

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1482 of 2026

Arising out of Impugned Order dated 31.07.2026 passed by the National Company Law Tribunal, Mumbai Bench Court-V, in I.A. (LIQ.) No. 87 of 2024 in C.P. (IB) No. 987/MB/2020]

IN THE MATTER OF:

Lakhminder Dayal Singh

Suspended Director,
Sapphire Land Development Private Limited,
Dreams 2/C, Flat No. 1904, L.B.S. Marg,
Near Pawar Public School, Bhandup (West),
Mumbai - 400078

...Appellant

VERSUS

1. Suraksha Asset Reconstruction Limited

ITI House, 36, Dr. R. K. Shirodkar Road,
Parel East, Mumbai, Maharashtra- 400 012
Also at: 20th Floor, "A" Wing, Naman Midtown,
Senapati Bapat Marg, Elphinstone Road,
Mumbai-400013

E-Mail Id:- admin@surakshaarc.com

...Respondent No.1

2. Unity Small Finance Bank Limited

Unit No. 101, 2nd Floor, Centrum House,
C.S.T. Road, Manipada Road, Kalina,
Santacruz East, Mumbai, Maharashtra -400098

E-Mail Id:- pravinchopra@unitybank.co.in

...Respondent No.2

3. Mr. Manish Shah

Liquidator of Sapphire Land Development Private
Limited,
Registration No. IBBI/IPA-001/IP-P00094/2017-
18/10194, A/502,
Krishna Palace, Thakur Complex, Kandivali (East),
Mumbai, Maharashtra-400 101

E-mail: mdshah0211@gmail.com

...Respondent No.3

4. Mr. Snehal Kamdar

Erstwhile Resolution Professional of Sapphire Land Development Private Limited,
301-302, Poonam Pearl,
Next to Himachal Society,
Opposite New India Colony, Andheri (West),
Mumbai, Maharashtra – 400058
E-Mail: Snehal.kamdar@jjkandco.com

...Respondent No.4

PRESENT

For Appellant : Mr. Abhishek Anand, Mr. Ashish Verma & Mr. Akash Chatterjee, Advocates.

For Respondents : Mr. Chitranshul A. Sinha, Mr. Sagar Bansal, Mr. Shivam Shorewala, Ms. Rakshita Bhargava, Ms. Akansha & Ms. Esha Sharma, Advocates for R-1

J U D G E M E N T

(09.09.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal is filed by the Appellant i.e., Lakhminder Dayal Singh who is Suspended Director of Sapphire Land Development Private Limited, (**Corporate Debtor**) under Section 61 of the Insolvency and Bankruptcy Code, 2016, (“**Code**”) arising out of Impugned Order dated 31.07.2026 passed by the National Company Law Tribunal, Mumbai Bench, Court-V, (“**Adjudicating Authority**”) in I.A. (LIQ.) No. 87 of 2024 in C.P. (IB) No. 987/MB/2020]

Suraksha Asset Reconstruction Limited, who is the Financial Creditor/Member of the Committee of Creditors, is the Respondent No.1 herein.

Unity Small Finance Bank Limited, who is the Member of the Committee of Creditors (CoC) is the Respondent No.2 herein.

Mr. Manish Shah, who is the Liquidator of Sapphire Land Development Private Limited, is the Respondent No.3 herein.

Mr. Snehal Kamdar, who is the Erstwhile Resolution Professional of Sapphire Land Development Private Limited, is the Respondent No.4 herein.

2. The Appellant submitted that the Corporate Debtor, namely Sapphire Land Development Private Limited, is a company forming part of the erstwhile Housing Development and Infrastructure Limited (“**HDIL**”) group and that the Appellant is a suspended director of the Corporate Debtor. The Appellant stated that by order dated 30.04.2021, the Adjudicating Authority admitted the petition filed by Respondent No.1 under Section 7 of the Code, being C.P. (IB) No. 987/MB/2020, and initiated the CIRP against the Corporate Debtor, with Mr. Ankur Kumar being appointed as the Interim Resolution Professional.

3. The Appellant submitted that CoC comprised only two members, namely Respondent No.1 i.e. Suraksha Asset Reconstruction Limited holding 51.04% voting share and the erstwhile Punjab and Maharashtra Co-operative Bank Limited, now Unity Small Finance Bank Limited Respondent No.2 pursuant to amalgamation with effect from 25.01.2022, holding 48.96% voting share. The Appellant contended that from the inception of the CIRP, Respondent No.1

consistently advocated liquidation whereas Respondent No.2 supported resolution of the Corporate Debtor.

4. The Appellant stated that Form G under Regulation 36A of the CIRP Regulations was never published, either within the prescribed period or at any subsequent stage during the ensuing five years. Consequently, no prospective resolution applicant was invited, no Information Memorandum reached the market and no resolution plan could ever be received. The Appellant contended that the absence of a resolution plan was therefore not a reflection upon the viability of the Corporate Debtor but was a direct consequence of the failure to initiate the process for inviting resolution applicants.

5. The Appellant submitted that the initial period of 180 days of the CIRP expired on 06.11.2021 and that, as recorded in the Impugned Order, neither extension of the CIRP period was thereafter sought nor any resolution plan was received. The Appellant contended that the failure to seek extension was itself attributable to the conduct of the Erstwhile insolvency professional, particularly since, in the 5th CoC meeting held on 30.10.2021, a resolution seeking a 90-day extension had been put to e-voting but failed only because Respondent No.2 abstained, after which the Interim Resolution Professional did not approach the Adjudicating Authority for extension or exclusion of time.

6. The Appellant stated that by order dated 01.06.2023 passed in I.A. No.1566 of 2021, Respondent No.4 i.e. Mr. Snehal Kamdar was appointed as Resolution Professional in place of the earlier Resolution Professional. The Appellant further

submitted that Respondent No.4 subsequently disclosed that he had traced substantial assets of the Corporate Debtor which had not been discovered by the erstwhile Interim Resolution Professional, including a twelve-acre land parcel in Kerala, approximately thirty-nine shops in Dream Mall, a yacht sold by Punjab and Maharashtra Co-operative Bank Limited whose panchnama and sale proceeds were yet to be received, and a Range Rover lying in the custody of the Enforcement Directorate/Economic Offences Wing.

