

**IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH
KOLKATA**

**I.A. (IB) No. 116/KB/2021
and
I.A. (IB) No. 1370/KB/2023
and
I.A.(IB) No. 1506/KB/2023
and
Ivn. P. (IB) No. 25/KB/2023
and
Ivn. P. (IB) No. 26/KB/2023
and
Ivn. P. (IB) No. 27/KB/2023
and
Ivn. P. (IB) No. 05/KB/2024
in
C.P. (IB) No. 1388/KB/2018**

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Sugesan Transport Private Limited

... Financial Creditor

Versus

EC Bose and Company Private Limited

... Corporate Debtor

And

I.A. (IB) No. 116/KB/2021

*An application under section 33 read with section 60(5) of the Insolvency and
Bankruptcy Code, 2016.*

In the matter of:

Geetha Sridhar,

Resolution Professional of EC Bose and Company Private Limited

... Applicant

And

I.A. (IB) No. 1370/KB/2023

*An application under section 27 read with section 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with rule 11 of the National Company Law
Tribunal Rules, 2016.*

In the matter of:

Deborshi Sadhan Bose

... Applicant

versus

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

1. Geeta Sridhar,
Resolution Professional of EC Bose and Company Private Limited
 2. State Bank of India
 3. Sugesan Transport Private Limited
- ... Respondents

and

IVN. P. (IB) No. 25/KB/2023

*An application under Section 60 (5) of the Insolvency and Bankruptcy Code,
2016 read with rules 11 and 43 of the National Company Law Tribunal Rules,
2016.*

In the matter of:

Bodhisattva Banerjee

... Applicant

versus

1. Geeta Sridhar,
Resolution Professional of EC Bose and Company Private Limited
 2. State Bank of India
 3. Sugesan Transport Private Limited
- ... Respondents

and

Inv. P. (IB) No. 26/KB/2023

*An application under section 60 (5) of the Insolvency and Bankruptcy Code,
2016 read with rules 11 and 43 of the National Company Law Tribunal Rules,
2016*

In the matter of:

Abhay Somani

... Applicant

versus

1. Geeta Sridhar,
Resolution Professional of EC Bose and Company Private Limited
 2. State Bank of India
 3. Sugesan Transport Private Limited
- ... Respondents

and

Inv. P. (IB) No. 27/KB/2023

*An application under Section 60 (5) of the Insolvency and Bankruptcy Code,
2016 read with rules 11 and 43 of the National Company Law Tribunal Rules,
2016.*

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
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& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

In the matter of:

Ayan Kumar Banerjee

... Applicant

versus

1. Geeta Sridhar,
Resolution Professional of EC Bose and Company Private Limited
2. State Bank of India
3. Sugesan Transport Private Limited

... Respondents

and

I.A. (IB) No. 1506/KB/2023

*An application under Section 60 (5) read with section 29(2) of the Insolvency
and Bankruptcy Code, 2016 read with the relevant regulations of the IBBI
(Insolvency Resolution Process for Corporate Persons) Regulations, 2016*

In the matter of:

Tantia Constructions Limited

... Applicant

versus

1. Geeta Sridhar,
Resolution Professional of EC Bose and Company Private Limited
2. State Bank of India
3. Sugesan Transport Private Limited

... Respondents

and

Ivn. P. (IB) No. 05/KB/2024

*An application under Section 60 (5) read with section 29(2) of the Insolvency
and Bankruptcy Code, 2016 read with the relevant regulations of the IBBI
(Insolvency Resolution Process for Corporate Persons) Regulations, 2016*

In the matter of:

Budge Budge Refineries Limited

... Applicant versus

1. Geeta Sridhar,
Resolution Professional of EC Bose and Company Private Limited
2. State Bank of India
3. Sugesan Transport Private Limited

... Respondents

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

Date of pronouncement of the Order: 13 March 2024

CORAM:

Smt. Bidisha Banerjee, Hon'ble Member (Judicial)

Shri Balraj Joshi, Hon'ble Member (Technical)

Appearance (via video conferencing/physically)

- | | | |
|--|---|--|
| For Financial Creditor | : | 1. Ms. Sonal Shah, Advocate
2. Mr. Aniket Chaudhury, Advocate |
| For SBI | : | 1. Ms. Deblina Lahiri, Advocate
2. Ms. Moumita Sharma, Advocate
3. Mr. Mrinmoy Chatterjee,
Advocate |
| For the Resolution Professional | : | 1. Mr. Joy Saha, Senior Advocate
2. Mr. Snehasish Chakraborty,
Advocate
3. Mr. Debasish Chakraborty,
Advocate |
| For the Applicants in IA(I.B) No. 1370/KB/2023 | : | 1. Mr. Jishnu Saha, Senior Advocate
2. Mr. Arik Banerjee, Advocate
3. Mr. Pujon Chatterjee, Advocate
4. Mr. Sumit Biswas, Advocate
5. Mr. Rajashree Bhowmick,
Advocate
6. Ms. S. Pal, Advocate |
| For the Intervenor in Invn. P. (IB) No. 25/KB/2023 | : | 1. Mr. Jishnu Choudhury, Advocate
2. Ms. Sruti Swaika, Advocate
3. Mr. Arka Banerjee, Advocate
4. Ms. Yukti Agarwal, Advocate
5. Ms. Joveria Sabbah, Advocate |
| For the Applicant in Inv P. (IB) No. 26/KB/2023 | : | 1. Mr. Nirmalya Dasgupta,
Advocate
2. Mr. Arijit Roy, Advocate
3. Ms. Chandeleekha Ghosh,
Advocate |
| For the Applicant in Inv P. (IB) No. 27/KB/2023 | : | 1. Mr. Shaunak Mitra, Advocate
2. Mr. Swarup Karmakar, Advocate |
| For the Applicant in IA (IB) No. 1506/KB/2023 | : | 1. Mr. Swatarup Banerjee, Advocate
2. Mr. Avishek Guha, Advocate
3. Mr. Shariful Haque, Advocate
4. Ms. Arunika Dutta, Advocate
5. Mr. Kaustav De Sarkar, Advocate |
| For the Applicants in Inv. P. (IB) No. 5/KB/2024 | : | 1. Mr. D.N. Shama, Advocate |

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
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& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

2. Mr. Sarangram Chakraborty,
Advocate

COMMON ORDER

Per: Coram

1. This Court convened through hybrid mode.
2. I.A. (IB) No. 116/KB/2021 is an application filed for initiation of liquidation of the Corporate Debtor and the other I.A.s and Intervention Petitions are objections with respect to the initiation of liquidation and have identical prayers, hence, a common order is being passed for I.A.s and the Inv. Petitions. The details are recorded in a tabular form hereunder for ease of understanding:

<i>Case No.</i>	<i>Party name</i>	<i>Filed on</i>	<i>Prayer</i>
I.A. (IB) No. 116/KB/2021	Geeta Sridhar	18 January 2021	For initiation of Liquidation
I.A. (IB) No. 1370/KB/2023	Deborshi Sadan Bose v. Geeta Sridhar	28 July 2023	Removal of Resolution Professional and re-initiation of CIRP
I.A. (IB) No. 1506/KB/2023	Tantia Constructions Limited v. Geeta Sridhar	31 August 2023	For receiving documents and re-initiation of CIRP

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

<i>Case No.</i>	<i>Party name</i>	<i>Filed on</i>	<i>Prayer</i>
Inv. P. (IB) No. 25/KB/2023	Bodhisattva Banerjee v. Geeta Sridhar	31 August 2023	For receiving documents and re- initiation of CIRP
Inv. P. (IB) No. 26/KB/2023	Abhay Somani v. Geeta Sridhar	31 August 2023	For receiving documents and re- initiation of CIRP
Inv. P. (IB) No. 27/KB/2023	Ayan Kumar Banerjee v. Geeta Sridhar	31 August 2023	For receiving documents and re- initiation of CIRP
Inv. P. (IB) No. 05/KB/2024	Budge Budge Refineries Limited	29 January 2024	For receiving documents and re- initiation of CIRP

Preliminary

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

3. The underlying Company Petition was filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) by Sugesan Transport Private Limited (“Financial Creditor”) against EC Bose and Company Private Limited (“Corporate Debtor”) was admitted into Corporate Insolvency Resolution Professional (“CIRP”) by this Adjudicating Authority on 25 October 2019 appointed Mr. Swarbanabi Ramasami as the Interim Resolution Professional (‘IRP’).
4. *Vide* order dated 02 December 2019, this Adjudicating Authority passed an order replacing Mr. Swarbanabi Ramasami as the IRP and appointed Ms. Geetha Sridhar as the Interim Resolution Professional of the Corporate Debtor.
5. Thereafter, an appeal was filed before the Hon’ble NCLAT and on 27 February 2020, the Hon’ble NCLAT upheld the order of admission. An appeal was filed before the Hon’ble Supreme Court of India being Civil Appeal No. 2914 of 2020, which was dismissed on 27 February 2023 wherein the order admitting the Corporate Debtor into CIRP was upheld.

