichever is higher. The resolution plan is also required to provide for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, which also shall not be less than the amount to be paid to such creditors in accordance with Sub-section (1) of Section 53 in the event of a liquidation of the corporate

> *debtor. Explanation 1 to Clause (b) of Sub-section (2) of Section 30 of the I&B Code clarifies for the removal of doubts that a distribution in accordance with the provisions of the said Clause shall be fair and equitable to such creditors. The resolution plan is also required to provide for the management of the affairs of the corporate debtor after approval of the resolution plan and also the implementation and supervision of the resolution plan. Clause (e) of Sub-section (2) of Section 30 of the I&B Code also casts a duty on RP to examine that the resolution plan does not contravene any of the provisions of the law for the time being in force.*"
>
> (Emphasis Added)

79. In ***Sandip Kumar Kejriwal, Professional (RP) of Indian Mining Works Private Limited*** **(Supra),** this Bench has held that:

> "*51. In view of the precedents supra, we can safely conclude that if a resolution plan meets the requirements as provided under Section 31(1) of the I&B Code and approved by the CoC by majority,* ***<u>the Adjudicating Authority has no choice but to approve the plan by upholding the commercial wisdom</u>****. Conversely, it does not mean that the* ***<u>Adjudicating Authority has been established to function as a mere rubber stamp affixing authority to allow all the commercial decisions of the CoC, wherein the irregularities or illegalities committed by the CoC, or the insinuating circumstances are galore</u>****. A resolution plan that <u>is violative or non-</u>*

compliant to the provisions of Section 30(2) read with Section 31(1) can be rejected under Section 30(2) of the I&B Code, though the plan has been approved by the CoC under its commercial wisdom."

(Emphasis Added)

80. In view of above, we would infer that if the resolution plan does not meet the requirements stipulated under Section 31(1) read with Section 30(2) of the Code, and where the irregularities and illegalities in the CIR Process including approval of resolution plan are in galore, the Adjudicating Authority may not be established to function as a rubber stamp fixing authority to allow all the decision of the CoC, and in such case, the NCLT can reject the plan approved by the CoC in terms of Section 31(2) of the I&B Code. We would note that CIRP has been initiated on 25.06.2024, and the resolution plan has been approved by CoC at its 7th meeting convened on 21.04.2025. We wonder as to how the RP has missed all those significant things to consider, during this period of a long 10 months of CIR Process, which are essential for a fruitful and efficacious resolution of the corporate debtor. At the same time, we are astonished by the conduct of CoC too who is the main stakeholder in the entire process.

To Summarize:

81. In view of the discussions above, we are of the view that:

a. With regard to the "Long-Term Loans and Advances" as indicated in the Valuation Reports dated 02.12.2024 and 03.12.2024, recommending the fair value and liquidation value of the corporate debtor, what action was taken by the corporate debtor to recover such Long-Term Loans and Advances which comprises of deposits with different entities, and if no action was taken by the corporate debtor, then, under CIRP, what action or initiatives has been adopted by the RP to recover such deposit in accordance with law and what recourse has been taken by the CoC for such inaction of the corporate debtor. Further, how the claim has been dealt with in the balance sheet of the corporate debtor.

b. Concerning the “Trade Receivables” which amounting to Rs. 3.19 Crore, as indicated in the Valuation Reports dated 02.12.2024 and 03.12.2024, what legal action the corporate debtor was taken to appropriate remedy against such traders when the claim was within limitation, and similarly, if no action was taken by the corporate debtor that time, then what was the view of the CoC in this regard and what action was adopted by CoC in respect of such claim and against the corporate debtor, as well, for maximization of the value of the assets of the corporate debtor. Further, how the claim has been dealt with in the balance sheet of the corporate debtor.

c. In respect of the "Other Current Assets" as indicated in the Valuation Reports dated 02.12.2024 and 03.12.2024, how the same has been dealt with in the balance sheet of the corporate debtor, and what was the view of the concerned tax authorities with regard to the huge tax demand and whether the same has been written off in the balance sheet of the corporate debtor. Further, why a proper recourse has not been taken against the decision of the insurer in accordance with law either by the corporate debtor or the RP herein.

d. As the plan envisages a huge amount of reduction in realization, we are of the view that why PUFE transactions has not been determined or why an independent auditor has not been appointed to that effect.

