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# IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

## MA(IBC)/3(CHE)/2022 in CP/288/IB/2018

*(Filed under Section 60(5) of the Insolvency & Bankruptcy Code)*

*In the matter of* ***Swastik Spinners (India) Private Limited***

**S V Ramasamy**
AR SevuganChettiar,
No.22/1, Ormes Road,
Kilpauk, Chennai – 600 010

*... Applicant*

-Vs-

**The Official Liquidator of**
Swastik Spinners (India) Private Limited
Mr.S.Muthu Raju,
No.3, Sundaram Brothers Layout,
Opp. To All India Radio, Trichy Road,
Ramanathapuram, Coimbatore

*... 1st Respondent*

**Tamil Nadu Mercantile Bank**,
Represented by its Branch Manager,
Palace Regency, First Floor,
No.80-93, Purasawalkam High Road,
Chennai

*... 2nd Respondent*

**S. Muthu Raju**,
No.3, Sundaram Brothers Layout,
Opp. To All India Radio, Trichy Road,
Ramanathapuram, Coimbatore

*... 3rdRespondent*

*Order pronounced on* ***12th May 2023***

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT**
**SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Applicant : S.V.Ramasamy Party in Person*

*For Respondents : Rohan Rajasekaran for R1*
*Purujit Narayanan for R2*

# ORDER

(Hearing conducted through physical mode)

This is an Application filed by the suspended director of the Corporate Debtor which is under Liquidation namely Swastik Spinners (India) Private Limited under Section 60(5) of IBC 2016 seeking relief as follows:

*a) To declare that M/s Swastik Spinners (India) Private Ltd is released from the Liquidation Process and restore the erstwhile management of the Company; and*

*b) Pass such further or other orders as this Hon'ble Tribunal may deem fit considering the facts and circumstances of the case and thus render justice.*

2. Shorn of unnecessary details brief facts of the case are as under;

2.1. The CIRP in respect of the Corporate Debtor was initiated under Section 10 of the Insolvency and Bankruptcy Code, 2016 by this Tribunal vide Order dated 22.03.2018 and the Respondent herein was appointed as the Interim Resolution Professional. It is pertinent to mention that the Corporate Debtor is an MSME Company.

2.2. Pursuant to his appointment, the IRP issued a Public Announcement on 11.04.2018 and invited claims from the creditors. Upon receiving claims such claims, the IRP constituted the Committee of Creditors (CoC).

2.3. In the first CoC meeting held on 10.05.2018, the Respondent herein was appointed as the Resolution Professional (RP) of the Corporate Debtor. Pursuant to the appointment of RP, the 2nd CoC meeting was held on 28.06.2018.

2.4. Since the Corporate Debtor is an MSME the Applicant herein who is the suspended Director of the Corporate Debtor has submitted a Resolution Plan in accordance with Section 240A of the IBC. However, it was submitted that in the 3rd CoC meeting which was convened on 31.08.2018, the CoC has resolved to liquidate the Corporate Debtor.

2.5. Pursuant to the Resolution passed in the CoC meeting, the Resolution Professional had filed an application bearing MA/445/2018, seeking liquidation of the Corporate Debtor and this Tribunal vide order dated 22.02.2019 passed an order of liquidation of the Corporate Debtor. As against the said order, the Applicant herein preferred *Company Appeal (AT) (Insolvency) No. 550 of 2019* before the Hon'ble National Company Law Appellate Tribunal at New Delhi.

2.6. It is submitted that the said appeal came up for hearing on several occasions and when the said appeal came up for hearing on 26.09.2019, the Applicant proposed to give a sum of Rs. 7.30 crores as a one-time settlement to be paid in installments. Upon hearing the said submission, the Hon'ble NCLAT permitted the Applicant herein to deposit the said sum of Rs. 7.30 crores in three installments. The 1st installment of Rs. 2 crores was to be paid by 30.11.2019, 2nd installment of Rs. 2 crores to be paid by 31.01.2020 and 3rd installment of Rs. 3.30 crores by 31.3.2020. It was further observed by the Hon'ble NCLAT that if the above said payments are made, the CIRP initiated against the Corporate Debtor shall stand set aside.