7. The Appellant contended that the discovery of such substantial assets demonstrated that the Corporate Debtor possessed valuable assets capable of forming the basis of a viable resolution process. The Appellant submitted that, despite the existence of these assets, the resolution process was never meaningfully opened to the market and no prospective resolution applicant was given an opportunity to submit a resolution plan.

8. The Appellant stated that in the 9th CoC meeting held on 30.11.2023, Respondent No.4 proposed publication of Form G in view of a prospective resolution applicant and Respondent No.2 supported the proposal, whereas Respondent No.1 continued to seek liquidation. The Appellant submitted that the CoC itself resolved that publication of Form G should be put to vote and, if no prospective resolution applicant came forward within thirty days of publication, the proposal for liquidation would thereafter be placed before the CoC. However, the said resolution was never implemented.

9. The Appellant contended that the same exercise was repeated in the 10th, 11th and 12th CoC meetings held on 14.12.2023, 02.01.2024 and 01.04.2024 respectively. On each occasion, Respondent No.1, holding 51.04% voting share, voted against publication of Form G, while Respondent No.2, holding 48.96%, voted in favour. The Appellant submitted that the Resolution Professional wrongly treated the absence of a 66% majority as disabling him from publishing Form G at all.

10. The Appellant contended that by the Impugned Order dated 31.07.2026, the Adjudicating Authority held that Section 33(1), and not Section 33(2), of the Code was attracted; consequently, the contention regarding the requirement of a 66% CoC resolution was held to be inapplicable. The Appellant stated that the Adjudicating Authority further held that CoC approval under Section 25(2)(h) was a prerequisite to publication of Form G, that Regulation 36A(1) was subservient to Section 25(2)(h), and that the Corporate Debtor had ceased operations and was no longer a going concern. On that basis, liquidation was directed, Respondent No.4 was not appointed as Liquidator, Respondent No.3 was appointed as Liquidator from the IBBI panel, and the issue of CIRP costs was kept open.

11. The Appellant submitted that the Impugned Order is contrary to the object and scheme of the Code, as liquidation is intended to be a measure of last resort. The Appellant relied upon few judgments of the Hon'ble Supreme Court, including ***Swiss Ribbons Private Limited v. Union of India***, (2019) 4 SCC 17,

wherein the Hon'ble Supreme Court recognised that liquidation is to be resorted to only as a last resort where there are no resolution plan or the plans submitted are not acceptable. The Appellant contended that the present case is fundamentally different because no resolution plan was received not because the market had rejected the Corporate Debtor, but because no invitation for expression of interest was ever published. The Appellant stated liquidation of a Corporate Debtor should be a matter of last resort and that the object of the Code extends beyond mere recovery of money. The Appellant contended that these principles directly apply to the present case, particularly when the Corporate Debtor possesses a twelve-acre land parcel, approximately thirty-nine shops, a yacht and a Range Rover. The Appellant submitted that the aforesaid assets constitute the very foundation upon which a resolution plan could be formulated and that directing liquidation without inviting even a single prospective resolution applicant amounts to treating the last resort as the first option.

12. The Appellant contended that the Adjudicating Authority fundamentally misconstrued Section 25(2)(h) of the Code and Regulation 36A of the CIRP Regulations. The Appellant submitted that Regulation 36A(1), as applicable to the present CIRP, imposed a mandatory duty upon the Resolution Professional to publish Form G inviting expressions of interest from interested and eligible prospective resolution applicants. The use of the expression "shall" demonstrated that publication was mandatory and could not be made dependent upon the discretion or veto of a particular CoC member.

13. The Appellant submitted that Section 25(2)(h) of the Code merely requires CoC approval in relation to the eligibility criteria to be laid down by the Resolution Professional. It does not make CoC approval a condition precedent to the very publication of Form G. The Appellant contended that the Impugned Order erroneously shifted the qualification relating to the eligibility criteria to the principal obligation of inviting prospective resolution applicants.

14. The Appellant stated that the interpretation adopted by the Adjudicating Authority would produce an anomalous result whereby a single financial creditor holding a blocking share could prevent the invitation of resolution applicants and thereby indirectly compel liquidation, despite not possessing the 66% majority required under Section 33(2) for a CoC decision to liquidate. The Appellant contended that such an interpretation would permit circumvention of the statutory safeguard requiring a 66% majority for liquidation on the commercial wisdom of the CoC.

15. The Appellant further submitted that, even assuming the CoC had failed to approve the eligibility criteria, the Resolution Professional ought to have approached the Adjudicating Authority under Section 60(5) of the Code for appropriate directions instead of abandoning the resolution process and seeking liquidation. The Appellant contended that the Resolution Professional's failure to adopt this course was overlooked by the Adjudicating Authority.

16. The Appellant stated that Section 25(1) of the Code imposes a duty upon the Resolution Professional to preserve and protect the assets of the Corporate

Debtor, including its continued business operations. The Appellant contended that permitting approximately five years to elapse without taking effective steps towards resolution and thereafter relying upon the resulting failure of the process as a ground for liquidation amounted to converting the Resolution Professional's own dereliction into a justification for corporate liquidation.

17. The Appellant submitted that the Adjudicating Authority also erred by applying Regulation 36A as amended by the IBBI (CIRP) (Fourth Amendment) Regulations, 2025 to a CIRP which commenced on 30.04.2021. The Appellant stated that the obligation to publish Form G arose in 2021, whereas the amendment relied upon by the Adjudicating Authority came into force only on 26.05.2025. Therefore, the statutory framework applicable on the insolvency commencement date ought to have governed the Resolution Professional's obligations.

18. The Appellant submitted that the expiry of the CIRP period cannot legitimately constitute a ground for liquidation where such expiry itself resulted from the failure of the Resolution Professional and the obstruction caused by Respondent No.1. The Appellant stated that no resolution plan could possibly have been received when no invitation was ever issued. Therefore, treating non-receipt of resolution plans as a reason for liquidation, when the machinery for receiving such plans was never activated, amounts to reasoning in a circle.

19. The Appellant stated that the Adjudicating Authority also failed to consider exclusion or extension of the CIRP period. The Appellant contended that periods

lost due to the conduct of the Resolution Professional or circumstances beyond the control of stakeholders may warrant exclusion. The Appellant further submitted that timelines under the Code cannot be applied mechanically were doing so would defeat the ultimate objective of resolution.