I.A. (IB) No. 116/KB/2020

6. This is an application filed by the Resolution Professional upon the instructions of the Committee of Creditors (CoC) seeking liquidation of the Corporate Debtor, *viz.*, EC Bose and Company Private Limited [CIN: U61200WB1962PTC025531], on the ground that the CIRP period of 180 days had expired and there was no possibility of any resolution plan.
7. The Applicant has sought following reliefs:
 - a) *Direction be issued under Section 33 read with Section 60 of the IB Code granting the initiation of the liquidation process of the Corporate debtor since the Corporate debtor has failed to attract any resolution plan as it was not a going concern.*
 - b) *A public announcement be made stating thereby that the Corporate debtor is in liquidation*

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

- c) *Any other Order(s) as this Hon'ble Tribunal shall deem fit and proper in this instant scenario in terms of Section 33 of Insolvency and Bankruptcy Code, 2016.*
- d) *Appointing Mrs. Geetha Sridhar (IBBI/IPA-002/IP-N00854/2019-2020/12733) as the liquidator of EC Bose and Company P Ltd. The remuneration of the liquidator be agreed mutually between Mrs. Geetha Sridhar and SBI, SARB, Kolkata.*
8. It is submitted that an appeal had been filed against the order of admission before the Hon'ble NCLAT, who on 19 December 2019 passed an interim order restraining the Resolution Professional from making public announcement and constituting the Committee of Creditors ("CoC").
9. It is further submitted that the Applicant wrote to the Directors of the suspended Board of the Management of the Corporate Debtor requesting the suspended Board to meet the Resolution Professional and also to hand over the documents pertaining to the Corporate Debtor but the Applicant did not receive any cooperation from the Directors of the suspended Board of the Management of the Corporate Debtor since 23 December 2019.
10. *Vide* order dated 19 December 2019, the Hon'ble NCLAT passed the following interim order:

"In the meantime, the 'Interim Resolution Professional' will not publish any publication, if not yet published and not constitute any 'Committee of Creditors', if not yet constituted. However, 'Interim Resolution Professional' will ensure that the Company remains as an on-going concern and will take assistance of the (suspended) Board of Directors, paid Director and the employees. The person who is authorised to sign the Bank cheques may issue cheques only after authorisation of the 'Interim Resolution Professional'. The Bank Accounts of the Corporate Debtor be allowed to be operated for day-to-day functioning of the Company such as for payment of Current

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

Bills of the Suppliers, Salaries and wages of the paid Director, the employees'/workmen Electricity bills etc”.

11. It is further submitted that the Applicant informed State Bank of India and collected data relating to the Corporate Debtor on 23 December 2019 from SBI. The Applicant along with the officials of State Bank of India visited the registered office of the Corporate Debtor held in possession of the State Bank of India. The Applicant sought the custody of the asset in possession of the Bank under the SARFAESI Act, and the Bank agreed to handover the possession.
12. The Applicant filed an application under section 19(2) of the Code seeking cooperation from the suspended Board of Management, this Adjudicating Authority on 10 February 2020 passed an order in C.A. (IB) No. 168/KB/2020 directed the suspended Board of Directors to cooperate by handing over all the financial papers to the Resolution Professional.
13. The Hon’ble NCLAT dismissed the appeal on 27 February 2020, thereby upholding the order admitting the Corporate Debtor into CIRP.
14. The Applicant submits that after the order of the Hon’ble NCLAT, in terms of section 15 of the Code, public announcement was made on 29 February 2020 in “Financial Express” and “Aajkal” which was published on 03 March 2020 and formed the Committee of Creditors with two Financial Creditor viz. State Bank of India having 59.9% voting share and Sugesan Transport Private Limited having 40.10% voting share.
15. The first meeting of the CoC was held on 25 March 2020 wherein the CoC resolved to appoint Ms. Geetha Sridhar as the Resolution Professional.
16. The suspended Board of Directors provided the financial accounts for the year ended on 31 March 2016, 31 March 2017 and 31 March 2018 and the list of employees and bank statement of the account maintained with UCO Bank. This account was subsequently attached by the GST authorities.

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

17. The Committee of Creditors in its second meeting held on 03 July 2020, wherein the CoC directed the Resolution Professional to send letter to Statutory auditors seeking clarification on the financial accounts for the financial year ended on 31 March 2018 and ask the Suspended Board to handover the assets as mentioned in the books of accounts and also handover cash, details of bank accounts, documents pertaining to the assets and the details of advances and trade receivables.
18. Due to non-cooperation, the Resolution Professional sought police assistance in order to approach the Director of the suspended Board of Management but to no avail.
19. It is submitted that the in the fourth CoC meeting held on 09 October 2020, the CoC resolved to seek exclusion of the following dates:
- i. Time lost due to delay in change of IRP – 66 days i.e. from 25 October 2019 to 19 December 2019;
 - ii. Days lost due to NCLAT order restraining the applicant from making public announcement and formation of CoC – 69 days i.e. 19 December 2019 to 27 February 2020;
 - iii. Days lost due to pandemic and complete lock down – 208 days i.e. 16 March 2020 till 09 October 2020 (till date mentioned in the minutes of meetings).
20. It is submitted that in the 5th COC meeting held on 20 November 2020, the State Bank of India having 59.90% voting rights recommended for initiation of the liquidation proceedings of the Corporate Debtor since there was no possibility of the Corporate Debtor to attract any resolution as there was no business going on and it was not a going concern, Sugesan Transport Private Limited sought some time.
21. In the interregnum, an order was passed in the Arbitration proceeding pending between Sugesan Transport Private Limited and the Corporate Debtor on 01 December 2020, wherein the claim of the Sugesan Transport

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

- Private Limited was crystalised to Rs.2,50,00,000/- (Rupees Two Crore Fifty Lakh only).
22. Thereafter, in the 6th CoC meeting held on 02 December 2020, the CoC was reconstituted with respect to voting rights and the voting share of State Bank of India was increased to 81.77% and the voting share of Sugesan Transport Private Limited was reduced to 18.23%. The 6th CoC meeting was adjourned to 09 December 2020. The CoC on 09 December 2020, resolved to liquidate the Corporate Debtor as 180 days of CIRP had expired and there was no possibility of any resolution plan.
23. Hence, the Resolution Professional has filed an application under section 33of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor on expiry of the CIRP period and seeing no possibility of any resolution plan.
24. It is further submitted that during the pendency of the present I.A., two parties *viz.* N.S. Patel and Mr. Ayan Kumar Banerjee have showed their interest for revival of the Corporate Debtor by their letter dated 12 may 2023 and 23 June 2023. It is submitted that the Resolution Professional informed the CoC of the said proposals and according convened the 7th CoC meeting on 27 June 2023.
25. In the 7th CoC meeting the proposals received by N.S. Patel and Mr. Ayan Kumar Banerjee were discussed. The State Bank of India, a member of the CoC informed that after receiving the proposal from NS Patel, State Bank of India sought for few additional clarifications *vide* email dated 09 June 2023 and a reminder email on 20 June 2023, however no response was received.
26. With respect to the proposal given by Ayan Kumar Banerjee, the State bank of India stated that the proposal does not have any merit for consideration. Hence, both the proposals were rejected by the CoC as the proposals did not have any details and is without any documentary support and/or

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

information about the revival of the Corporate Debtor and the amount proposed is quite low.

27. Hence, in the 7th CoC meeting, the CoC once again resolved to liquidate the Corporate Debtor by a majority vote of 81.77%.

28. The Applicant/Resolution Professional, Ms. Geetha Sridhar, has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator, in terms of section 34(1) of the Code.