2.7. When the Appeal came up for hearing on 11.12.2019, the Applicant appeared before the Hon'ble NCLAT and sought an extension to pay the 1st and 2nd installments together on 31.01.2020. However, the said Appeal came to be dismissed.

2.8. In the meantime, the 1st Respondent published an advertisement in various daily newspapers like Business Standard, Makkal Kural, etc. on 08.12.2020 for auction of the immovable property of the Corporate Debtor. It was submitted that the Applicant immediately sent a letter dated 09.12.2020 to the 1st Respondent herein requesting not to proceed with the auction in view of the fact of pendency of case before Hon'ble NCLAT and the same could not be listed due to pandemic situation. The proposed auction was to be held on 26.02.2021 and the last date for Reserve money deposit was on 23.02.2021. Therefore, the Applicant herein had filed WP No. 5192 of 2021 before the Hon'ble High Court of Madras challenging the notice for auction dated 27.01.2021 for the proposed auction to be conducted on 26.02.2021.

2.9. The 1st Respondent had conducted four auctions in total, more specifically on 10.01.2020, 09.03.2020, 04.01.2021 and on 26.02.2021. There were no bids in the first 3 auctions and only on the 4th auction dated 26.02.2021, one M/s. Sivajothy Spinning Mill participated in the auction and deposited the Earnest Money Deposit (EMD) of Rs. 54,31,050/- (Rupees Fifty Four Lakhs Thirty One Thousand and Fifty only). However, the said M/s Sivajothy Spinning Mill failed to pay the balance amount and hence the EMD was forfeited.

2.10. In the meantime, while the writ petition was pending, the Applicant herein had agreed to a one- time settlement scheme with the 2nd Respondent whereby the 2nd Respondent has accepted an amount of Rs.9.50 crores as a full and final settlement of all debts of the Corporate Debtor. This acceptance to the OTS scheme was communicated by the 2nd Respondent and further the 2nd Respondent also issued the account closure certificate dated 06.08.2021 thereby certifying that the Corporate Debtor had closed the loan account on 17.07.2021 under One Time Settlement. It was submitted by the Applicant that upon closure of the loan account on 17.07.2021, the Corporate Debtor ought to be released from the rigours of Corporate Insolvency Resolution Process / Liquidation Process and ought to be permitted to function as a separate entity with its directors.

2.11. It was submitted that it is the bounded duty of the 1st Respondent / Liquidator to file an Application under Section 12A of the IBC before this Tribunal. However, the Liquidator has failed to do so.

2.12. It was submitted that in the present case, the 2nd Respondent is the sole member of the CoC and the 2nd Respondent's account closure certificate dated 06.08.2021 itself clearly goes on to show that the debt has been fully paid and therefore there is no liability due on the part of the Corporate Debtor. However, it was submitted that for reasons best known only to himself, the 1st Respondent Liquidator is remaining in charge, even after the expiry of his statutory mandate. Such actions cannot be countenanced in facts nor in law and hence the Applicant has filed the present Application to direct the 1st Respondent to file the Application under Section 12A of the IBC in accordance with law and accordingly discharge the Corporate Debtor Company from the rigours of the Corporate Insolvency Resolution Process/Liquidation Process.

2.13. It was further submitted that when the WP No. 5192 of 2021 came up for hearing before the Hon'ble Madras High Court on 10.11.2021, the factum of the OTS scheme was accepted by the Tamilnad Mercantile Bank and the matter being settled and also the EMD deposited by M/s Sivajothy Spinning Mill was brought to the attention of the Hon'ble High Court. Hence, the Hon'ble Court of Madras vide order dated 10.11.2021 in WP No. 5192 of 2021 was pleased to order as follows:

> "2. Thus, in a sense, nothing remains of the petition, though certain formalities have to be complied with before the National Company Law Tribunal.
>
> 3. It is also recorded that a part of the consideration deposited by a successful bidder at an auction in connection with the present matter had been forfeited by the official liquidator. Since the bank's claim has now been met, it will be the petitioner who will be entitled to the benefit of the forfeited money, subject to the right of the relevant purchaser to challenge the forfeiture on the ground of unjust enrichment, in accordance with law."