20. The Appellant submitted that the finding that the Corporate Debtor was not a going concern was perverse and unsupported by the record. The Appellant stated that the Adjudicating Authority relied substantially upon the assertion of Respondent No.1 that the Corporate Debtor had no business operations, employees or going-concern status. The Appellant contended that such an assertion could not substitute for objective evidence, particularly when Respondent No.1 was the creditor consistently seeking liquidation and its status as a financial creditor was itself under challenge.

21. The Appellant further contended that no valuation was ever undertaken, no registered valuers were appointed, and no fair value or liquidation value under Regulation 35 was determined. No Information Memorandum under Section 29 was prepared or circulated. Consequently, there was no objective material before the Adjudicating Authority upon which the viability of the Corporate Debtor or the prospects of resolution could properly have been assessed.

22. The Appellant stated that the finding that resolution would not have materially advanced the objective of the Code was also internally inconsistent with the Impugned Order itself, which recorded the existence of substantial assets and further recorded that Form G had been proposed by the Resolution

Professional in view of a prospective resolution applicant. The Appellant contended that the existence of a prospective resolution applicant was material and ought to have been considered before concluding that resolution had no meaningful prospects.

23. The Appellant submitted that the liquidation order was passed without deciding I.A. No.2161 of 2026 filed under Section 65 of the Code. The Appellant stated that the said application directly challenges the locus of Respondent No.1 as a financial creditor and the very initiation of the CIRP, yet the Impugned Order does not even refer to the pending application. The Appellant contended that the challenge to Respondent No.1's status was neither speculative nor unsupported. The Appellant stated that collusive transactions do not result in creation of financial debt under Section 5(8) of the Code and that the nature of the underlying financial transactions must be examined rather than treating the existence of debt and default as automatically sufficient for admission under Section 7 of the Code. The Appellant submitted that the Section 65 of the Code application, supported by the CBI charge-sheet and Yes Bank's internal audit report, specifically alleges that the assignment in favour of Respondent No.1 was funded by Yes Bank itself through circular lending to Fortune Integrated Assets Services Limited and was undertaken contrary to the RBI Master Circular dated 01.09.2016. The Appellant contended that, if these allegations are ultimately established, Respondent No.1 would not qualify as a financial creditor, the admission order dated 30.04.2021 would be without jurisdiction and the subsequent proceedings, including the

Impugned Order, would consequently be rendered unsustainable. The Appellant stated that fraud vitiates judicial proceedings. The Appellant contended that where a specific and documented allegation of fraudulent initiation of CIRP remains pending, the Adjudicating Authority ought to decide the same before ordering liquidation, since liquidation and sale of assets could render the challenge academic and make restoration of the status quo practically impossible.

24. The Appellant submitted that the Impugned Order was also passed in breach of the principles of natural justice because the suspended management was neither impleaded nor heard in the liquidation proceedings. The Appellant stated that the proceedings in I.A. (LIQ.) No.87 of 2024 involved the Resolution Professional and the two CoC members, while the suspended board of directors was never made a party. The Appellant contended that the suspended directors are not strangers to the insolvency process. Relying upon ***Vijay Kumar Jain v. Standard Chartered Bank & Ors.***, (2019) 20 SCC 455, the Appellant stated that the erstwhile Board of Directors has a right to participate in CoC meetings and discuss resolution plans. The Appellant submitted that if such participation is recognised during the resolution process, the suspended management cannot be denied an opportunity of being heard when an order of liquidation was passed. The Appellant stated that the denial of hearing caused substantial prejudice. The Appellant had specifically sought records and information from Respondent No.4 through e-mails dated 08.02.2025 and 13.02.2025, but received no substantive response. The Appellant contended that, had he been heard, he could have placed

before the Adjudicating Authority the material forming part of I.A. No.2161 of 2026, highlighted the failure to publish Form G and pointed out that no valuation had been undertaken.

25. The Appellant further submitted that the Adjudicating Authority relied upon allegations of non-cooperation by the erstwhile directors dating back to 2021 but failed to consider the subsequent documented attempts of the Appellant to cooperate and participate in the process. The Appellant contended that the subsequent conduct of the Appellant could not be ignored while relying upon alleged non-cooperation from an earlier period.

26. The Appellant contended that the appointment of Respondent No.3 as Liquidator was contrary to the statutory scheme under Section 34 of the Code. The Appellant submitted that Section 34(1) of the Code ordinarily contemplates the Resolution Professional appointed during CIRP continuing as Liquidator, subject to written consent, unless replaced in accordance with Section 34(4) of the Code. Replacement is permissible only in the circumstances specified therein, and Sections 34(5) and 34(6) of the Code prescribe the procedure for obtaining another insolvency professional through the Board. The Appellant stated that the Impugned Order rejected the request of Respondent No.4 to be appointed Liquidator and also declined to appoint the insolvency professional proposed by Respondent No.1, but instead appointed Respondent No.3 directly from the panel of insolvency professionals shared by the IBBI. The Appellant contended that no

finding under Section 34(4) of the Code was recorded and no direction under Section 34(5) of the Code was issued, thereby bypassing the statutory procedure.

27. The Appellant stated that the Adjudicating Authority failed to consider any course short of liquidation. The Appellant submitted that several alternatives were available, including directing immediate publication of Form G, excluding the period lost due to deadlock and inaction, reviving the CIRP for a limited period, directing appointment of registered valuers, replacing the Resolution Professional and, alternatively, ensuring that any liquidation process explored compromise or arrangement under Section 230 of the Companies Act, 2013 and sale of the Corporate Debtor as a going concern.

28. The Appellant contended that none of these alternatives was considered, and that the Adjudicating Authority proceeded directly from the existence of deadlock and lapse of time to liquidation. Such an approach, according to the Appellant, amounted to non-application of mind, particularly because the CoC itself had earlier resolved that liquidation would be considered only if no prospective resolution applicant emerged within thirty days after publication of Form G. Since Form G was never published, the CoC never had an informed opportunity to assess the prospects of resolution.

29. The Appellant further relied upon ***Vidarbha Industries Power Limited v. Axis Bank Limited***, (2022) 8 SCC 352, to submit that the Adjudicating Authority exercises discretion under the Code and is not merely a rubber stamp. The Appellant contended that the Code is not intended to penalise a Corporate Debtor

or operate merely as a recovery mechanism and that the same judicial caution and application of mind were required before directing liquidation in the present case.