I.A. (IB) No. 1370/KB/2023

29. The present I.A. has been filed by Debtorshi Sadhan Bose, a suspended Director of the Corporate Debtor seeking the following reliefs:

- a. *An order be passed removing Geeta Sridhar as the Resolution Professional of EC Bose and Company Private Limited, the Corporate Debtor herein, and a new Resolution Professional be appointed in her place as per the choice of the Hon'ble National Company Law tribunal;*
- b. *An order be passed to restart the CIRP of the EC Bose and Company Private Limited, the Corporate Debtor herein;*
- c. *An order be passed staying the resolution for liquidation in respect of the EC Bose and Company Private Limited, the Corporate Debtor herein;*
- d. *Stay of all further proceedings in IA(I.B.C.) 116(KB)2021, being the application for passing the order of liquidation, till the disposal of the instant application;*
- e. *Ad-interim orders in terms of prayers above;*
- f. *Cost;*
- g. *Such further or other order or orders be made and/or direction or directions be given as this Hon'ble Tribunal may deem fit and proper.*

30. Submissions of the learned Counsel appearing on behalf of the Applicant in I.A. (IB) No. 1370/KB/2023

- 29.1.The learned Counsel submitted that the present I.A. has been filed for removal of the Resolution Professional and to restart the Corporate Insolvency Resolution Process of the Corporate Debtor as the Resolution Professional has not performed any of her duties under the provisions of the Code.
- 29.2.It is submitted that the Corporate Debtor has an immovable asset which is located at 13A, St. George Terrace, Hastings, Kolkata- 700022 which is the registered office of the Corporate Debtor. The said asset was lying in the possession of State Bank of India pursuant to proceedings initiated under the Securitisation and Reconstruction of Financial Assts and Enforcement of Security Interest Act, 2002 on and from 30 March 2017.
- 29.3.The State Bank of India is the member of the Committee of Creditors. There was no embargo on the Resolution Professional for visiting the registered the registered office of the Corporate Debtor for conducting the valuation of the said asset.
- 29.4.It is submitted that the Resolution Professional has, till date, not followed the model timeline for CIRP of the Corporate Debtor as provided under regulation 40 of the IBBI (Insolvency Regulation Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”).
- 29.5.The learned Counsel submitted that during the pendency of the appeal before the Hon’ble Supreme Court, the Resolution Professional, without performing any of her duties under the Code to revive the Corporate Debtor, placed a resolution to be passed before the Committee of Creditors for passing a resolution for liquidation of the Corporate Debtor which was approved.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

- 29.6.It is submitted that no steps were taken by the Resolution Professional to prepare the Information Memorandum under section 29 of the Code read with regulation 36 of the CIRP Regulations. No Form G was published and hence there were no prospective resolution applicants.
- 29.7.The Resolution Professional had asked for documents from the suspended Board of Directors, the same were provided *vide* several emails.
- 29.8.Despite providing all the documents related to books of accounts, bank statements and all other documents including property details, the resolution Professional did not take any step to revive the Corporate Debtor.
- 29.9.It is further submitted that the Resolution Professional can take an extension of CIRP period. In the present matter, the resolution Professional could have applied for exclusion of entire Covid-19 period i.e. from 15 March 2020 till 28 February 2022, but the same was not done. Neither did the Resolution Professional seek for the exclusion of period involved in litigation i.e. till 27 February 2023.
- 29.10. It is further submitted that various entities expressed their interest to revive the Corporate Debtor through several letter and emails on 28 June 2023, 12 May 2023, 26 June 2023, 23 June 2023, 29 September 202, 24 June 2023 and 17 July 2023. The Resolution Professional and the Committee of Creditors did not take any heed to such letter and emails.
- 29.11. It is submitted that there are interested prospective resolution Applicant who want to revive the Corporate Debtor hence no purpose will be served by sending the Corporate Debtor into liquidation.
- 29.12. The learned Counsel placed reliance on the following judgments:
a. Jayanta Banerjee v Shashi Agarwal, Liquidator of Incab Industries Ltd. and Anr.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

- b. Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta and Ors., (2020) 8 SCC 531;*
- c. Bank of India v Agnipa Energo Pvt. Ltd.*
- d. Phoenix ARC Pvt. Ltd. v. Arambagh Hatcheries Ltd.*
- e. Committee of Creditors of Trading Engineers International Ltd. v. Trading Engineers International Ltd.*
- f. Vivek Raheja, RP*

Inv. P. (IB) No. 25/KB/2023

31. The present Intervention Petition has been filed by Bodhisattva Banerjee seeking the following directions:

- a. Leave be given to the applicant to intervene in this proceeding;*
- b. An order be passed directing the resolution professional and the CoC to provide the necessary documents as sought for by email dated 30.08.2023;*
- c. An order be passed directing the resolution professional to provide the following documents, if prepared:-*
 - i. Information memorandum;*
 - ii. Valuation Report;*
 - iii. CoC meeting minutes;*
 - iv. List of creditors approved by the IRP;*
 - v. Share of creditors in the CoC.*
- d. CIRP process of the corporate debtor, EC Bose and Company Private Limited be started afresh;*
- e. Pending adjudication of this application, the resolution for liquidation be stayed;*
- f. Ad-interim orders in terms of prayers above;*
- g. Costs;*

h. Such further or other order or orders be made and/or direction or directions be given as this Hon'ble Tribunal may deem fit and proper.

32. Submissions of the learned Counsel appearing on behalf of the Applicant in Invn. P. (IB) No. 25/KB/2023

31.1.The learned Counsel asserts that the Applicant has completed his post-graduation in MBA from Germany, and is an avid entrepreneur. It is further submitted that the Applicant is a key leadership personnel in various legal entities being Engineers Venture, Bassetti Ites Pvt. Ltd., Inceptial Infrastructure & Technology LLP, Loginn Hospitality & Gargi Memorial Institute of Technology etc. and is associated internationally as a Member of London Chamber of Commerce, Member of Liverpool Chamber of Commerce as well as a Member of Manchester Chamber of Commerce. In India, he is a Member of Indo-German Chamber of Commerce, Member of Indo-Italian Chamber of Commerce, Member of the National Association of Software and Service Companies (NASSCOM) and others.

31.2.It is submitted that the net worth of the Applicant, who has huge assets in Real Estate in Kolkata, is in excess of Rs. 50Crore.

31.3.The Applicant has avid interest in the Hospitality Sector, Educational Sector, Shipping Sector and Maritime Business.

31.4.It is submitted that the Corporate Debtor holds the distinction of being the oldest stevedoring company in India boasting an unparalleled reputation in this industry. The Applicant has come to know that the Corporate Debtor has gone into CIRP and is on the verge of liquidation and that the Resolution professional has not initiated measures to appraise the company's assets, published an Information Memorandum nor has published Form-G inviting expression of interest from prospective Resolution Applicants to submit a Resolution Plan.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

31.5.The learned Counsel submitted that the Applicant, taking into account the substantial positive reputation and promising future potential of the Corporate Debtor, has sent an e-mail dated 30 August 2023 to the Resolution Professional for providing the necessary documents regarding the latest financial dues, details of the assets and other financial documents of the Corporate Debtor including the latest annual returns so that the Applicant can give a Resolution Plan to revive the Corporate Debtor.

31.6.Sadly, no response has been received for the e-mail dated 30.08.2023 and the requested documents have not been furnished as requested.

Inv. P. (IB) No. 26/KB/2023

33. The present Intervention Petition has been filed by Abhay Somani seeking the following directions:

- a. *Leave be given to the applicant to intervene in this proceeding;*
- b. *An order be passed directing the resolution professional and the CoC to provide the necessary documents as sought for by emails dated 29.09.2021, 24.06.2023, 17.07.2023 and 01.08.2023;*
- c. *An order be passed directing the Resolution Professional to provide the following documents, if prepared*
 - i. *Information Memorandum;*
 - ii. *Valuation Report;*
 - iii. *COC meeting minutes;*
 - iv. *List of Creditors approved by the IRP;*
 - v. *Share of Creditors in the COC;*
- d. *CIRP Process of the Corporate debtor, EC Bose and Company Private Limited be started afresh;*
- e. *Pending adjudication of this application, the resolution for liquidation be stayed;*
- f. *Ad-interim orders in terms of prayers above;*

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

g. *Cost;*

h. *Such further or other order or orders be made and/or direction or directions be given as this Hon'ble Tribunal may deem fit and proper.*

34. Submissions of the learned Counsel appearing on behalf of the Applicant in Inv. P. (IB) No. 26/KB/2023

33.1. The learned Counsel submitted that the Applicant is a chartered accountant by profession and is also a Director of several companies listed with the Calcutta Stock Exchange and other, it is further submitted that the net worth of the Applicant, who has huge assets in Noida, Mumbai, Jamshedpur and Kolkata, is in excess of Rs.24Crore, and the Applicant has avid interest in the shipping and maritime business.