2.14. Further, the Hon'ble Madras High Court held that with respect to the EMD deposited by the successful bidder at the auction i.e. the sum of Rs. 54,31,050/-, the Corporate Debtor Company is entitled to the benefit of this sum of Rs. 54,31,050/- since the bank's claim had already been satisfied. Hence it was submitted that it is not in dispute that the amount which was collected by the 1st Respondent herein as the Liquidator of the Company for the EMD, belongs to the Corporate Debtor since the dues of the Bank had already been settled. However, contrary to the same, the 1st Respondent vide letter dated 10.07.2021 had directed the 2nd Respondent to transfer a sum of Rs.2,03,664/- from M/s Swastik Spinners (India) Private Limited - Liquidation Account to bank account of the 1st Respondent and further transfer a sum of

Rs.52,27,386/- from M/s.Swastik Spinners (India) Private Limited - Liquidation Account to the account of the 2nd Respondent and the copy of this letter dated 10.07.2021 is enclosed as Annexure A7 of the Application typeset.

2.15. It was further submitted that the 1st Respondent is desperately attempting to continue in the position of liquidator even after his statutory mandate has expired and the creditors of the company have been settled and the same cannot be countenanced in law. Reliance was placed upon the Judgment of the Hon'ble NCLAT, New Delhi in its order dated 26.09.2019 wherein it has been clearly stated that if the amount is settled with the Financial Creditor, the Corporate Debtor Company would be free from the CIRP. Hence, the 1st Respondent is duty-bound to put an end to the Corporate Insolvency Resolution Process/ Liquidation process.

2.16. It was further submitted that the 1st Respondent sent a letter dated 13.12.2021 requesting the Applicant to submit Form - FA for the withdrawal of Application along with a Bank Guarantee for a sum of Rs.19,35,000/- towards liquidation cost to be paid to the Liquidator. It was submitted that the said letter seems to have been sent under a faulty understanding of the law. As per Section 12A of the IBC, read with Regulation 2(1)(a) and Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 makes it abundantly clear that it is the duty of the 1st Respondent to file the Application before the Adjudicating Authority. It is further submitted that once the Liquidation is ordered, the Liquidator assumes the role and responsibility of the Board of Directors and Key managerial personnel of the Corporate Debtor.

2.17. It was submitted that the liability of the Corporate Debtor has been fully settled by way a One Time Settlement and hence the Corporate Insolvency Resolution Process/Liquidation process automatically stands abated and the only thing left is for the 1st Respondent to file the Application under Section 12A of the IBC, 2016 read with Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in accordance with law and thereby restore the erstwhile management and Directors of the Corporate Debtor. It is submitted that the delay caused by the 1st Respondent is causing undue harm and hardship to the Applicant who is the suspended Director of the Corporate Debtor and the business of the Corporate Debtor is put on hold causing immense financial loss to the Applicant and to the Corporate Debtor Company. Therefore it is of utmost importance that the Applicant and the erstwhile management of the Corporate Debtor is restored in their position.

**STATUS REPORT FILED BY THE LIQUIDATOR :**

3. The Learned Counsel for the Liquidator had filed a status report wherein it was stated that the liquidation expenses and fee of the Liquidator amounting to Rs. 21.35 Lakhs has not yet been paid to the Liquidator.

4. Further, it was submitted by the Learned Counsel for the Liquidator that though the immovable properties of the Corporate Debtor were sold in e-auction, the successful bidder M/s Sri Sivajothi Spinning Mills Private Limited did not pay the remaining payment within a period of 90 days and hence the EMD amount was forfeited. However, the successful bidder has filed an Application for the return of EMD and the same is pending adjudication.

5. It was further submitted by the Learned Counsel for the Liquidator that the promoter's application seeking relief to declare that M/s. Swastik Spinners (India) Private Limited is released from the Liquidation Process and restore the erstwhile management of the Company is also not maintainable. Thus, under these circumstances Learned Counsel for the Liquidator submitted that the present Application filed by the Applicant seeking withdrawal of

the Liquidation process finds no place in IBC and hence sought dismissal of the same.