e. The plan violates Section 30(2)(b) of the I&B Code with regard to allocation to the operational creditors. Further, providing the NIL amount in the plan to the operational creditors towards their total admitted claim breaches the mandate as enshrined under Article 300A read with Article 21 of the Constitution of India, as observed by the Hon'ble Madras High Court in the case of ***The National Sewing Thread*** **(Supra).**

f. The Government dues (GST-WB) has the total admitted claim of Rs. 16.89 Crore, against such only an amount of Rs. 2 Lakh, resulting a recovery of 2%, has been allocated in the plan. The GST Department Bihar has a claim of Rs. 1,39,62,077/- and the Income Tax Authority for the financial year of 2015-16, assessment year of 2016-17, has a claim of Rs. 76,52,027/-, however, such claims have not been submitted before the RP. However, an amount of another Rs. 2 Lakh has been retained if any claim from them is received within two years after approval of the plan. As held in ***Rainbow Papers Limited*** **(Supra)** that if the resolution plan ignores the statutory demands payable to any state of a legal authority, altogether, the NCLT is bound to reject the plan. Thus, we are of the view that why the RP has not invoked Regulation 6A of the CIRP Regulations and intimated all the statutory authorities who has a significant claim due to the corporate debtor, not filed their claim with RP.

However, we are conscious of the legal position that the Adjudicating Authority lacks jurisdiction to direct the allocation of a particular amount to such creditor as the applicant, but in the case, where the irregularities are being committed in galore, the Adjudicating Authority cannot be a silent spectator.

g. Thus, this resolution plan does not inspire any confidence concerning the entire process conducted with regard to transparency, valuation and equitable distribution etc. and consequently, violates the mandatory statutory provisions envisaged in Explanation I to Section 30(2)(b) of the I&B Code.

82. In terms of the enumerations supra, we are of the considered opinion that present application praying for the final approval of the resolution plan which has been approved by the CoC at its 07th meeting convened on 21.04.2025, is **not allowed** and accordingly, the application is **dismissed**.

I.A. (IB) No. 734/KB/2025

A. Case of the RP:

83. Mr. Niraj Kumar Agrawal, Resolution Professional ("RP") of Balajee Ingot India Private Limited has preferred this application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code", praying for a direction to return the possession of the leasehold land situated at Pargana-Salemabad, Tauzi Number 2913, Thana No. 93, Mauza-Khairi and Mahisona, Lakhisarai, Bihar to its lawful owner – Mr. Nirmal Kanodia, Respondent herein, in accordance with the resolution passed by the Committee of Creditors ("CoC") at its 6th meeting convened on 19.02.2025.

84. The Corporate Debtor – Balajee Ingot India Private Limited, operated its manufacturing facility on a parcel of leasehold land owned by the Respondent – Mr. Nirmal Kanodia. The Lease Deed was originally executed on 14.06.2016, granted the corporate debtor a fixed term of 36 months commenced from 01.06.2016 and expired on 31.05.2019. The Lease was renewed on 01.06.2019 for a further 36 months and the same was expired on 31.05.2022, prior initiation of Corporate Insolvency Resolution Process, for brevity "CIRP" admitted by this Adjudicating Authority on 25.06.2024.

B. Argument Advanced by the RP's Counsel:

85. Mr. Shaunak Mitra, Ld. Counsel appearing on behalf of the Resolution Professional would submit that the leasehold land in question does not form a part of the assets of the corporate debtor as the lease was expired long two years ago prior commencement of CIRP and termination notice was issued on 03.06.2022 by the

respondent landowner. The Respondent submitted his claimed through Form B on 16.12.2024 for the lease rent due, however, since no lease rental liability was found in the books of accounts of the corporate debtor, and no renewal was executed further after 31.05.2022, and thus, the Ld. Counsel for RP would assert that claim of the respondent towards lease rent was not admitted.

86. Mr. Mitra, Ld. Counsel for the RP would further submit that the CoC, at its 6th meeting convened on 19.02.2025, unanimously resolved that the leasehold land does not form a part of the assets of the corporate debtor and accordingly, the CoC approved the return of the possession to of the said leasehold land to the respondent, subject to an undertaking made by the respondent that he would have no claim whatsoever on account of rental or lease for the land for any period.