30. Concluding arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order and allow the present appeal.

31. Per contra, the Respondent No.1, the contesting Respondent, denied all the averments made by the Appellant as misleading and baseless.

32. The Respondent No. 1 submitted that it is a Financial Creditor and a member of the CoC of the Corporate Debtor, holding 51.04% of the voting share. The Respondent No. 1 stated that Respondent No. 3 was appointed as the Liquidator pursuant to the Impugned Order, whereas Respondent No. 4 was the erstwhile Resolution Professional. The Respondent No. 1 further stated that the Appellant is a suspended director of the Corporate Debtor and that, despite repeated requests, the suspended directors failed to extend cooperation or furnish the requisite records, thereby compelling the Interim Resolution Professional to initiate proceedings under Section 19(2) of the Code. It was submitted that the records were ultimately handed over only on 17.06.2023 through the outgoing Interim Resolution Professional.

33. The Respondent No. 1 submitted that the Appellant had full knowledge of the liquidation proceedings and was actively appearing before the Adjudicating Authority, yet failed to seek impleadment or intervention in I.A. (LIQ.) No. 87 of 2024, which remained pending from 2024 until 31.07.2026. The Respondent No. 1 stated that the Appellant's own List of Dates reflects that he had corresponded

with the Resolution Professional in February 2025, filed I.A. No. 2161 of 2026 on 23.03.2026 and was present in I.A. No. 2939 of 2026 on 16.07.2026. The Respondent No. 1 thus submitted that the Appellant, having consciously remained outside the liquidation proceedings despite having knowledge thereof, cannot subsequently contend that he was denied an opportunity of hearing.

34. The Respondent No. 1 submitted that the CIRP commenced on 30.04.2021 and the statutory period of 180 days expired on 06.11.2021, without any application for extension or exclusion of time and without receipt of any resolution plan under Section 30(6) of the Code. The Respondent No. 1 stated that, on the admitted facts, the mandatory conditions stipulated under Section 33(1)(a) of the Code stood satisfied and, consequently, the Adjudicating Authority was bound to order liquidation without any discretion to adopt an alternative course. The Respondent No. 1 further submitted that the requirement of approval by not less than 66% of the voting share of the CoC is applicable only in cases falling under Section 33(2) of the Code and has no application where liquidation ensues upon the expiry of the resolution process period under Section 33(1)(a) of the Code. It was further stated that the contention regarding mandatory publication of Form G, irrespective of CoC approval, had already been raised by Respondent No. 2 before the Adjudicating Authority and rejected, and Respondent No. 2 has not challenged the said finding.

35. The Respondent No. 1 submitted that the Appellant's allegation that the voting conduct of Respondent No. 1 obstructed the CIRP is misconceived, as a

financial creditor exercises a statutory right while voting in the CoC and the commercial decisions of the CoC are subject only to limited judicial review on the grounds recognised under the Code. The Respondent No. 1 stated that, being the creditor with the largest admitted exposure of 51.04% of share in the CoC was entitled to take the view that the Corporate Debtor, having no business operations, employees or going concern status, was not a viable candidate for resolution and that further accrual of CIRP costs would only erode the available assets. The Respondent No. 1 further submitted that the application under Section 65 of the Code filed by the Appellant on 23.03.2026, nearly five years after commencement of the CIRP, cannot be permitted to operate as a collateral challenge to the order of admission dated 30.04.2021, which had already attained finality after the dismissal of the challenge before this Appellate Tribunal in CA(AT)(Ins) 394 of 2021 and the Hon'ble Supreme Court in Civil Appeal No.6294 OF 2021. The Respondent No. 1 thus stated that the mere pendency of the said application created no embargo upon the Adjudicating Authority's mandatory duty to pass an order of liquidation under Section 33(1)(a) of the Code.

36. The Respondent No. 1 stated that the reliance on ***Vidarbha Industries (supra)*** is misconceived, since the said decision concerned the discretion of the Adjudicating Authority at the stage of admission of a petition under Section 7 of the Code and was subsequently confined to its own facts in ***M. Suresh Kumar Reddy v. Canara Bank, Civil Appeal No. 7121 of 2022***. The Respondent No. 1 further submitted that the assets of the Corporate Debtor were considered in the

9th CoC meeting, wherein it emerged that documentary proof regarding ownership of the shops was unavailable, the land in Kerala constituted wetland, the Range Rover had been attached by the EOW and the yacht had already been sold. It was stated that the Corporate Debtor had no viable assets capable of supporting a resolution, no employees and no business operations. Accordingly, the Respondent No. 1 submitted that liquidation of the Corporate Debtor was both legally and factually justified, particularly as it was not willing to incur further costs in pursuing an unviable resolution process.

37. Concluding arguments, the Respondent No.1 requested this Appellate Tribunal to dismiss the present Appeal.

Findings

38. As a background of the appeal, it is noted that the Adjudicating Authority allowed the application filed under Section 33(1)(a) of the Code by the erstwhile Resolution Professional (Respondent No. 4) and ordered that Sapphire Land Development Private Limited/Corporate Debtor a company forming part of the erstwhile Housing Development and Infrastructure Limited group ('HDIL') to be liquidated, appointing Respondent No. 3 as Liquidator. The Appellant is a suspended director and assails the Impugned Order on several counts including that Form G under Regulation 36A(1) of the CIRP Regulations was never published; that the Adjudicating Authority misconstrued the relationship between Section 25(2)(h) of the Code and Regulation 36A(1); that liquidation was ordered

while an application under Section 65 of the Code remained pending; and that the order was passed without notice to, or hearing of, the suspended board.

39. It is noted that the CoC constituted with two members i.e. Respondent No. 1, holding 51.04% of the voting share, and the erstwhile Punjab and Maharashtra Co-operative Bank Limited now Respondent No. 2 (Unity Small Finance Bank Limited), upon amalgamation with effect from 25.01.2022 holding the remaining 48.96%. From the inception of the CIRP, Respondent No. 1, the majority financial creditor, has consistently taken the position that liquidation, not resolution, is the appropriate course where as the Respondent No. 2 has taken the contrary view. Neither commanded, singly, the 66% voting share the Code prescribes for the CoC's decisions on the matters to which that threshold applies.