**<u>FINDINGS OF THIS TRIBUNAL :</u>**

6. We have heard the submissions made by the Applicant and the Learned Counsel for the Respondent.

7. In the present case, it is significant to point out here that the CIRP in respect of the Corporate Debtor was triggered at the instance of the Applicant herein by filing an Application under Section 10 of IBC, 2016. The Corporate Debtor was ordered for Liquidation by this Tribunal vide order dated 22.02.2019 and the Liquidator took over the assets of the Corporate Debtor in terms of the Regulations specified under IBBI (Liquidation Process Regulation 2016). It is to be noted here during the Liquidation process of the Creditors / Stakeholders are require to file their claim a fresh as on the date of commencement of Liquidation.

8. It is also seen from the records that as against the Liquidation order passed by this Tribunal the Applicant has preferred an Appeal before the Hon'ble NCLAT in Company Appeal (AT)(Ins) No. 550 of 2019, wherein the Hon'ble NCLAT vide its order dated 26.09.2019 has passed the following order:

Learned counsel for the Appellant submits that 'Corporate Debtor' being MSME is ready to settle the matter with 'TamilNadu Mercantile Bank', the sole 'Financial Creditor' and pay the principal amount of Rs. 7.30 crores in instalments.

Learned counsel appearing on behalf of the 'TamilNadu Mercantile Bank' submits that till date no part payment has been made out of the aforesaid Rs. 7.30 crores.

Learned counsel for the Liquidator submits that the 'Corporate Debtor' is under liquidation, however, if the matter is settled then fee and cost of the 'Resolution Professional' / 'Liquidator' should also be simultaneously determined.

In the circumstances, we allow the Appellant to pay total Rs. 7.30 crores in three instalments to Tamilnadu Mercantile Bank'. Appellant will deposit the sum of Rs. 2 crores by 30th November, 2019; another Rs. 2 crores by 31st January, 2020 and rest of the Rs. 3.30 crores by 31st March, 2020.

The 'Resolution Professional' / 'Liquidator' will charge fee @ Rs. 50,000/- P.M., the 'Corporate Debtor' being MSME and who will give the details of the cost incurred with supporting evidence to the Appellant, who will collate the same and pay the amount in terms of the fee as determined by us and the actual cost borne by the Liquidator / 'Resolution Professional' including the litigation expenses in three equal instalments i.e. by 30th November, 2019, 31st January, 2020 and 31st March, 2020.

If the amount is paid within the aforesaid period of 31st March, 2020 in terms of order as recorded above, including the fee and cost of the "Resolution Professional' / 'Liquidator', the 'Corporate Insolvency Resolution Process' initiated against M/s. Swastik Spinners India Pvt. Ltd., (a MSME Company) Enterprise shall stand set aside and it will go out of all the rigour of the 'Corporate Insolvency Resolution Process'.

However, on failure to pay the total amount, 'The TamilNadu Mercantile Bank' and the 'Resolution Professional' / 'Liquidator', the liquidation proceeding may continue, if ordered by this Appellate Tribunal.

Post the appeal for 'Orders' on 6th December, 2019 to report progress.

During the pendency of the appeal, the order of liquidation shall remain stayed.

9. When the Appeal came up for hearing before Hon'ble NCLAT on 06.12.2019, the following orders were passed.

> No payment has been made by the Appellant till date. The Liquidation proceedings will continue. The interim order passed on 26th September, 2019 stands vacated.
>
> Learned counsel for the Appellant though accepts that the amount has not been deposited in terms of the earlier understanding but he states that the total amount will be paid by 31st January, 2020. However, such statement cannot be accepted as the Appellant has already failed to act in terms of the understanding.
>
> In the circumstances, as the Appellant having failed to execute the undertaking, we direct 'Mr. S. V. Ramasamy' Appellant to appear before this Appellate Tribunal on the next date. Learned counsel for the Appellant will inform the Appellant failing which the appeal may be dismissed.
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> Post the case 'for orders' on 11th December, 2019.