33.2. It is submitted that the Applicant after learning that the Corporate Debtor is in CIRP and considering the high goodwill and business prospects of the Corporate Debtor has issued various emails dated 29 September 2021, 24 June 2023, 17 July 2023 and 01 August 2023 to the Resolution Professional and the State Bank of India for providing the necessary documents regarding the latest financial dues, details of assets and other financial documents of the Corporate Debtor including the annual returns to enable the Applicant to consider the same and submit a Resolution Plan.

33.3. It is further submitted that the Resolution Professional did not reply to the said emails nor was any document provided, hence, the Applicant was constrained to file the Intervention Petition.

Inv. P. (IB) No. 27/KB/2023

35. The present Intervention Petition has been filed by Ayan Kumar Banerjee seeking the following directions:

a. *Leave be given to the Applicant to intervene in this proceeding;*

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

- b. *An order be passed for restarting the CIRP process of the Corporate Debtor;*
- c. *An order be passed directing the CoC and the resolution professional to consider the proposal of the applicant for revival of the corporate debtor given by email dated 23.06.2023 and pass a reasoned decision deciding the fate of the proposal;*
- d. *An order be passed directing the resolution professional to invite the applicant in the CoC meetings of the corporate debtor.*
- e. *Stay of the Resolution for Liquidation;*
- f. *Ad-interim orders in terms of prayers above;*
- g. *Costs;*
- h. *Such further or other order or orders be made and/or direction or directions be given as this Hon'ble Tribunal may dim fit and proper;*

36. Submissions of the learned Counsel on behalf of the Applicant in Invn. P. (IB) No. 27/KB/2023

35.1. The learned Counsel submitted that upon learning from reliable sources that the Corporate Debtor is in CIRP and a resolution for liquidation had been passed, the Applicant issued an email dated 23 June 2023 to the Resolution Professional and the State Bank of India submitting a proposal to mortgage his property situated at 46, Kalighat Road, Kolkata 700026. The Applicant proposed that out of such mortgage, Rs.4,00,00,000/- (Rupees Four Crore only) received shall be paid to the bank for settlement of all the dues and the balance money out of such mortgage will be used for resurrection of the Corporate Debtor.

35.2. It is submitted that since the Applicant did not get any response from the Resolution Professional, the Applicant sent another email dated 01 August 2023, reiterating his intention to revive the Corporate Debtor.

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

The Applicant did not receive any reply and hence filed the said Application.

I.A. (IB) No. 1506/KB/2023

37. The application is being preferred by Tantia Construction seeking the following reliefs:

- a. *The Resolution Professional be directed to provide the relevant documents to the applicant herein for the Applicant submits its resolution plan in term of the section 29(2) of the Code.*
- b. *The Resolution Professional and/or Committee of Creditors be directed to accept and consider the resolution plan to be submitted by the applicant in terms of Insolvency and Bankruptcy Code, 2016.*
- c. *Stay of all the pending applications in connection with this Company Petition till disposal of the instant Interlocutory application;*
- d. *Ad-interim orders in terms of prayers above;*
- e. *Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble Tribunal may deem fit and proper.*

38. Submissions of the learned Counsel appearing on behalf of the Applicant in I.A. (IB) No. 1506/KB/2023

37.1. The Learned Counsel submitted that the Applicant is a listed Company limited by shares, the Applicant had been admitted into CIRP on 13 March 2019 and on 24 February 2020, a Resolution Plan was approved by this Adjudicating Authority.

37.2. It is submitted that the Applicant during the course of business came to know that the Corporate Debtor was undergoing CIRP, as the new management (Which new management ?) on Board was looking for

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

diversification, the Applicant Company showed interest in submitting a Resolution Plan for EC Bose & Company Private Limited.

37.3.It is further submitted that the Resolution Professional has not published any information memorandum in terms of section 29 read with regulation 36 of the IBBI (Insolvency Regulation Process for Corporate Persons) Regulations, 2016, and has also not issued or published any invitation of Expression of Interest in Form 'G'.

37.4.In the above circumstances, the Applicant sent a letter dated 05 July 2023 to the CoC of the Corporate Debtor communicating its interest in submitting a proposal plan for revival of Corporate Debtor and requested the Respondents to share the details of the Corporate Debtor as may be in the form of RFRP, Information Memorandum and other details for submitting of Resolution Plan.

37.5.Thereafter, the Applicant again sent an e-mail to the Resolution Professional dated 31 July 2023 requesting the Respondent to share the Information Memorandum and other relevant information/documents in relation to EC Bose & Company Private Limited to which the Respondent had sat tight and has not communicated any details to the applicant herein.

37.6.It is submitted that till date the Resolution Professional has not shared any details of the Corporate Debtor as may be in the form of RFRP, Information Memorandum and other details for submitting of Resolution Plan with mala fide motive to delay the CIRP process until the Corporate Debtor is put under Liquidation, hence the Applicant has filed the present I.A.

38. ***Submissions of the learned Counsel appearing on behalf of the Resolution Professional***

38.1.The learned Counsel submitted in the present case, since the commencement of CIRP, the suspended board of directors have constantly

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

not co-operated with the Resolution Professional. The Resolution Professional has time and again sought for various documents from the suspended board like the Asset Related Documents, Accounting Records, Cash, Bank Account Details and all other documents which would be required for the CIRP to continue. However, the suspended Board never provided the same.

38.2.The same has been recorded in various minutes of the CoC meetings. It shall be evident from the minutes of such CoC meetings that the director of the Suspended board has always attended the said CoC meetings and as such have complete knowledge of the same.

38.3.It is further submitted that the Resolution Professional had filed the an application under section 19(2) of the Code being CA(IB) 168/KB/2020 before this Adjudicating Authority reporting complete non-co-operation from the suspended board. Upon hearing of the said application, this Adjudicating Authority passed an order on 10 February 2020 wherein the same was pleased to observe as follows:-

"....we heard Ld. Counsel for the directors. It appears that no required information/financial papers with list of assets were furnished to the RP. We direct the respondents to give co-operation by handing over all the financial papers to the RP within seven days, failing which, RP shall approach local police and local police shall give every assistance to the RP to take possession of all above documents.....".

38.4.However, even after the said order was passed by this Adjudicating Authority, the suspended board never handed over any documents to the Resolution Professional. The Resolution Professional approached the Karaya Police Station and on 09 September 2020, the police officials accompanied the Resolution Professional to the house of the suspended board. However, they could meet only the mother of the director and after lot of discussions, she committed to provide a date on which the documents

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

would be made available to the Resolution Professional. Later, the police officials followed up with them for the date but no documents were ever handed over to either the police officials or the Resolution Professional.

38.5. It is submitted that the Resolution Professional met the Accountant cum auditor of the Corporate debtor, Mr, Soumya Dutta, who was very evasive with the submission of records. After much persuasion the Resolution Professional received some records in the form of tally backup for the financial year 2018-19, however very minimum incomplete data was received. After continuous follows ups with the previous auditor Mr. R Banerjee, CA, the Resolution Professional could obtain breakup of the schedules of the Audited Accounts for the financial year 2017-18 and very few details of the motor vehicles.

38.6. The learned Counsel further submitted that the accountant and the auditor stated that the audited financial of the corporate debtor for the year ended 31st March, 2018 does not reveal the true and correct view. The draft balance sheet for the financial year ended 31st March, 2019 were drawn considering the balance sheet of 2018 and hence the balance sheet of 2019 is also incorrect.

38.7. The learned Counsel asserted that 1130 days has elapsed even after considering the exclusion period, as indicated in the table below:

<i>Date</i>	<i>Particulars</i>
25.10.2019	Insolvency Commencement Date
09.12.2020	Resolution for liquidation passed by the Committee of Creditors
17.12.2020	277 days exclusion granted by NCLT
19.01.2021	Liquidation application filed by the Resolution Professional
24.01.2021	CIRP end date after taking exclusion into consideration

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

23.06.2021	330 days expired from the CIRP commencement date
01.09.2023	1130 days expired from the CIRP commencement date after taking the exclusion into consideration.