40. It is also undisputed fact that Form G was never published in this CIRP. The 180-day period prescribed under Section 12(1) of the Code expired on 06.11.2021. At the 5th CoC meeting held on 30.10.2021, a resolution seeking a 90-day extension of the CIRP period was put to e-voting and failed to cross the 66% threshold prescribed by the proviso to Section 12(2) of the Code, Respondent No. 2 having abstained. No application for extension, and no application for exclusion of time, was thereafter moved before the Adjudicating Authority by the IRP, by any member of the CoC, by the Appellant, at any point over the following years.

41. By order dated 01.06.2023 in I.A. No. 1566 of 2021, Respondent No. 4 was appointed Resolution Professional ("RP") in place of the IRP, and took

charge on 17.06.2023. In the 8th CoC meeting held on 29.08.2023, the Respondent No. 4 disclosed that he had traced certain assets of the Corporate Debtor, i.e. a twelve-acre land parcel in Kerala, approximately thirty-nine shops in Dream Mall, a yacht, sold by the erstwhile Punjab and Maharashtra Co-operative Bank Limited, whose sale proceeds remained to be received, and a Range Rover in the custody of enforcement agencies. The Corporate Debtor was, at any material time after the CIRP commenced, not conducting business operations, employing personnel, or generating revenue; what is disclosed is the existence of certain assets, several of them under litigation, attachment, or third-party custody, and not a functioning enterprise.

42. At the 9th CoC meeting held on 30.11.2023, the Respondent No. 4 proposed publication of Form G. The Respondent No. 2 supported publication, however the Respondent No. 1 opposed it and sought liquidation instead. The CoC resolved that publication be put to vote and that liquidation would be considered only if no applicant came forward within thirty days of such publication. That resolution could not be passed due to own internal disagreement between both members of the CoC. At the 10th, 11th and 12th CoC meetings, held respectively on 14.12.2023, 02.01.2024 and 01.04.2024, the same division recurred with the Respondent No. 1 against publication but the Respondent No. 2 in favour, on each occasion. At no stage no one approached the Adjudicating Authority under Section 60(5) of the Code for directions. The Respondent No. 4 thereafter filed I.A. (LIQ.) No. 87 of 2024, seeking liquidation of the Corporate

Debtor, his own appointment as Liquidator, and ratification by the CoC of CIRP costs and fees of approximately Rs. 25,03,196/-. By order dated 24.10.2024, the Adjudicating Authority directed impleadment of the members of the CoC. The suspended management, including the Appellant, was not separately impleaded.

43. The Appellant, as suspended director, addressed e-mails dated 08.02.2025 and 13.02.2025 to Respondent No. 4, seeking records and seeking to participate. It is not disputed that no substantive response was received. We observe that these communications were sent more than three and a half years after the CIRP commenced and nearly four months after I.A. (LIQ.) No. 87 of 2024 had already been filed by the Resolution Professional. We also take into consideration that the erstwhile directors, including the Appellant, had been found non-cooperative with the process as far back as 2021, occasioning an application under Section 19(2) of the Code.

44. It is significant to keep in mind that on 23.03.2026, more than four years and ten months after the CIRP commenced, and after I.A. (LIQ.) No. 87 of 2024 had been pending for over a year, the Appellant filed I.A. No. 2161 of 2026 under Section 65 of the Code, contending that the assignment of debt from Yes Bank Limited to Respondent No. 1 was a sham transaction, funded by Yes Bank Limited itself and that Respondent No. 1 was consequently not a financial creditor at all. That application remains pending. It is also worthwhile and interesting to note that the order of admission dated 30.04.2021 by the Adjudicating Authority on which the entirety of the CIRP rests, was never itself put in issue by way of

appeal, at any point in the more than five years that followed its passing, by any one including the Appellant. Ultimately, by the Impugned Order dated 31.07.2026, the Adjudicating Authority directed liquidation of the Corporate Debtor.

45. By the Impugned Order, the Adjudicating Authority held, that Section 33(1) of the Code, and not Section 33(2), was attracted, the 66% threshold urged by reference to the latter provision being accordingly inapplicable. The Impugned Order also state that approval of eligibility criteria by the CoC under Section 25(2)(h) of the Code is a prerequisite to the publication of Form G, and that Regulation 36A(1) of the CIRP Regulations operates subject to, and does not override, that requirement. The Adjudicating Authority also observed that the Corporate Debtor had, ceased operations and was no longer a going concern; in consequence, publication of Form G and invitation of resolution applicants would not have materially advanced the objective of resolution. Based on these reasoning, the Adjudicating Authority directed liquidation under Section 33(1)(a), of the Code and also declined to appoint either Respondent No. 4 or the insolvency professional proposed by Respondent No. 1 as Liquidator, and instead appointed Respondent No. 3 from the panel maintained by while leaving the question of CIRP costs open.

46. It is the case of the Appellant that liquidation is a measure of last resort and that no plan was ever solicited because Form G was never published. The Appellant further submitted that Regulation 36A(1) of the CIRP Regulations casts

an unqualified duty to publish Form G and that Section 25(2)(h) of the Code conditions only the eligibility criteria not the antecedent duty to invite. The Appellant pleaded that the Adjudicating Authority erred in referring to Regulation 36A as amended with effect from 26.05.2025, four years after the CIRP and further the. liquidation cannot be founded on an expiry of time substantially attributable to the resolution professional's own default and to CoC deadlock. The Appellant also argued that the finding that the Corporate Debtor is not a going concern rests on the unverified assertion. The Appellant tried to impress us that liquidation ought not to have been ordered while I.A. No. 2161 of 2026 under Section 65 of the Code remained pending before the Adjudicating Authority. The Appellant also alleged that the order was passed without hearing the suspended board, contrary to audi alteram partem and the participatory rights recognised in *Vijay Kumar Jain (supra)*. The Appellant further stated that the appointment of the Liquidator does not follow the sequence prescribed by Section 34(4) and Section 34(5) of the Code.

47. On the other hand, it was submitted on behalf of Respondent No. 1 that the Code is a time-bound statute and that a CIRP running more than five years past its commencement, with no resolution plan in sight and no application for extension or exclusion ever moved by any stakeholder, presents precisely the case for which Section 33(1)(a) provides a mandatory, self-executing consequence.