87. It is further submitted that the respondent, in accordance with the resolution adopted by the CoC at its 6th meeting convened on 19.02.2025, wrote a letter on 16.04.2025 to the RP, annexed at page 169 to the application, undertook that he shall not raise any claim whatsoever against the corporate debtor or the RP on account of rental or lease charges for the said leasehold land for any period.

88. We have heard the parties and perused the documents on records very carefully. No reply has been furnished to the application, however, during the course of hearing the Ld. Counsel

Mr. Amandeep Singh appearing on behalf of the respondent was present.

C. Discernible Facts:

89. The discernible facts are that the lease was originally granted on 14.06.2016, and the same was renewed on 01.06.2019 for a further 36 months, which takes us to 31.05.2022, i.e., the date of expiry of the renewed lease. Notably, respondent issued a letter on 03.06.2022, annexed at pages 41-42 to the application, to the corporate debtor demanding for payment of outstanding dues and handover of peaceful possession of leased property, followed by the reminder letters issued by the respondent on 20.01.2023 and 10.05.2023, annexed at pages 43-44 to the application.

90. During the ongoing CIRP, the Respondent also issued a letter to the RP on 07.11.2024, annexed at pages 42-42A to this application, claiming for peaceful and vacant possession of the leasehold land in question along with for the payment of outstanding lease rent dues on part of the corporate debtor.

91. In reply to such letter dated 07.11.2024, the RP issued an email to the respondent on 16.11.2024, asked for furnishing all the documents to fortify respondent's claim including the copies of lease agreement, ownership proof, proof of rent and letter of termination. The respondent submitted his claim by way of Form B on 16.12.2024, and in reply to such, an email was issued on 21.12.2024 by the RP, annexed at page wherein the RP tendered his

decision by way of rejecting the claim of the respondent and informed that during ongoing CIRP when moratorium is in force, the possession of the said leasehold land could not be handed over till the completion of the CIRP.

92. The CoC at its 6th meeting convened on 19.02.2025, deliberated on the agenda concerning the handing over of the possession of the said leasehold land to the landowner – Respondent and concluded that:

> "***To handover the possession of land to landowner- Handover of Leasehold land of Nirmal Kanodia: -***
>
> "***RESOLVE THAT*** *the land on which the factory of the CD was built at Village Khairi Mahisona Jamui Road, Dist- Lakhisarai Bihar Pin-811311, is lying vacant after removal of all the plant and machinery as auctioned under SARFAESI before commencement of CIRP.*
>
> ***RESOLVED FURTHER THAT*** *there are scrap material lying at premises which need to be retained in the premises till the resolution plan is approved and successful resolution applicant take handover of the same.*
>
> ***RESOLVED FURTHER THAT*** *Mr. Nirmal Kanodia will provide an undertaking that he will have no claim what so ever on account of rental or lease for the land for any period.*
>
> ***RESOLVED FURTHER THAT*** *the landowner Mr. Nirmal Kanodia need to give an undertaking to CD/RP that he would provide sufficient space to retain the material without charging any cost or*

rental for a period of 1 year or till removal of the same by successful resolution applicant whichever is earlier.

RESOLVED FURTHER THAT *the material lying at the premises need to be protected by the security deployed at the premises by the landowner.*

RESOLVED FURTHER THAT ***Mr. Nirnmal Kanodia need to make application to NCLT, Kolkata for getting possession of the land****, if approved for handover COC has no objection to handing over the land as the same is not an asset of CD and the factory is no more running, all the assets, plant and machineries are taken by the auction winner under SARFAESI action of lender.*

RESOLVED FURTHER THAT ***the moratorium is in place as per section 14 hence transfer of possession would require AA approval****.*

RESOLVED FURTHER THAT on receiving the undertaking from Mr. Nirmal Kanodia and approval from AA, possession of the land may be handover to him as it is where it is whatever it is basis without any further claim to the CD on any account for the said land*."*

On put to vote

Voting at Meeting

Put to vote at meeting	***Approved with 100% vote*"**

93. On 16.04.2025, the Respondent Nirmal Kanodia issued a letter, annexed at page 169 to the application, to the RP, undertook that he shall not raise any claim whatsoever against the corporate debtor or the RP on account of rental or lease charges for the said leasehold land for any period. The letter dated 16.04.2025, is reproduced hereunder:

"FROM THE DESK OF

Nirmal Kanodia

16 April 2025

To
Mr. Niraj Kumar Agrawal
Resolution Professional - Balajee Ingot India Pvt Ltd (in CIRP)
Lakeview Apartment, P-887, Block-A, Ground Floor Kolkata 700089

Subject: Undertaking in respect of land at Lakhisarai.