- 38.8. It is further submitted that the resolution for commencement of liquidation proceeding has been passed by the CoC on 09 December 2020 after which more than two and a half years has already lapsed.
- 38.9. The learned Counsel submitted that the law has been settled by the Hon'ble Supreme Court of India in the matter of *Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta & Ors., (2020) 8 SCC 531¹*, that only in exceptional circumstances, the time can be extended, however the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the Corporate Debtor must take place beyond which the Corporate Debtor is to be driven into liquidation.
- 38.10. Reliance is further placed on the judgment passed by the Hon'ble NCLAT in the matter of *Pioneer Rubchem Pvt. Ltd. v. Vivek Raheja, Resolution Professional, Trading Engineers (International) Limited, (2020) SCC OnLine NCLAT 1158²* wherein the Hon'ble NCLAT held that although it is directory that CIRP can be completed upto a period of 330 days or so which is largely to consider the time from of judicial process, hence, practically all attempts be made to complete the CIRP within 270 days.
- 38.11. The learned Counsel further submitted that several intervening applications have been filed. It is submitted that the resolution for initiation of liquidation passed by the CoC on 09 December 2020, and the Application under section 33 for initiation of liquidation has been filed by

¹ Paragraph 127

² Paragraphs 4 & 5

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

the Resolution Professional on 19 January 2021. From 2020 to 2022, the resolution Professional did not receive any expression of interest and after a lapse of more than two and half years, the Resolution Professional received the expression of interest from the Intervenors.

38.12. It is further submitted that there has been no development in the business of the Corporate Debtor in these last two and a half years which has lead to this sudden intervention of the Applicants to revive the Corporate Debtor.

38.13. The learned Counsel further submitted that out of the four Intervention Applications, three of the applications i.e. Inv. P. No. 25/KB/2023, Inv. P. 26/KB/2023 and I.A. (IB) No. 1506/KB/2023 has been affirmed on the same day i.e. 30 August 2023 and Inv. P. No. 27/KB/2023 has been affirmed on 31 August 2023 and all have been numbered serially.

38.14. Hence, it is clear that all these Applicants who claim to be the potential investor for revival of the Corporate Debtor are nothing but the alter ego of the suspended board with the sole motive of restricting the Corporate Debtor to go into liquidation.

38.15. It is further submitted that the Applicant who intend to revive the Corporate Debtor are outsiders in the CIRP and are not stakeholder in the CIRP.

38.16. It is further submitted that during the pendency of the I.A. filed for initiation of Liquidation, the resolution Professional received two letters from Mr. Ayan Kumar Banerjee and N.S. Patel expressing their intent to revive the Corporate Debtor. The Resolution Professional as directed by this Adjudicating Authority convened the 7th CoC meeting held on 27 June 2023, whereby the proposals were considered by the CoC and rejected for lack of seriousness, insufficient data and unacceptable considerations offered. The CoC further resolved to go ahead with the initiation of liquidation of the Corporate Debtor.

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

- 38.17. The learned Counsel submitted that once the CoC has taken a reasoned decision to initiate liquidation proceedings against the Corporate Debtor, the resolution Professional does not have any role to play other than filing appropriate application before this Adjudicating Authority for initiating liquidation proceedings against the Corporate Debtor.
- 38.18. Therefore, the suspended Board of Directors cannot allege the Resolution Professional for not discharging its functions in preparing the information memorandum and inviting expression of interest since even before the CIRP could reach such stage, the CoC has taken the decision to liquidate the Corporate Debtor due to deliberate non co-operation from the CoC.
- 38.19. It is further submitted that if there is any alleged lacuna and/or laxity on the part of the Resolution Professional in discharging her functions as the Insolvency Professional, then the Resolution Professional shall be liable to answer before the IBBI.
- 38.20. It is further submitted that the suspended Board of Directors have no locus standi to intervene and/or interject into the CIRP or challenge the decisions of the CoC. In the present case, the CoC has already resolved that the Corporate Debtor be sent into liquidation and the commercial wisdom of the CoC is paramount and cannot be interfered with. The learned Counsel has placed reliance on the following decisions:
- a. *K. Sashidhar v. Indian Overseas Bank & Ors., (2019) 12 SCC 150*, paragraphs 52, 59 and 64
 - b. *Committee of Creditors of Essar Steel v. Satish Kumar Gupta, (2020) 8 SCC 531*, paragraphs 54 to 65;
 - c. *Kalparaj Dharamshi & Anr. v. Kotak Investment Advisor & Anr., (2021) 10 SCC 401*, paragraphs 158 to 172;
 - d. *Vallal RCK v. Siva Industries & Holdings Limited & Ors., (2022) 9 SCC 803*, paragraph 21.

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

38.21. It is further submitted that the CIRP was never stayed by any of the forums starting from this Adjudicating Authority to Hon'ble Supreme Court of India although he suspended Board of Directors has made every effort to stay the said proceeding. Hence, the I.A. for initiation of liquidation of the Corporate Debtor cannot be unlawfully stalled by the suspended Board of Directors by making frivolous applications.

Inv. P. (IB) No. 05/KB/2024

39. Ld. Counsel Mr. Sharma appearing for the applicant and Ld. Sr. Counsel Mr. Joy Saha for the Respondent RP, were heard.
40. This application has been preferred by the Applicant Budge Budge refineries to seek a direction upon the Resolution Professional to provide necessary documents so that the Applicant can come up with a Resolution plan for revival of the Corporate Debtor, E.C. Bose & Company Private Limited.
41. **This application has been filed by the Applicant primarily to seek the following reliefs; *interalia*:**
- 41.1.To pass an Order allowing the Applicant to intervene in the proceeding being CP (IB) 1388/KB/2018.
- 41.2.To pass an order directing the Resolution Professional and the CoC to provide the necessary documents in the form of information memorandum, valuation report, list of creditors, list of assets and liabilities of the company, list of annual returns and other financial documents, in favour of the Applicant.
- 41.3.To pass an Order allowing the Applicant to submit the Resolution prayed for revival of the Corporate Debtor.
- 41.4.To pass an Order for restarting the CIRP process of the Corporate Debtor.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

41.5.To pass an Order restraining the Resolution Professional from taking any steps for liquidating the company pending adjudication of the petition.

41.6.To pass Ad-interim orders in terms of prayers.

41.7.To pass such further and/or other Order or Orders, direction or directions be given as this Hon'ble Tribunal may deem fit and proper.

42. **Contentions of the Applicant:**

42.1.The Applicant is a public limited company carrying on business in manufacturing and trading of rice bran edible oil in the brand name 'Dr's Choice'.

42.2.The Applicant claims to be a profit-making company having an annual turnover of almost Rs.4000 crore. In substantiation thereof relevant extracts of the balance sheet for the last three years filed with the RoC and the income tax authorities have been furnished.

42.3.The Applicant claims that it is interested in reviving the Corporate Debtor E.C. Bose and Company Private Limited which is the oldest transporter company in India. The Applicant intends to venture into shipping business and as such considering the high reputation and goodwill that the Corporate Debtor had earlier before it went CIRP, the Applicant wants to carry on their business of shipping, sea bedearing and freight forwarding with the Corporate Debtor.

42.4.The Applicant claims that for the purpose of importing oil it has chartered and has been operating two barges at Budge Budge, Kolkata Port Trust.

42.5.The Applicant contends that it has obtained knowledge from its Chartered Accountant that the Corporate Debtor has been admitted into CIRP on October 25, 2019, that the order of admission was challenged before the Hon'ble NCLAT and thereafter before the

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

Hon'ble Supreme Court by the Suspended Board, but the Suspended Board was unsuccessful in both the fora.

- 42.6. It has come to learn that, several applications have been filed in the company petition by several interested persons and entities showing their interest to revive the company by furnishing a resolution plan and that, such applications have been reserved for orders.
- 42.7. The Applicant through its Chartered Accountant has come to know that the Resolution Professional Smt. Gita Sreedhar was all aloy stationed in Chennai she had never taken any steps to revive the company by publishing information memorandum, nor she has taken any steps to publish invitation for expression of interest in Form-G which is required to be mandatorily made in terms of Regulation 36 (A) of the CIRP regulations. As a result no resolution plan came in and the Corporate Debtor could not be revived.
- 42.8. That Applicant send an email to the Resolution Professional as well as the CoC on January 25, 2024 requesting various documents regarding the details of the assets and liabilities of the Corporate Debtor, the latest financial statement, the annual returns as well as other financial documents so that the applicant, on the basis of such financial position of the Corporate Debtor offer a Resolution Plan for revival. However, such email send on 25.1.2024 being forwarded to the Resolution Professional and the CoC, has not been replied to.
- 42.9. The Applicant by way of such email of January 25, 2024 has made an offer of Rs.5,30,00,000/- (Rupees Five Crore Thirty Lakhs only) to the CoC which according to the Applicant is a substantial offer for paying off the dues of the CoC members as well as other creditors, if any.
- 42.10. The Applicant alleges the Resolution Professional without taking steps for reviving the company is pushing the company into

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

liquidation, without even undertaking steps for publication of information memorandum, invitation for expression of interest through newspaper in Form-G for inviting plans for prospective resolution Applicant.