48. The Respondent No.1 further submitted that the Corporate Debtor has, on the unrebutted material before the Adjudicating Authority, ceased business

operations. The Respondent No.1 stated that merely the discovery of certain assets several of them under litigation, third-party sale, or the custody of enforcement agencies, does not establish the existence of an operating business and that the Appellant despite ample opportunity, placed no material of his own before the Adjudicating Authority to demonstrate ongoing operations. On the pendency of I.A. No. 2161 of 2026, it was submitted that Section 65 provides a penalty against the person responsible for fraudulent initiation and is not, in terms, a mechanism for annulling an admission order that was never itself appealed and has long attained finality as the application of the Appellant was filed only in March 2026, shortly before the liquidation application was due to be finally heard, after more than four and a half years. On natural justice, the Respondent No.1 submitted that the Appellant had notice of the CIRP from 2021, was found non-cooperative at that stage, made no attempt to engage with the process for over three years thereafter, and cannot now complain of a want of hearing that his own conduct did much to bring about.

49. Based on above, we frame following issues for determination in order to decide the present appeal.

Issue no 1 Whether on the basis of Regulation 36A(1) of the CIRP Regulations read with Section 25(2)(h) of the Code, the resolution professional's duty to publish Form G is conditional upon prior approval of the CoC of the criteria for eligible applicants or otherwise.

Issue no 2 Whether an order of liquidation under Section 33(1)(a) of the Code, once the CIRP period has expired without a resolution plan under Section 30(6), leaves ample discretion to the Adjudicating Authority to decline liquidation on the ground that the expiry is attributable to the conduct of stakeholders within the process.

Issue no 3 Whether the finding that the Corporate Debtor is not a going concern is sustainable on the material before the Adjudicating Authority.

Issue no 4 Whether the pendency of the application under Section 65 of the Code barred the Adjudicating Authority from proceeding to pass an order under Section 33.

Issue no 5 Whether the non-impleadment of the suspended board vitiates the Impugned Order, having regard to the nature of the proceeding and the conduct of the Appellant.

Issue no 6 Whether the Impugned Order discloses failure to consider alternatives short of liquidation.

50. Issue no 1 Whether on the basis of Regulation 36A(1) of the CIRP Regulations read with Section 25(2)(h) of the Code, the resolution professional's duty to publish Form G is conditional upon prior approval of the CoC of the criteria for eligible applicants or otherwise.

51. At the outset, we will take into consideration Section 25 of the Code and Regulation 36A of the CIRP Regulations — Invitation for expression of interest, which reads as under :-

“Section 25 of the Code — Duties of resolution professional

“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, namely: ... (h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans;”

Section 33 of the Code — Initiation of liquidation

“33. Initiation of liquidation. — (1) Where the Adjudicating Authority, (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process ... does not receive a resolution plan under sub-section (6) of section 30; or (b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall — (i) pass an order requiring the corporate debtor to be liquidated ... (2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent of the

voting share, to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order ...”

(Emphasis Supplied)

From above, we note that clauses (1) and (2) of Section 33 address two distinct situations the former, the automatic consequence of expiry without a resolution plan; the latter, a considered decision of the CoC to liquidate before expiry.

Regulation 36A of the CIRP Regulations — Invitation for expression of interest

“36A. Invitation for expression of interest. — (1) The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule at the earliest, not later than sixtieth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.(1A) The resolution professional may, with the approval of the committee, invite expression of interest for submission of resolution plans for the corporate debtor as a whole, or for sale of one or more of assets of the corporate debtor, or for both.”

(Emphasis supplied)

52. From above, we note that Section 25(2)(h) of the Code requires the resolution professional to “invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors... to submit a resolution plan or plans.” Regulation 36A (1) of the CIRP

Regulations, requires the resolution professional to “publish brief particulars of the invitation for expression of interest in Form G... from interested and eligible prospective resolution applicants to submit resolution plans.” The Regulation, in other words, sets the motion of seeking CoC’s approval for inviting Resolution Plan on issuance of Form G the instrument through which the Section 25(2)(h) invitation is issued. Section 25(2)(h) requires the resolution professional to invite applicants “who fulfil such criteria as may be laid down by him with the approval of committee of creditors.”

53. Thus, we hold that since the criteria require CoC approval, it follows that the invitation itself and hence the publication of Form G, which simply operationalises that invitation cannot, consistently with the Code, go forward without that approval of the CoC. We are unable to accept the submission of the Appellant that the words “with the approval of committee of creditors” in Section 25(2)(h) are confined in their operation to the eligibility criteria considered in isolation, divorced from the act of invitation those criteria are meant to govern.

54. We find that Regulation 36A(1) is expressed in mandatory terms (“shall publish... at the earliest”), which is an obligation as to timing; it does not, dispense with the prior CoC approval. We cannot subscribe to arguments of the Appellant that Regulation 36A(1) as conferring on the resolution professional unrestricted powers to publish Form G without any criteria approved by the CoC. The commercial wisdom of the CoC has been repeatedly held by the Hon'ble Supreme Court to occupy a position of primacy in matters of this kind including

Essar Steel (supra). Requiring CoC concurrence in the criteria it ensures that the invitation reflects the CoC's own collective judgment on the complexity and scale of the corporate debtor's business, as Section 25(2)(h) itself directs, rather than a resolution professional's unilateral view imposed upon a divided or reluctant CoC. We are accordingly unable to hold that the Adjudicating Authority erred in treating CoC approval as a precondition to publication of Form G.

55. At this stage, we will also refer to Section 33 of the Code, which reads as under :-

“Section 33 of the Code — Initiation of liquidation

“33. Initiation of liquidation. — (1) Where the Adjudicating Authority, (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process ... does not receive a resolution plan under sub-section (6) of section 30; or (b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall — (i) pass an order requiring the corporate debtor to be liquidated ... (2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent of the voting share, to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order ...”