Dear Sir,

This is with reference to your communication regarding the possession of my land situated at Lakhisarai, currently under the possession of the Corporate Debtor (CD). As per the decision of the Committee of Creditors (CoC) in its meeting dated 19.02.2025, I hereby submit the following declarations as required:

1. ***That** I acknowledge there is scrap material lying at the premises, which is to be retained there until the resolution plan*

is approved and the successful resolution applicant takes possession of the same.

2. ***That*** *I, Mr. Nirmal Kanodia, hereby undertake that I shall not raise any claim whatsoever against the Corporate Debtor or the Resolution Professional on account of rental or lease charges for the said land for any period.*

3. ***That*** *I undertake to provide sufficient space within the said premises to retain the material mentioned above without charging any rent or cost for a period of one (1) year from the date hereof, or until removal of the same by the successful resolution applicant, whichever is earlier.*

4. ***That*** *I further undertake to ensure that the material lying at the premises will be duly protected and safeguarded by the security personnel deployed at the premises by me.*

I trust the above fulfills the required declarations for the handover process. Kindly acknowledge receipt of the same.

Thanking you,

Yours sincerely,

Nirmal Kanodia"

D. Issue:

94. The issue that has cropped up for determination is whether this Adjudicating Authority has the jurisdiction to consider

the transfer of possession of a leasehold property to the lessor whose lease was expired prior commencement of CIRP.

E. Analysis and Findings:

95. It is a settled position of law that the NCLT is not a court of civil jurisdiction to resolve a civil dispute, thus, termination of any leasehold right including the transfer of the possession of the leasehold land in question cannot be sought for at this Adjudicating Authority. We would note that in ***Embassy Property Developments Pvt. Ltd. vs. State of Karnataka*** reported at **MANU/SC/1661/2019: (2020) 13 SCC 308**, the Hon'ble Apex Court has laid down that:

> **"***39. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, <u>subject to the determination of ownership by a court or other authority</u>. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. <u>This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the</u>*

word "assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property". Another important aspect is that Under Section 25(2)(b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

25. Duties of resolution professional -

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of Sub-section (1), the resolution professional shall undertake the following actions:

(a)............

(b) represent and act on behalf of the corporate debtor with third parties, ***exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings****.*

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

> ***40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.***"
>
> (Emphasis Added)

96. In view of the ratio laid down in ***Embassy Property*** **(Supra)**, we have already held in ***H. R. Brothers Ltd. v. Ramachandra Dallaram Choudhary, RP of GIT Textiles Manufacturing Limited and Ors.***, reported in (2024) ibclaw.in 681 NCLT, that though Section 25 of the I&B Code endows a duty with the RP to represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, *quasi*-judicial and arbitration proceedings, which includes its right to get a lease legally terminated by a competent court of law along with the transfer of possession of the leasehold property whose lease may be expired, but under no circumstances the RP can short circuit the procedure by way of applying to this Adjudicating Authority seeking transfer of possession or termination of leasehold property, on the ground that it has been approved by the CoC with majority. The fate of either the lease, even if contrary to law, may be expired prior to the commencement of CIRP, or transfer of possession of that leasehold property, can only be determined by an appropriate forum having civil jurisdiction. Thus,

the RP can approach the appropriate forum for the termination of lease or transfer of possession of the leasehold property to the lessor in accordance with existing laws.

97. Further, the I&B Code expressly deals with the insolvency and the resolution of the Corporate Debtor or liquidation of the corporate debtor if resolution plan fails. It does not empower this Adjudicating Authority to exercise it inherent power to that extent whatsoever if the issues do not concern with the insolvency and the resolution of the Corporate Debtor or its liquidation.