10. Again when the matter came up for hearing on 11.12.2019, Hon'ble NCLAT has passed the following order:

> "It is informed that the appellant has not deposited Rs.2 crores agreed by him by 30.11.2019. As per earlier order dated 26.09.2019 Rs.2 crores more is to be deposited by 31st January, 2020.
>
> 2. On the last occasion learned counsel for appellant submitted that if some more time is allowed the appellant will pay the amount of instalment. For the said reasons we asked appellant, Mr. S.V. Ramasamy to remain present who is now present. When we asked whether the appellant is in a position to pay Rs. 2 crores by 31.01.2020 which was to be paid by 30.11.2019, we are informed that the appellant can pay only after liquidation of the assets. However, we are not inclined to accept appellants' submissions. **For the said reason we**

**recall the order dated 26.09.2019 and dismiss the appeal.**

11. It is seen that as against the above order passed by Hon'ble NCLAT, the Applicant has filed a Review Petition No. 02 of 2020 and the Hon'ble NCLAT vide its order dated 24.05.2021 has also dismissed the said Review Application by observing as follows:

> There does not appear to be any specific provision as such of -Review in I.B.C or Companies Act. The above provision under Section 420 gives limited jurisdiction to this Tribunal to "rectify any mistake apparent from the record". Considering what was recorded by this Tribuna. in the Order dated 11th December, 2019 read with what the Applicant stated in Paragraph 5 of his I.A. No. 4009 of 2019, it cannot be said that there was any error in recording the statement by this Tribunal.
>
> 10. The Record shows that an opportunity was given to the Applicant which was not taken and subsequently the Order dismissing Appeal was passed.
>
> 11. The Learned Counsel for the Applicant submits that the Applicant ready to immediately pay Rs. 7.30 Crores to the Respondent No. 2 for which Copy of the Demand Draft has been filed with I.A. sent electronically on 19 April, 2021.
>
> 12. According to us, when there is no error apparent on the record, we ar functus officio to set aside the Order dated 11th December, 2019 and reope 4 the Appeal. Even otherwise, there is no word from the Applicant as to wha he did with the other part of the Order dated 26.09.2019 which require payment of fees and costs etc. of the Liquidation also in three instalments a mentioned above.
>
> 13. From the above reasons, we do not find that there is any substance in entertaining this Application which has been filed as a Review Application. For the reasons recorded above, we decline to entertain this Application filed as Review Application. The Application is dismissed.

> 14. Before parting we note that the Applicant has already moved Hon'ble High Court of Madras for stay of the auction proceedings which are going on. The Learned Counsel for the Liquidator has submitted that the auction had already been conducted and the matter is pending in the High Court.

12. Thus, it could be seen that an opportunity was granted by the Hon'ble NCLAT to the Applicant to settle the matter with the sole Financial Creditor within a specific time frame and since the Applicant was unable to settle the matter, the indulgence granted by the Hon'ble NCLAT was vacated and ultimately the Appeal was dismissed on 11.12.2019. A perusal of the dismissal order dated 11.12.2019 passed by Hon'ble NCLAT would manifest the fact that the Applicant has stated that he would be in a position to settle the creditors by only liquidating the assets of the Corporate Debtor, which the Hon'ble NCLAT has not permitted.

13. While this being the fact, and upon fully being aware that the Hon'ble NCLAT has dismissed the appeal against the order of Liquidation passed by this Tribunal, a perusal of the averments made in the Application would show that the Applicant has acted under the wrong notion that the Corporate Debtor is still under CIRP and they can settle their Creditors at any point of time and can come out by way of filing Application under Section 12A of IBC 2016. For the sake of brevity, the provisions of Section 12A of IBC, 2016 is extracted hereunder:

> **12A. Withdrawal of application admitted under section 7, 9 or 10. –**
>
> The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified

14. The provisions of the IBC, 2016 treats CIRP and Liquidation Process as two separate stages and the procedures to be followed in each stage have been delineated by way of framing a separate regulation by the regulator viz. IBBI.

15. The Corporate Debtor can be revived only at the stage during which it is undergoing in CIRP and it has been held by Hon'ble NCLAT in the matter of **Y. Shivaram Prasad** that even during Liquidation a Scheme can be given under Section 230 of the Companies Act, 2016 for the revival of the Corporate Debtor. Further, even during Liquidation, the Corporate Debtor can be sold as a 'going concern'. Apart from the above process stipulated *supra*, there is no other way which is recognized under the provisions of the IBC, by which the Corporate Debtor can be revived or come out of CIRP / Liquidation.