(Emphasis Supplied)

56. We are of the considered view that Section 33(2) governs a CoC's affirmative decision to liquidate at any time before confirmation of a resolution plan and it does not purport to be the exclusive route by which a resolution process may fail to proceed, nor does it guarantee that resolution will occur merely because 66% has not been mustered against it. The Code nowhere provides that publication of Form G, or approval of eligibility criteria under Section 25(2)(h), requires anything less than the ordinary decision-making process of the CoC, whatever majority that process requires, whether by regulation, by the resolution professional's own reasonable practice, or by the CoC's internal resolution, as occurred here. We are of view that CoC member holding a majority, but not having requisite, voting share is not thereby, disabled from expressing, its view on a matter properly before the CoC. If the consequence of a persistent, good-faith division within the CoC is that the process cannot proceed to publication and, in time, the statutory clock under Section 12 runs out, that is a consequence flowing from the ordinary operation of Sections 25(2)(h), 28 and 33(1)(a) read together, not a circumvention of Section 33(2). We do not think the co-existence of these provisions, each addressed to a different stage and a different decision, discloses any conflict as the Appellant suggests. We are unable to accept pleading the Appellant on this issue.

57. Issue No 2 Whether an order of liquidation under Section 33(1)(a) of the Code, once the CIRP period has expired without a resolution plan under Section 30(6), leaves ample discretion to the Adjudicating Authority to

decline liquidation on the ground that the expiry is attributable to the conduct of stakeholders within the process.

58. Section 33(1)(a) of the Code provides that where the Adjudicating Authority, before the expiry of the CIRP period or the maximum period permitted for its completion, does not receive a resolution plan under Section 30(6), it “shall” pass an order requiring the corporate debtor to be liquidated. The provision is framed in the imperative and, unlike Section 33(2), does not condition the Adjudicating Authority's power on any decision of the CoC at all. Once the twin facts are established i.e. expiry of the period, and absence of a resolution plan. We find that Section 33(1)(a) leaves little room for the Adjudicating Authority to decline liquidation on an inquiry into why no plan was received. In our view, is a deliberate legislative choice, reflecting Parliament's own judgment that a corporate debtor cannot be left in perpetual suspension once the time the Code allows for resolution, generously extended where warranted, has run its course.

59. We are conscious that Essar Steel (*supra*), struck down the word “mandatorily” from the proviso to Section 12(3), so that the outer limit of 330 days is not an absolute, unyielding wall in truly exceptional cases. But the exception the Hon'ble Supreme Court recognised was in given circumstances, addressed to delay occasioned by litigation and similar circumstances genuinely beyond the control of the resolution process and not a general license for the Adjudicating Authority, or this Appellate Tribunal, to treat ordinary institutional

friction within a CIRP, such as CoC disagreement or a resolution professional's want of diligence, as grounds for indefinitely suspending the operation of Section 33(1)(a). To hold otherwise would be to convert the exception recognised in *Essar Steel* (supra) into a general rule that the very default the Code's timelines are designed to guard against delay, drift, and irresolution is itself a reason to excuse further delay. We do not think that can be the law. On the facts before us, the CIRP period expired in November 2021 i.e. more than five years passed without a resolution plan and no application of any kind was made, by any stakeholder, to prevent the consequence. Thus, we are of considered view that Section 33(1)(a) was, in these circumstances, rightly invoked by the Adjudicating Authority.

60. We have also considered the contentions the Appellant that no party may take advantage of its own wrong. That principle, sound as it is, presupposes that the party invoking the beneficial consequence is itself the author of the default said to found it. We are of view that Respondent No. 1 did not cause the IRP's failure to seek extension in 2021, nor did it single-handedly cause the CoC deadlock and it exercised a vote, as it was entitled to do, against a proposal it did not consider commercially sound. Respondent No. 1 has, moreover, at every stage, sought precisely the consequence i.e. liquidation, consistently since the inception of the CIRP. We also find that the Respondent No.1 was it is not a party who engineered a delay and now seeks to profit from it, but a party who opposed further delay throughout and has waited five years to see the process concluded. If the maxim has any application on this record, it would apply with greater force

against those who allowed the extension resolution to lapse without remedy and who, thereafter, took no steps for years to correct that omission including the erstwhile IRP and, on the facts noted, the Appellant's own conduct rather than the Respondent No. 1. Thus, we reject the pleadings of the Appellant on this issue.

61. Issue no 3 Whether the finding that the Corporate Debtor is not a going concern is sustainable on the material before the Adjudicating Authority.

62. The Impugned Order records, at paragraph 31, the submission of Respondent No. 1 that the Corporate Debtor had no business operations, employees, or going-concern status, and concludes on that basis that publication of Form G would not have materially advanced the objective of resolution. The Appellant submits that this finding cannot stand together with the Impugned Order's own recital, at paragraphs 9 and 24, of a twelve-acre land parcel, shops in Dream Mall, a yacht, and a Range Rover.

63. We are unable to accept that these two sets of findings are in any conflict the Appellant suggests. "Going concern" is a term to establish that business is continuing to trade employing personnel, generating revenue, servicing its operations and not to whether the entity that once conducted that business continues to hold assets of value. We find that even dormant or defunct company may very well retain title to land, buildings, or vehicles while having ceased, for all practical purposes, to carry on any business at all; indeed, that is a common and unremarkable feature of long-running CIRPs where the corporate debtor's

underlying business collapsed well before, or shortly after, the commencement of the insolvency process, leaving behind an asset shell to be administered rather than an operating enterprise to be rescued. The assets recorded at paragraphs 9 and 24 of the Impugned Order i.e., a land parcel, mall shops, a yacht sold by a creditor bank, and a vehicle in the custody of enforcement agencies are if anything, more consistent with the residue of a defunct enterprise than with a functioning business. Nothing in the record before the Adjudicating Authority, or before us, suggests that the Corporate Debtor had employees on its rolls, was generating income, or was otherwise trading, at any point after the CIRP commenced. The Appellant, who as suspended director would have been best placed to place such material before the Adjudicating Authority had it existed, placed none.

We accordingly find no perversity in the Adjudicating Authority's conclusion on this point.

64. We would add that the Appellant's own case, is not that the Corporate Debtor was in fact trading or operating; it is, rather, that resolution ought to have been attempted because the Corporate Debtor held assets capable of sustaining a Resolution plan. A distressed asset base is undoubtedly capable, in principle, of attracting a resolution applicant willing to acquire and redevelop it. But the Adjudicating Authority's finding was addressed to a logically prior question: whether the Corporate Debtor was, as a going concern in the operational sense, still in business. We do not find any infirmity in the Impugned Order on this issue.