98. To fortify our view, we would rely on the judgment rendered by the Hon'ble Apex Court in ***Gujarat Urja Vikas Nigam Limited vs. Amit Gupta and Ors.*** reported in MANU/SC/0157/2021, wherein it has categorically held that:

> "*67. [...] Therefore, considering the text of* ***Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes***, ***NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor***. *However, in doing do, we issue a note of caution to* ***the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor***. *The nexus with the insolvency of the Corporate Debtor must exist.*"
>
> (Emphasis Added)

Further, the Hon'ble Apex Court has laid down that:

> "*72. Therefore, we hold that **the RP can approach the NCLT for adjudication of disputes that are related to the insolvency resolution process.** However, **for adjudication of disputes that arise dehors the insolvency of the Corporate Debtor**, **the RP must approach the relevant competent authority**. For instance, if the dispute in the present matter related to the non-supply of electricity, the RP would not have been entitled to invoke the jurisdiction of the NCLT under the IBC. However, since the dispute in the present case has arisen solely on the ground of the insolvency of the Corporate Debtor, NCLT is empowered to adjudicate this dispute Under Section 60(5)(c) of the IBC.*"
>
> xxx xxx xxx
>
> *87. The residuary jurisdiction of the NCLT Under Section 60(5)(c) of the IBC provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings. If the jurisdiction of the NCLT were to be confined to actions prohibited by Section 14 of the IBC, there would have been no requirement for the legislature to enact Section 60(5)(c) of the IBC. Section 60(5)(c) would be rendered otiose if Section 14 is held to be the exhaustive of the grounds of judicial intervention contemplated under the IBC in matters of preserving the value of the corporate debtor and its status as a 'going concern'. We hasten to add that our finding*

> *on the validity of the exercise of residuary power by the NCLT is premised on the facts of this case. We are not laying down a general principle on the contours of the exercise of residuary power by the NCLT.* ***However, it is pertinent to mention that the NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters would fall outside the realm of IBC. Any other interpretation of Section 60(5)(c) would be in contradiction of the holding of this Court in Satish Kumar Gupta (supra).*****”**
>
> (Emphasis Added)

99. Further, in ***TATA Consultancy Services Limited vs. Vishal Ghisulal Jain,*** reported in MANU/SC/1118/2021, the Hon'ble Apex Court has observed that:

> *“27. It is evident that the Appellant had time and again informed the Corporate Debtor that its services were deficient, and it was falling foul of its contractual obligations. There is nothing to indicate that the termination of the Facilities Agreement was motivated by the insolvency of the Corporate Debtor. The trajectory of events makes it clear that the alleged breaches noted in the termination notice dated 10 June 2019 were not a smokescreen to terminate the agreement because of the insolvency of the Corporate Debtor. Thus,* ***we are of the view that the NCLT does not have any residuary jurisdiction to entertain the present contractual dispute which has arisen dehors the insolvency of the Corporate Debtor. In the absence of jurisdiction over the dispute, the NCLT***

> ***could not have imposed an ad-interim stay on the termination notice. The NCLAT has incorrectly upheld the interim order of the NCLT.***"
>
> (Emphasis Added)

100. In ***Victory Iron Works Ltd. vs. Jitendra Lohia and Ors.*** reported in MANU/SC/0229/2023, the Hon'ble Apex Court further held that:

> "*44. The decision in **Tata Consultancy**, rather than helping the Appellants, actually supports the case of the Corporate Debtor. In fact, the decision in **Gujarat Urja Vikas Nigam Limited** was distinguished in Tata Consultancy (by the very same author), on the ground that if the termination was on an ipso facto Clause i.e., the fact of insolvency itself, **then NCLT will have jurisdiction, but that there was no residuary jurisdiction for NCLT, if the termination of a contract is based on grounds unrelated to the insolvency**.*"
>
> (Emphasis Added)

101. The Hon'ble NCLAT in ***SICOM Ltd. and Ors. vs. Kitply Industries Ltd. and Ors.*** reported in MANU/NL/0564/2023: (2023) ibclaw.in 236 NCLAT, has held that:

> "*On the point of jurisdiction of NCLT or NCLAT in respect of interpretation of agreement/contract which had already occurred prior to initiation of CIRP it has been held that **neither NCLT nor NCLAT is having jurisdiction to adjudicate**. In this context it would be profitable to reproduce paras 16, 24, 28 to 31 of judgement of*