42.11. Mandatory provision of law being grossly violated by the Resolution Professional in the manner in which the CIRP process has been conducted renders it void ab-initio and as such on the basis of a void ab-initio proceeding, the Corporate Debtor which has high chances of revival, cannot be send into liquidation.

42.12. Under such circumstances, the applicant prays for leave to intervene in the proceeding and also prays for direction upon the CoC as well as Resolution Professional to provide the necessary documents in the form of information memorandum, valuation report, list of creditors, list of assets and liabilities of the company, list of annual returns and other financial documents, so that the applicant is in a position to consider the same and give a resolution plan.

43. **In support of the contentions Ld. Counsel Mr D.N. Sharma at hearing, would place reliance on the following decisions rendered by Hon'ble NCLAT in Incab Industries, where Hon'ble NCLAT was of the following view:-**

64. "Completing the Corporate Insolvency Resolution Process strictly in terms of provisions of the I&B Code, as per the Code and Regulations made thereunder, are an essential element of the CIRP. Skipping any statutory process as per the Code would have significant repercussions and impact on the entire Resolution Process under the Insolvency and Bankruptcy Code 2016. In the circumstances, we think it proper to scrutinize every step of the corporate Insolvency Process in the instant case, to see whether it

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

conforms with the statutory provisions under the Insolvency and Bankruptcy Code and Regulations thereunder. Further, we have to see whether any of the procedures prescribed under the Code can be skipped on the pretext of the commercial decision of CoC.”

x x x

80. *“It is important to mention that all the statutory provisions for the conduct of CIRP are interlinked; it doesn't leave any scope to the IRP/RP to skip any of the provisions. CIRP regulations are exhaustive and include a provision to deal with all the eventualities that may arise in the conduct of the CIRP. For example, during CIRP, the IRP has to publish the notice in the newspaper for inviting claims. After receiving and collating the claims, he has to form the Committee of Creditors. Based on the collation of the claims, IRP has to form the Committee of Creditors from among the Financial Creditor. IRP has to assign the voting share to each creditor based on the Financial Debts owed to such creditor. Without verification and admission of a claim, the IRP cannot assign the voting share to a creditor, and without that, there cannot be a meeting of the Committee of Creditors.”*

x x x

85. *“Based on the above discussion, we are the considered opinion that the Constitution of the Committee of Creditors violates the proviso to Section 21(2) of the I & B code 2016 read with 12(3) of CIRP Regulations. Therefore, the Constitution of the creditors' committee is a nullity in the eye of law that vitiates the entire CIRP. Liquidation is like a death knell for the corporate entity/corporate person. Liquidation based on the resolution of the CoC, which consists of related party Financial Creditors having 77.20 % vote share, is a matter of grave concern. Hon'ble Supreme Court in the case of*

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

Phonix ARC (supra) has described the entering of such related party Financial Creditors in the Committee of Creditors as an act of commercial contrivances through which these entities sought to enter the COC, Company Appeal (AT) (Insolvency) No. 348 & 720 of 2020 79 of 82 which could affect the other independent Financial Creditors. An order for liquidation of corporate debtor based on the sole decision of related parties Financial Creditors could be fatal for the existence of the corporate debtor, cannot be sustained. It is also pertinent to mention that when the Constitution of the Committee of Creditors itself is found to be tainted, then the decision of that COC cannot be validated on the pretext of exercise of commercial wisdom.”

43.1.This Adjudicating Authority in CoC of *Tamra Dhatu Udyog Pvt. Ltd. v. Ms. Mamta Binani RP*, I.A. (IB) No. 1459 (KB)2023 and I.A. (IB) No. 1444 (KB) 2023 in Company Petition (IB)/128(KB)2020 reported in (2023) [ibclaw.in](https://www.ibclaw.in) 650 NCLT that:

“We are mindful of the objective of the Code and commercial wisdom of COC being of paramount importance. Hence, we allow this application and allow all the Participating Resolution Applicants by giving a last, equal and fair opportunity to submit their revised and/or enhanced resolution plans to the RP of the Corporate Debtor. If required fresh timelines may be provided to all the Participating Resolution Applicants who wish to enhance and/or revise their resolution plans, keeping in view the prescribed timelines of completion of the CIR Process and voting period may also be extended if necessary.”

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

43.2. We rely upon the judgment of the Hon'ble Supreme Court of India in *Committee of Creditor of Essar Steel India Limited v. Satish Kumar Gupta and Others*, (para 79) where it was held that:

“On the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days.”

“There again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the Corporate Debtor is to be driven into liquidation.”

44. **Per Contra Ld. Senior Counsel Mr. Joy Saha, while vehemently opposing the prayer of the Applicant would submit as under:**

44.1. That CIRP was ordered on 25.10.2019

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

- 44.2. An appeal, preferred before Hon'ble NCLAT, was dismissed on 27.02.2023.
- 44.3. Civil Appeal preferred before Hon'ble Apex Court was dismissed on 27.02.2023.
- 44.4. Thereafter, an application seeking liquidation was taken out in 2021.
- 44.5. Long thereafter, this intervention application has been preferred.
- 44.6. It is wrong to allege that the RP has taken no steps as she had no other choice but to await the outcome of pending appeals.
- 44.7. Meanwhile, CoC decided to go for liquidation, as 330 days of CIRP was long over, for which RP cannot be blamed.

Analysis and Findings

45. Heard the learned Senior Counsel appearing on behalf of the Resolution Professional, learned Senior Counsel appearing on behalf of the suspended Bord of Directors and learned Counsel on behalf of the Applicants and we have considered the rival contentions and perused records
46. The Resolution Professional has filed the application for initiation of liquidation for two reasons, one, the CIRP period of 330 days have expired, secondly because there is no chance for the revival of the Corporate Debtor.
47. Before we proceed with deciding the I.A.s along with the Intervention Petitions, we would like to refer to the timeline from the date of initiation of CIRP:

Sl. No.	Date	Event
1.	25.10.2019	Corporate Debtor was admitted into CIRP. Mr. Swarnamani Ramasamy was appointed as the IRP.
2.	05.11.2019	Mr. Swarnamani Ramasamy informed that he could not undertake the appointment as IRP

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

Sl. No.	Date	Event
3.	02.12.2019	IRP was replaced by order of this Adjudicating Authority. Geetha Sridhar was appointed as IRP
4.	19.12.2019	The Hon'ble NCLAT passed an interim order restraining the IRP not to proceed with public announcement and formation of CoC till further orders.
5.	10.02.2020	The suspended board was directed to cooperate with the RP pursuant to C.A. (IB) No. 168/KB/20 filed under section 19(2) of the Code.
6.	27.02.2020	Hon'ble NCLAT upheld the order of admission.
7.	03.03.2020	Form A published
8.	25.03.2020	1 st CoC meeting
9.	03.07.2020	2 nd CoC meeting
10.	19.08.2020	3 rd CoC meeting
11.	09.10.2020	4 th CoC meeting
12.	20.11.2020	5 th CoC meeting
13.	01.12.2020	Arbitration award between Sugesan Transport and CD
14.	02.12.2020	6 th CoC meeting
15.	09.12.2020	Adjourned 6 th CoC meeting
16.	17.12.2020	I.A. 1292/KB/2020 filed for exclusion of 69 days from 19.12.2019 to 27.02.2020 due to litigation and exclusion of 208 days due to Covid-19 from 16.03.2020 to 09.10.2020 was allowed.
17.	18.01.2021	I.A. for initiation of liquidation of Corporate Debtor filed, i.e. I.A. (IB) No. 116/KB/2021.
18.	09.11.2021 06.01.2022 08.03.2022	In view of the appeal pending before the Hon'ble SC, the CP was adjourned.
19.	20.04.2022	CP was adjourned sine die to await outcome of the appeal before the Hon'ble Supreme Court.
20.	27.02.2023	The Hon'ble Supreme Court upheld the order admitting the Corporate Debtor into CIRP
21.	27.06.2023	7 th CoC meeting was held.