65. Issue no 4 Whether the pendency of the application under Section 65 of the Code barred the Adjudicating Authority from proceeding to pass an order under Section 33.

66. The Section 65 of the Code reads as under :-

“65. Fraudulent or malicious initiation of proceedings. — (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.”

67. Section 65 of the Code, empowers the Adjudicating Authority to impose a penalty upon a person who initiates insolvency proceedings fraudulently or with malicious intent for a purpose other than resolution or liquidation. It is a provision directed at the conduct of the person who set the process in motion; it is not, in terms, a mechanism for annulling or unwinding an admission order that has otherwise attained finality. The order dated 30.04.2021 admitting the Section 7 petition of Respondent No. 1 was never appealed, by the Appellant at any point in the five years that followed. If the Appellant's grievance is that Respondent No. 1 ought never to have been treated as a financial creditor and that the CIRP itself rests on an infirm foundation, the appropriate course was to challenge the foundation directly and at the earliest opportunity and not to raise the point, for

the first time, in an application filed in March 2026, more than four and a half years after admission and shortly before a liquidation application that had by then been pending for well over a year was due to be finally disposed of. The Adjudicating Authority has jurisdiction to inquire into allegations of fraudulent or collusive initiation of a CIRP, and that such allegations, where timely and properly raised, may bear on the continuation of the very process founded upon them. But we do not read either authority as holding that the mere pendency of any Section 65 application, however belatedly filed, operates automatically to suspend the Adjudicating Authority's power to otherwise conclude proceedings that are independently ripe for disposal under Section 33(1)(a). To hold that it does would be to place in the hands of any suspended director a ready means of indefinitely forestalling an adverse liquidation order: file a Section 65 application on the eve of the hearing, and the process grinds to a halt regardless of the application's timing, its merits, or the diligence with which it was pursued. We do not think the Code, contemplate so open-ended a result. Thus, we are not inclined to accept contentions of the Appellant on this issue.

68. Issue no 5 Whether the non-impleadment of the suspended board vitiates the Impugned Order, having regard to the nature of the proceeding and the conduct of the Appellant.

69. We note that it was held in *Vijay Kumar Jain (supra)*, that the erstwhile board of a corporate debtor retains a right to participate in CoC meetings and to be furnished the material discussed there. We do not think it follows that a

suspended board possesses an unqualified right to be impleaded as a party in every application filed in the course of a CIRP, including an application under Section 33(1)(a). The Adjudicating Authority has to satisfy itself of two objective facts i.e. expiry of the period, and absence of a resolution plan, rather than an adversarial proceeding turning on contested facts peculiarly within the suspended board's knowledge.

70. In any event, the question of prejudice cannot, on this record, be resolved in the Appellant's favour. The Impugned Order itself records that the erstwhile directors, including the Appellant, were found non-cooperative with the CIRP as far back as 2021, resulting in a formal application under Section 19(2) of the Code. The Appellant did not seek to engage with the process again until February 2025 well over three years later, and only after I.A. (LIQ.) No. 87 of 2024 had already been filed. A right to be heard exists to protect a party who has been diligent in seeking to exercise it, or who has at least been prevented by circumstances beyond his control from doing so but it is not a device by which a party who was himself found wanting in cooperation at the relevant time may retrospectively complain of exclusion from a process he did not, for years together, attempt to engage with. We have, in any event, in this Appeal, heard the Appellant fully on every contention he brought to our notice that including the very material said to underlie I.A. No. 2161 of 2026. Having examined those contentions on their merits and found them, for the reasons given throughout this judgment, insufficient to displace the Impugned Order, we are satisfied that a

remand solely to afford a hearing that would not alter the outcome would serve no purpose beyond further delay, itself inimical to the interests the Code is designed to protect.

71. We are conscious that natural justice occupies a place of particular importance in this Appellant Tribunal's jurisprudence, and that breaches of it are not lightly excused. We have not treated the point lightly and addressed it on its own terms and found, on this specific record, that the combination of the Appellant's own prolonged non-engagement, the largely objective character of the Section 33(1)(a) inquiry, and the full appellate hearing now afforded, takes this case outside the ordinary rule that a breach of audi alteram partem vitiates the proceeding irrespective of demonstrated prejudice. We would reach a different conclusion on facts disclosing a suspended board that had sought, without success, to engage with the CIRP from an early stage, or an Adjudicating Authority that had relied on matters peculiarly within such a board's knowledge without affording it any opportunity to respond; those are not the facts before us. Thus, we are not in position to accept the pleadings of the Appellant on this ground.

72. Issue no 6 Whether the Impugned Order discloses failure to consider alternatives short of liquidation.

73. We do not accept the submission of the Appellant that this is a case where liquidation was ordered as a first, rather than a last, resort. It has been brought to our notice during the hearing that the CoC considered publication of Form G on

four separate occasions across more than five months, from November 2023 to April 2024; on each occasion, the majority financial creditor declined to support it. This is not a case of a proposal was never discussed by the CoC rather it is a case where resolution was proposed, but could not command the requisite support required. We are also of view that the liquidation is a measure of last resort where a resolution plan is either not received or found wanting that do not hold that liquidation is impermissible wherever the CoC's own commercial deliberations, exercised within the framework the Code prescribes, result in a decision against further resolution efforts. That commercial wisdom of the CoC, even where divided and even where one member's view ultimately prevails by virtue of a larger voting share, is not, on settled principle, a matter for this Appellate Tribunal to substitute with its own assessment.

74. It is not in dispute that the CIRP of the Corporate Debtor commenced on 30.04.2021, and that more than five years elapsed before the Impugned Order came to be passed, without Form G ever having been published and without any resolution plan ever having been received. In our considered view, the very facts on which the Appellant relies an unresolved CoC deadlock persisting for years, a resolution process incapable of being completed despite every reasonable opportunity, and a Corporate Debtor that has, on the material before the Adjudicating Authority, ceased to function as an operating business are the facts that the Code's scheme of time-bound resolution, and the residual mechanism of

liquidation under Section 33(1)(a), exist precisely to address. We accordingly find no infirmity in the Impugned Order that would warrant interference in appeal.

75. Based on above detailed consideration, we do not find any merit in the Appeal. The Appeal fails and stand rejected. I.A., if any, stand closed. There should be no order as to cost.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Sim
Shweta (LRA)