> *Hon'ble Supreme Court reported in (2022) 2 SCC 583* ***Tata Consultancy Services Ltd Vs. Vishal Ghisulal Jain*** *which are quoted herebelow:*"
>
> (Emphasis Added)

102. Thus, from the enumerations supra, it can be ascertained that the NCLT being an Adjudicating Authority has the jurisdiction to entertain any application concerning the resolution or liquidation of the corporate debtor, on no occasion, it can exercise its power going beyond the ambit of I&B Code and consider an issue which can only be determine by a court having the civil jurisdiction. Thus, issue, concerning the termination of lease or transfer of possession of the leasehold property having the control of the corporate debtor (lessee) to its landowner (lessor), however, the lease was expired prior commencement of CIRP, can only be consider and determine by a proper court of law as catered to by the law in force. In the present case, notably, the CoC within its 'commercial wisdom' has resolved and decided that on receiving the undertaking from the respondent and approval from this Adjudicating Authority, possession of the land may be handover to him as it is where it is whatever it is basis without any further claim to the corporate debtor on any account for the said land. However, albeit having limited scope to interfere with the commercial wisdom, the Adjudicating Authority remains having a revisional jurisdiction to ascertain the correctness of what has been done before and by the CoC, as held in ***The National Sewing Thread*** **(Supra)**.

103. It is further trite and fairly well-settled that the resolution plan must be consistent with the law in force, and the resolution applicant having stepped into the shoes of the corporate debtor, shall make necessary applications along with filing fees to the concerned regulatory or statutory authorities for the renewal of business permits and supply of essential services, and such authority shall also consider the same keeping in mind the objectives of the I&B Code, which is essentially resolving the insolvency of the corporate debtor.

104. In view of above, the prayer made in this application deserves to be rejected and accordingly, the application is **dismissed**.

I.A. (IB) No. 1727/KB/2024

105. This application has been preferred under Section 19(2) of the I&B Code, by the RP against the suspended board of the corporate debtor seeking for a direction upon the suspended directors to cooperate with the RP and handover/ access to the records and documents for effective conduct of CIRP.

OBSERVATIONS:

106. We would note that the Financial Creditor Mr. Nirmal Kanodia is an erstwhile director of the corporate debtor who had

directorship from 20.08.2007 to 21.05.2008. Mr. Kanodia had advanced a loan of Rs. 1,14,27,453/- in several tranches from 17.02.2022 to 24.03.2022. The Corporate Debtor failed to repay such amount along with interest by 31 March 2023 as agreed upon. Thus, on default, Mr. Kanodia preferred a petition under Section 7 of the I&B Code to this Tribunal for initiation of CIRP in respect of the corporate debtor which was admitted on 25.06.2024.

107. During CIRP, Mr. Kanodia's claim has been admitted as an unsecured financial debt and RP declared him as related party, thus, one Sipra Chouhan Das became the sole member of CoC having claim of Rs. 8 Lakh as unsecured financial creditor.

108. Notably, the GST Authority West Bengal has a claim to the tune of Rs. 16.89 Crore which has been admitted as operational creditor, against such amount only Rs. 2 Lakh has been proposed to allocate which is resulting to a recovery of 0.12%.

109. Further, that the GST Department Bihar has a claim of Rs. 1,39,62,077/- and the Income Tax Authority for the financial year of 2015-16, assessment year of 2016-17, has a claim of Rs. 76,52,027/-, however, such claims have not been submitted before the RP. Notably, another amount of Rs. 2 Lakh has been kept aside in the resolution plan for any claim received within two years after approval of the plan, otherwise the same will be invested in the business.

110. Thus, the Government/ Statutory Authorities have a significant claim which is to the tune of Rs. 19 Crore against the corporate debtor.

111. Further noted that Mr. Kanodia granted a lease to the corporate debtor on 14.06.2016, for a fixed term of 36 months commenced from 01.06.2016 and expired on 31.05.2019. The Lease was renewed on 01.06.2019 for a further 36 months and the same was expired on 31.05.2022, prior initiation CIRP admitted on 25.06.2024.

112. Mr. Kanodia issued a letter on 03.06.2022 to the corporate debtor demanding for payment of outstanding dues and handover of peaceful possession of leased property, followed by the reminder letters issued by the respondent on 20.01.2023 and 10.05.2023.