48. The issue that has cropped up for determination is whether the RP, without publishing Information Memorandum (IM), Expression of Interest

(EoI)/Form G could straight away, at the behest of the Financial Creditors seek Liquidation of the Corporate Debtor (CD).

49. **The relevant statutory provisions applicable here are the following:**

49.1. **Section 29 IBC envisages:**

*“The resolution professional **shall** prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.*

The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes:-

- a. To comply with provisions of law for the time being in force relating to confidentiality and insider trading;*
- b. To protect any intellectual property of the Corporate Debtor it may have access to; and*
- c. Not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.”*

49.2. **Regulation 36A lays down:**

*“The Resolution Professional **shall** publish brief particulars of the invitation for expression of interest in Form G of the (Schedule-1) at the earliest, (not later than sixtieth day) from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.*

Clarification: *The resolution professional after the approval of the committee may invite a resolution plan for each real estate project or group of projects of the corporate debtor.*

*(2) The Resolution Professional **shall** publish Form G*

(i) in one English and one regional language newspaper with wide circulation at the location of the registered office and

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

principal office, if any, of the corporate debtor and any other location where in the opinion of the resolution professional, the corporate debtor conducts material business operations;

(ii) on the website, if any, of the corporate debtor;

(iii) on the website, if any, designated by the Board for the purpose; and

(iv) in any other manner as may be decided by the committee.

(3) The Form G in the [Schedule-I] shall-

(a) state where the detailed invitation for expression of interest can be downloaded or obtained from, as the case may be; and

(b) provide the last date for submission of expression of interest which shall not be less than fifteen days from the date of issue of detailed invitation.

(4) The detailed invitation referred to in sub-regulation (3) shall-

(a) specify the criteria for prospective resolution applicants, as approved by the committee in accordance with clause (h) of sub-section(2) of section 25;

(b) state the ineligibility norms under section 29A to the extent applicable for prospective resolution applicants;

(c) provide such basic information about the corporate debtor as may be required by a prospective resolution applicant for expression of interest; and

(d) not require payment of any fee or any-refundable deposit for submission of expression of interest.

(4A) Any modification in the invitation for expression of interest may be made in the manner as the initial invitation for expression of interest was made:

Provide that such modification shall not be made more than once.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

(5) A prospective resolution applicant, who meet the requirements of the invitation for expression of interest, may submit expression of interest within the time specified in the invitation under clause (b) of sub-regulation (3).

(6) The expression of interest received after the time specified in the invitation under clause (b) of sub-regulation (3) shall be rejected.

(7) An expression of interest shall be unconditional and be accompanied by

(a) an undertaking by the prospective resolution applicant that it meets the criteria specified by the committee under clause (h) of sub-section (2) of section 25;

(b) relevant records in evidence of meeting the criteria under clause (a);

(c) an undertaking by the prospective resolution applicant that it does not suffer any ineligibility under Section 29A to the extent applicable;

(d) relevant information and records to enable an assessment of ineligibility under clause (c);

(e) an undertaking by the prospective resolution applicant that it shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process;

(f) an undertaking by the prospective resolution applicant that every information and records provided in expression of interest is true and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the Code; and

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

(g) *an undertaking by the prospective resolution applicant to the effect that it shall maintain confidentially of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under Sub-Section (2) of Section 29.*

(8) *The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with*

(a) the provisions of clause (h) of sub-section (2) of section 25;

(b) the applicable provisions of section 29A, and

(c) other requirements, as specified in the invitation for expression of interest.

(9) *The resolution professional may seek any clarification or additional information or document from the prospective resolution applicant for conducting due diligence under sub-regulation (8).*

(10) *The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.*

(11) *Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) may be made with supporting documents within five days from the date of issue of the provisional list.*

(12) *On considering the objections received under sub-regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.*”

“36A. Invitation of Resolution Plans

- (1) The resolution professional shall issue an invitation, including evaluation matrix, to the prospective resolution applicants in accordance with clause (h) of sub-section (2) of section 25, to submit resolution plans at least thirty days before the last date of submission of resolution plans.
- (2) *Where the invitation does not contain the evaluation matrix, the resolution professional shall issue, with the approval of the committee, the evaluation matrix to the prospective resolution applicants at least fifteen days before the last date for submission of resolution plans.*
- (3) *The resolution professional may modify the invitation, the evaluation matrix or both with the approval of the committee within the timelines given under sub-regulation (1) or sub-regulation (2), as the case may be.*
- (4) *The timelines specified under this regulation shall not apply to an ongoing corporate insolvency resolution process.*
 - (a) *Where a period of less than thirty-seven days is left for submission of resolution plans under sub-regulation (1);*
 - (b) *Where a period of less than eighteen days is left for submission of resolution plans under sub-regulation (2);*
- (5) The resolution professional shall publish brief particulars of the invitation in Form G of the schedule:
 - (a) *On the website, if any, of the corporate debtor; and*
 - (b) *On the website, if any, designated by the Board for the purpose.”*

50.1. In *Essar Steel (supra)* Hon'ble Apex Court, in no uncertain terms has laid down the following:

“In terms of the judgment of the Hon’ble Apex Court dated 05.11.2019 in Committee of Creditor of Essar Steel India Limited Vs. Satish Kumar Gupta and Others, (2020) 8 SCC 531 (para 127) it was held that if, on the fact of a given case it can be shown to the Adjudicating Authority or the Appellate Authority under the Code that only a short period of time is left for completion of the Insolvency process beyond 330 days and it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation, it may be upon the Adjudicating Authority in such case for to extend the time.”

50.2. In *Incab (supra)* having found that the Resolution Professional failed to discharge duty and responsibility under IBC and the connected regulations, the Hon'ble Appellate Court held that the whole process of CIRP has been vitiated, The Corporate Insolvency being conducted in utter disregard to the provisions of the code, such lapses were held to have vitiated the entire corporate insolvency resolution process which led to setting aside and quashing the order passed by directing liquidation.

51. **Impact of Pendency of Appeals**

51.1. In the present case we have failed to decipher any order in the interim, passed in the higher fora that restrained the RP from causing publication of IM, EoI, Form G etc, or to carry on with its statutory duties under the Code.

51.2. The reason why RP restrained itself from taking any steps pursuant to the Code of could neither be comprehended nor countenanced.

52. Let us now consider whether the entire period of CIRP has expired. From 25 October 2019 till the date of the 6th CoC meeting held on 09 December 2020, ranges to a total of 411 days. *Vide* order dated 17 December 2020, this Adjudicating Authority excluded the period of 69 days from 19

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

December 2019 to 27 February 2020 due to litigation and an exclusion of 208 days due to Covid-19 from 16 March 2020 to 09 October 2020 in I.A. (IB) No. 1292/KB/2020, which is a total of 277 days. Hence, considering the same, only 134 days have expired in the CIRP period. No work has been done after 18 January 2021 and the Company Petition was adjourned till the Hon'ble Supreme Court decided on the appeal.

53. In view of the above, taking into consideration the period of exclusion, it is clear that only 134 days have expired and not 330 days.
54. The Resolution Professional has time and again submitted that the suspended Board of Management did not cooperate with the Resolution Professional, but on perusal of the letters and emails annexed in I.A. (IB) No. 1370/KB/2023³, from the email dated 16 January 2020, it is seen that documents relating to appeal were sent to the Resolution Professional, further Mr. Deborshi Sadhan Bose has replied to the emails of the Resolution Professional since 2020, a point wise note has been sent to the Resolution Professional.
55. It is seen that in several emails Mr. Deborshi Sadhan Bose has mentioned the health issues faced by him and his father, and the same had been informed to the Resolution Professional as well. In the interregnum there was a bereavement in the family as well.
56. Further, the Suspended Board of Management has sent her the books of accounts, given the details of assets, given a point wise reply. It is also the duty of the Resolution Professional to appoint registered valuers and assess whatever is possible with respect to the assets of the Corporate Debtor.
57. On perusal of the minutes of the 2nd CoC meeting, the Resolution Professional has mentioned a list of assets of the Corporate Debtor, in the same meeting the CoC had requested the Resolution Professional to enquire about the assets and the vehicles that were registered under the

³ Annexure I

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

name of the Corporate Debtor. A detailed list of assets have also been mentioned in the 4th CoC meeting which also mentions Trade receivables. The question that arises is whether the Resolution Professional has taken any step to recover the amounts due from the list of Trade Receivables and advance to Suppliers.