16. In the present case, knowing fully well that the properties of the Corporate Debtor is being sold by way of e-auction by the Liquidator and even being aware of the fact that the Hon'ble NCLAT

has dismissed the Appeal, the Applicant herein without any mandate has proceeded to enter into a One Time Settlement with the Creditor and most surprisingly the Creditor who has submitted his claim before the Liquidator has also issued a OTS offer letter to the Applicant, without the knowledge of the Liquidator. This shows that both the Creditor and the Applicant have acted in a way which is totally contrary to the provisions of IBC, 2016. Having done so, the Applicant cannot now cast aspersions against the Liquidator by stating that the Liquidator ought to have filed an Application under Section 12A of IBC, 2016. Further, even during the hearing, the Applicant was not willing to pay the fee of Rs. 21.35 Lakh which is due and payable to the Liquidator.

17. Further, there is no provision under IBC 2016 to come out of the liquidation process once a liquidation is ordered, except by way of a Scheme under Section 230 of the Companies Act, 2013 or by Sale as a going concern. The provisions of IBC does not envisage the termination of the liquidation process. As such the prayer sought by the Applicant transcends beyond the scope of IBC. When the statute prescribes a particular thing to be done in a particular manner then it has to be done only in that manner and not in any other manner. *(See Taylor -Vs- Taylor; (1875) LR 1 ch D 426)*

18. The act of the Creditor viz. Tamilnad Mercantile Bank in receiving the money directly from the Applicant, when they have submitted the claim before the Liquidator is directly in violation of the provisions of IBC, 2016. Hence, we direct the Liquidator to proceed with the e-auction process in accordance with law and to distribute the proceeds thereof in terms of Section 53 of IBC, 2016. Further, this Tribunal already in the matter of **Jayashree Mohan -Vs- Pathukasahasram Raghunathan Raman, Liquidator of RA-NI Precast Private Limited** in IA(IBC)/320(CHE)/2021 vide its order dated 14.10.2022 has also held that there is no provision under IBC 2016 to come out of the Liquidation Process once liquidation is ordered.

19. At this juncture, we find it apt to refer to the Judgment of the Hon'ble Supreme Court in the matter of **Arun Kumar Jagatramka -Vs- Jindal Steel and Power Ltd. &Anr.,***2021 SCC OnLine SC 220*whereinthe Hon'ble Supreme Court, after examining the judicial interventions and innovations made under the provisions of IBC, 2016 by the Adjudicating Authority and also by the Appellate Authority, has held as follows;

> **103.** At this juncture, it is important to remember that the explicit recognition of the schemes under Section 230 into the liquidation process under the IBC was through the judicial intervention of the NCLAT in *Y Shivram Prasad* (supra). Since the efficacy of this arrangement is not challenged before us in this case, we

cannot comment on its merits. However, we do take this opportunity to offer a note of caution for the NCLT and NCLAT, functioning as the Adjudicatory Authority and Appellate Authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from the NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC. This conscious shift in their role has been noted in the report of the Bankruptcy Law Reforms Committee (2015) in the following terms:

> **"An adjudicating authority ensures adherence to the process**
> At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives powers to the insolvency professional to take appropriate action against the directors and management of the entity, with recommendations from the creditors committee. All material actions and events during the process are recorded at the adjudicating authority. The adjudicating authority can assess and penalise frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on. The adjudicating authority will adjudicate on fraud, particularly during the process resolving bankruptcy. Appeals/actions against the behaviour of the insolvency professional are directed to the Regulator/Adjudicator."

**104.** Once again, we must clarify that our observations here are not on the merits of the issue, which has not been challenged before us, but only limited to serve as guiding principles to the benches of NCLT and NCLAT adjudicating disputes under the IBC, going forward.

*(emphasis supplied)*

20. Thus, in view of the reasons stated *supra* and also guided by the principle of Hon'ble Supreme Court in the matter of **Arun Kumar** *(supra),* the present Application filed by the Applicant is not sustainable and liable to be dismissed and accordingly stands **dismissed.** No costs.

—SD— —SD—

**SAMEER KAKAR**
MEMBER (TECHNICAL)

**JUSTICE RAMALINGAM SUDHAKAR**
PRESIDENT