113. During the ongoing CIRP, Mr. Kanodia also issued a letter to the RP on 07.11.2024, claiming for peaceful and vacant possession of the leasehold land in question along with for the payment of outstanding lease rent dues on part of the corporate debtor. In reply, RP issued an email to the respondent on 16.11.2024, asked for furnishing all the documents to fortify respondent's claim including the copies of lease agreement, ownership proof, proof of rent and letter of termination.

114. Mr. Kanodia accordingly submitted his claim by way of Form B on 16.12.2024, which was rejected by RP on 21.12.2024 by

way of an email as no lease rental liability was found in the books of accounts of the corporate debtor, and no renewal was executed further after 31.05.2022. Further, the RP informed that during ongoing CIRP when moratorium is in force, the possession of the said leasehold land could not be handed over till the completion of the CIRP.

115. Very surprisingly, the CoC at its 6th meeting convened on 19.02.2025, unanimously resolved that Mr. Nirmal Kanodia will provide an undertaking that he will have no claim whatsoever on account of rental or lease for the land for any period. Further, Mr. <u>Nirmal Kanodia needs to make application to NCLT, Kolkata for getting possession of the land, if approved for handover</u>, the CoC has no objection to handing over the land as the same is not an asset of the corporate debtor and the factory is no more running, all the assets, plant and machineries are taken by the auction winner under SARFAESI action of lender. Accordingly, Mr. Kanodia issued a letter on 16.04.2025, undertook that he shall not raise any claim whatsoever against the Corporate Debtor or the Resolution Professional on account of rental or lease charges for the said land for any period.

116. We have already decided that this Adjudicating Authority lacks jurisdiction to consider an issue concerning the termination of lease or transfer of possession of the leasehold property having the control of the corporate debtor (lessee) to its landowner (lessor), which may be considered by a court of civil jurisdiction.

117. We wonder that Mr. Kanodia was the unsecured financial creditor (declared as "related party" to the corporate debtor) and also an operational creditor whose claim was rejected by RP, and after rejection of his claim, what was the requirement for the CoC as well as the RP to obtain an undertaking from Mr. Kanodia not raise any further claim against the corporate debtor and the RP on account of rental or lease charges for the leasehold land. If Mr. Kanodia is rightful owner of the leasehold land and if the corporate debtor is wrongfully occupying the said leasehold land, either Mr. Kanodia, who was the director of the corporate debtor once, can take proper recourse in accordance with law against the corporate debtor/ RP just after issuance of termination notice, or the RP upon instruction of the CoC, can take appropriate action before the proper fora. Instead of doing such, CoC upon receiving a 'no claim' undertaking from Mr. Kanodia, has resolved beyond the scope of I&B Code, to release the property to Mr. Kanodia and preferred an application through RP to this Tribunal for approval of its decisions. We are not satisfied by this conduct of RP as well as CoC.

118. Notably, the CoC has been comprised with one unsecured financial creditor having admitted claim of Rs. 8 Lakh and significantly, the Government/ Statutory (GST/ Tax) Authorities have a significant claim which is to the tune of Rs. 19 Crore against the corporate debtor, and under the resolution plan, this huge amount has been satisfied only by a realisation amount of 4 Lakh, which leads a recovery in respect of such government dues at 0.21%. Thus, we are clear of view that the entire process has initiated by

Mr. Kanodia for the wrongful gain and to evade the government liabilities as it is a settled position of law that after approval of the plan all the claim prior CIRP shall stand extinguished, and no further claim or proceedings shall sustain against the corporate debtor.

119. In view of such, we would infer that the CIR Process has been fraudulently initiated, not with an aim or purpose to resolve the insolvency of the debtor, but with a malicious intent to escape from the government dues and for wrongful gain. Hence, we are satisfied enough to invoke Section 65 of the I&B Code for **closure of CIR Process**, along with our inherent power as enshrined under Rule 11 of the NCLT Rules, for meeting the ends of justice and to prohibit the misuse or abuse the law and accordingly, we deem it fit to **recall** our Admission Order dated 25.06.2024.