58. The Resolution Professional has also mentioned that an asset of the Corporate Debtor was lying with the State Bank of India, who has agreed to handover the possession of the same to the Resolution Professional.
59. In due course, an arbitration award was also passed in favour of the Corporate Debtor.
60. In the course of the hearing, in order to address the issues raised by the intervenors and objectively evaluate the work done by the Resolution Professional, we directed the Resolution Professional on 21 November 2023 to file an affidavit indicating the timelines followed in the CIRP proceeding as envisaged under regulation 40A of the CIRP Regulations. The resolution Professional filed a supplementary affidavit on 24 January 2024, wherein the Resolution Professional has submitted the following table:

<i>Section of the Code/regulation No.</i>	<i>Description of Activity</i>	<i>Latest timeline under regulation 40A</i>	<i>Actual Date</i>
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	25.10.2019
Regulation 6(1)	Publication of Public Announcement	T+3	29.02.2020
Section 15(1)(c)/Regulation 12(1)	Submission of Claims	T+14	16.03.2020
Regulation 13(1)	Valuation of Claims	T+21	20.03.2020

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

<i>Section of the Code/regulation No.</i>	<i>Description of Activity</i>	<i>Latest timeline under regulation 40A</i>	<i>Actual Date</i>
Section 26(6A)/Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	NA
Regulation 17(1)	Filing Report Certifying Constitution of CoC	T+30	25.03.2020
Regulation 35A	Determination of fraudulent and other transactions	T+115	--
Regulation 27	Appointment of two Registered Valuers	T+47	---
Regulation 36(1)	Submission of Information Memorandum to CoC	T+95 ⁴	---
Regulation 36A	Invitation of EoI	T+75	---
	Publication of Form G	T+75	---
	Provisional List of Resolution Applicant	T+100	---
	Final List of Resolution Applicants	T+115	
Regulation 36B	Issue of Request for resolution Plan, which includes Evaluation Matrix and Information Memorandum to	T+105	---

⁴ T+54 written in the affidavit

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

<i>Section of the Code/regulation No.</i>	<i>Description of Activity</i>	<i>Latest timeline under regulation 40A</i>	<i>Actual Date</i>
	resolution Applicants		
Section 30(6)/regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	---
Section 31(1)	Approval of Resolution Plan	T+180	---

61. From the timeline submitted by the Resolution Professional under regulation 40 of the CIRP Regulations, it is amply clear that the Resolution Professional appears to have made no efforts towards achieving the principal objective of the code i.e. reviving the Corporate Debtor. The Resolution Professional has not appointed any registered valuers, nor has prepared the Information Memorandum, let alone publish an Expression of Interest.
62. Other than the assets that can be deduced from the perusal of the minutes of the meetings it is also important to note that the Company is 162 years old, and hence may command a brand value as well.
63. It is thus clear that there is lack of due diligence on the part of the Resolution Professional. Further, the CoC comprised of two Financial Creditors, but after the reconstitution of the CoC, keeping in view the Arbitration Award, it can be seen that one member in the CoC has the majority vote. Hence, the CoC has also failed to take a holistic view. The entire CIRP of the Corporate Debtor seems to be have been done with a lackadaisical manner and decision to send the CD to liquidation taken in a hurried manner. Due to prolonged litigation, the RP has convinced the CoC to take a stand of convenience.

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

64. Although the Suspended Board of Management has given the list of assets, and the Resolution Professional being well aware of the asset i.e. the security with State Bank of India, and those mentioned in the minutes of the CoC meeting, the Resolution Professional has taken no steps to assess the assets and try revive the Corporate Debtor.
65. From a causal look at the timeline provided under regulation 40A of the CIRP Regulations, the lackadaisical attitude/unprofessional attitude of the Resolution Professional can be seen.
66. The present case is an exception on the face of it, wherein the Resolution Professional has failed to fulfil its obligations to the fullest. The Resolution Professional was appointed on 02 December 2019, but due to interim stay by the Hon'ble NCLAT on 19 December 2019 could only begin the work of publication of Form A and formation of CoC after 27 February 2020 and completed the entire CIRP within a short period of time.
67. Therefore, there is no gainsaying that the procedures prescribed by the statutory provision can be skipped at the sweet will of the RP.
68. This Adjudicating Authority in CoC of ***Tamra Dhatu Udyog Pvt. Ltd. v. Ms. Mamta Binani RP***, I.A. (IB) No. 1459 (KB)2023 and I.A. (IB) No. 1444 (KB) 2023 in **Company Petition (IB)/128(KB)2020** reported in (2023) [ibclaw.in](https://www.ibclaw.in) 650 NCLT that:

“We are mindful of the objective of the Code and commercial wisdom of COC being of paramount importance. Hence, we allow this application and allow all the Participating Resolution Applicants by giving a last, equal and fair opportunity to submit their revised and/or enhanced resolution plans to the RP of the Corporate Debtor. If required fresh timelines may be provided to all the Participating Resolution Applicants who wish to enhance and/or revise their resolution plans, keeping in view the

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
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& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

prescribed timelines of completion of the CIR Process and
voting period may also be extended if necessary.”

69. The CoC in the 7th meeting rejected the proposal of N.S. Patel and Mr. Ayan Kumar Banerjee stating that the proposals did not have any details and is without any documentary support and/or information about the revival of the Corporate Debtor and the amount proposed is quite low. But how can one expect a proper proposal for revival of the Corporate Debtor if proper details of the Corporate Debtor is not given to the interested party.
70. We are well aware that timelines have value and are sacrosanct, however considering the uncertain and foggy inferences being drawn around the entire conundrum, we deem it appropriate to give an opportunity for the revival of this Corporate Debtor, in keeping with the main objective of the Code.
71. In view of the above, the decision of CoC for the Liquidation of the Corporate Debtor needs to be set aside
72. However, since a considerable period is lost due to pendency of appeals which period from filing of appeal before Hon'ble NCLAT to dismissal of Civil Appeal on 27.02.2023 should stand excluded.
73. **Accordingly, we pass the following Orders:**
- 73.1. The decision of CoC to liquidate the CD is set aside.
- 73.2. The period from the date of filing appeal before the Hon'ble NCLAT till disposal of Civil Appeal by the Hon'ble Apex Court stands excluded from the computable 330 days period of CIRP.
- 73.3. ***Mr. Sandip Mitra***, Resolution Professional, having Registration No. ***IBBI/IPA-001/IP-P00497/2017-18/10885*** having email id. ***sasoso@gmail.com*** is hereby appointed as the Resolution Professional, replacing Ms. Geeta Sridhar.

IN THE NATIONAL COMPANY LAW TRIBUNL
KOLKATA BENCH (Court-II)
SPECIAL BENCH

I.A. (IB) No. 1370/KB/2023 & I.A. (IB) No. 116/KB/2021
& I.A.(IB) No. 1506/KB/2023 & Inv. P. (IB) No. 05/KB/2024
& Inv.. P. (IB) No. 25/KB/2023 & Inv. P. (IB) No. 26/KB/2023
& Inv.. P. (IB) No. 27/KB/2023
in C.P. (IB) No. 1388/KB/2018

- 73.4.Ms. Geeta Sridhar shall handover all the documents with respect to the Corporate Debtor to the Resolution Professional within one week of uploading of this order.
- 73.5.The outgoing RP will be paid all her legitimate dues within 4 weeks, if not already paid.
- 73.6.The CIRP of the Corporate Debtor is rebooted and the newly appointed RP shall proceed from the stage of publishing IM, EoI/Form G. The suspended board shall afford all out cooperation to the RP by providing him all the information that would be required for preparation of the IM. The RP shall complete the entire process in four months from the date of receipt of a copy of this order, failing which appropriate application seeking liquidation of CD may be filed.
74. In view of the above directions, we dismiss I.A. (IB) No. 116/KB/2021 and allow the prayers in I.A. (IB) No. 1370/KB/2023 and is hereby disposed. A new Resolution Professional has been appointed hence I.A. (IB) No. 1506/KB/2023, Inv. P. (IB) No. 25/KB/2023, Inv. P. (IB) No. 26/KB/2023, Inv. P. (IB) No. 05/KB/2024 and Inv. P. (IB) No. 27/KB/2023 are hereby disposed.
75. List the Company Petition on **19-04-2024** for filing of progress reports.
76. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
77. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order signed on this, the 13th day of March, 2024.

GGRB_LRA/SG_Steno