120. Reliance would be placed on ***State Bank of India v. Consortium of Murari Lal Jalan & Florian Fritsch,*** reported in (2024) SCC OnLine SC 3187, wherein it has been held that:

> **"***162. However, the aforementioned decision should in no manner be read so as to restrict the exercise of plenary powers under Article 142 of the Constitution even while in deviating from the statutory procedure and framework of the IBC, 2016 or the rules and regulations thereunder, if such deviation is very much necessary. This Court in* ***Glas Trust (supra)*** *only went so far as to say that, where there is a prescribed procedure in place for a particular purpose, then that*

> *particular thing must be done only in the manner prescribed. It no way lays a dictum that even where cogent reasons exist warranting such deviation, the court would be powerless to exercise such inherent powers. In other words,* ***Glas Trust (supra)*** *only went to the extent of saying that in the absence of any exceptional circumstances or extraordinary reasons necessitating a deviation from the procedure laid down, the court should refrain from invoking its inherent jurisdiction to do something which otherwise could have been validly done in accordance with the procedure.*
>
> *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 Rule 11 of the NCLT Rules would be rendered otiose and meaningless*****."**
>
> (Emphasis Added)

121. In ***Murari lal Jalan*** **(Supra),** it has been clearly held that where such cogent reasons or extraordinary circumstances exist warranting the exercise of inherent power to ensure the

worthwhile purpose of the Code, the Adjudicating Authority will not be restrained or under the teeth to exercise such inherent power.

122. In ***Hindalco Industries vs. Hirakud Industries Works Ltd.*** in Company Appeal (AT) (Insolvency) No.42 of 2022, reported in MANU/NL/0032/2023, wherein the Hon'ble NCLAT whiling attracting the provision of Section 65 of the Code, held that initiation of CIR Process was done fraudulently by the corporate debtor, working in collusion with financial creditor and accordingly the admission under Section 7 was set-aside. The extract of the judgment is reproduced verbatim as under:

> "*97. Section 65 of the IBC prescribes a stringent punishment, which may be a penalty extending up to Rs. one crore for fraudulent and malicious initiation of the CIRP. In such a background, we are of the clear view that the initiation of CIRP was done fraudulently by the corporate debtor working in collusion with financial creditor Nandakini and therefore such fraudulent initiation of CIRP started with the admission order under section 7 is liable to be set aside. Therefore, taking recourse to section 65 of the IBC, we set aside the admission order of the section 7 application as its basis, the section 7 application, and loan therein which is claimed to be due and in default are found to be fraudulent.*"
>
> (Emphasis Added)

123. In view of above, we are of the considered opinion to **recall** and **withdraw** our Admission Order dated 25.06.2024 and

accordingly direct for the **closure of** the **CIR Process** initiated in respect of the corporate debtor.

CONCLUSION:

124. **I.A. (IB) (Plan) No. 10/KB/2025** filed by the RP for the final approval of the resolution plan, as approved by CoC, is **dismissed**.

125. **I.A. (IB) No. 734/KB/2025** filed under Section 60(5) of the I&B Code is **dismissed.**

126. **I.A. (IB) No. 1727/KB/2024** filed under Section 19(2) of the Code is **dismissed** as infructuous in view of above.

127. **Order of Admission** dated **25.06.2024** in **Company Petition (IB) No. 39/KB/2024** is **recalled** and **dismissed** and the CIR Process initiated in respect of the corporate debtor – Balajee ingot India Private Limited is **closed** accordingly.

128. Accordingly, the Moratorium imposed under section 14 of the Code by virtue of the order initiating the CIR Process, shall cease to have effect from the date of this order.

129. Upon lifting of the moratorium, all the government/ statutory authorities shall be free to initiate appropriate proceedings against the corporate debtor, in accordance with law.

130. The Joint Registrar of this Adjudicating Authority is directed to serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) by the Registry for noting the conduct of the RP herein, as he has missed a plenty of statutory provisions for a better resolution and maximization of the value of the assets of the present corporate debtor.

131. The Joint Registrar is further directed to serve a copy of this Order upon all the Governmental/ Statutory Authorities, viz., Directorate of Commercial Taxes, Government of West Bengal; Bihar Commercial Tax Department; Income Tax Department, West Bengal to initiate appropriate action in accordance with law for recovery of these dues if they deem fit.

132. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

133. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.

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

135. File be consigned to the record.

Cmde. Siddharth Mishra
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 01st Day of September 2025.

Bose, R. K. [LRA]