IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT– I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **27.03.2026** THROUGH VIDEO CONFERENCE

CORAM: HON'BLE SHRI SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : IDBI Trusteeship Services Ltd
Vs
Tuscan Consultants and Developers Pvt. Ltd

MAIN PETITION NUMBER : CP(IB)/81(CHE)2023

(IA/MA) APPLICATION NUMBERS

IA(Liq)/36(CHE)/2024; IA(IBC)/300(CHE)2024

ORDER

IA(Liq)/36(CHE)/2024
IA(IBC)/300(CHE)2024

Present: Ms. Pragati Prajapti, Ld. Counsel for the RP.
Mr. Ashok Pandey, Ld. Counsel for the Respondents.

Vide separate order pronounced in the open Court, application IA(IBC)/300(CHE)2024 is disposed of with directions.

Vide another order, the application IA(Liq)/36(CHE)/2024 is allowed.

Mr. Ashok Mittal is appointed as the Liquidator.

-sd-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

-sd-
[SANJIV JAIN]
MEMBER (JUDICIAL)

MS

Date: 27.03.2026

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

IA(IBC)/300(CHE)/2024
In
CP(IB)/81(CHE)/2023

(filed Sections 14, 70(1)(A), 74(2) and 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 ***Tuscan Consultants and Developers Private Limited***

Mr. Ashok Mittal,
Resolution Professional of ***Tuscan Consultants and Developers Private Limited***
Registration Number: IBBI/IPA-001/IP-P02549/2021-2022/13889
S-138, 2nd Floor, B-Wing, Express Zone Commercial Hub,
Western Express Highway, Goregaon East, Mumbai -400063

……. Applicant/ Resolution Professional

Vs

1.Vasudevan Sathyamoorthy
Suspended Director of M/s Tuscan Consultants
And Developers Private Limited
G-2, Sona Palace 34, Norris Road Richmond Town,
Bangalore- 560025, Karnataka ***………..Respondent No.1***

2.Sathya Moorthy Sai Prasad
Suspended Director of M/s Tuscan Consultants
And Developers Private Limited
2nd Floor No.35/1, Yellappa Chetty Layout, Civil Station,
Ulsoor Road, Bangalore-560042, Karnataka ***………..Respondent No.2***

Order Pronounced on 27th March, 2026

CORAM

SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
SHRI. VENKATARAMAN SUBRAMANIAN, MEMBER (TECHNICAL)

For Resolution Professional: Mr. Amir Bavani
For Respondents: Debopriyo Moulik

ORDER

(Heard through Hybrid mode)

1. This Application has been filed under Sections 14, 70(1)(A), 74(2) and 60(5) of The Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking the following reliefs:

i. Allow the instant Application;

ii. Direct the Respondents to remit the amount of Rs. 84,04,879/- to the bank account of the Corporate Debtor,

iii. Issue necessary directions against the Respondents under Section 74(2) of the Code;

iv. Issue necessary directions to punish the Respondents under Section 70(1)(a);

v. Direct the Respondents to provide details of transactions from 10.10.2023 13.10.2023 and the details of beneficiaries in whose account such amounts were diverted to; and to

vi. Pass any other order(s) as this Tribunal may deem fit in the facts and circumstances of the present case

2. It is stated that intimation with respect to the commencement of CIRP of the Corporate Debtor and declaration of moratorium thereof was communicated to the Respondents by the Applicant vide email dated 12.10.2023. The Applicant in the email had pointed out and explained that the act of withdrawing or transferring any amount of money from the bank account of the Corporate Debtor, post commencement of CIRP, would amount to contravening of Section 14 of the Code. Additionally, it was pointed out that any violation of moratorium, as declared by the NCLT is a punishable offence under the Code and shall attract penal actions in terms of Section 74(2) of the Code, which states that any creditor that violates the provisions of section 14, any person who knowingly and willfully authorized or permitted such contravention by a creditor shall be punishable with imprisonment for a term ranging from one year to five years, or with fine ranging from one lakh rupees to one crore rupees, or with both. Copy of the email dated 12.10.2023 is placed as **ANNEXURE A-3.**

3. It is stated that the Respondent No. 1 replied on 13.10.2023 to the email, stating that, he is travelling and unable to respond. On receipt of such response, the Applicant intimated the Respondent No. 1, that the Applicant would be visiting the Registered Office of the Corporate Debtor on 16.10.2023. He also asked the Respondent No.1 to make himself available and keep the documents/information/explanation ready as sought vide email dated 12.10.2023. Copy of the emails dated 13.10.2023 are placed as **ANNEXURE A-4 (Colly.).**

4. It is stated that the Respondent No.1 despite being aware of the initiation of the CIRP, transferred an amount of Rs. 84,04,879/- from the bank account of the Corporate Debtor, maintained with the HDFC Bank Limited at Ulsoor II Branch, to various accounts during the period from 10.10.2023 to 13.10.2023. It is stated that the Respondent No.1 acted illegally and in contravention of the moratorium declared by this Tribunal under Section 14 of the Code.

5. The Applicant has relied on the decision in the case of ***Sandeep Khaitan, National Plywood Industries Ltd. Versus JSVM Plywood Industries Ltd. & Anr, [2021 SCC Resolution Professional for OnLine SC 338],*** wherein the Hon'ble Supreme Court has held that the role of the insolvency professional is neatly carved out, that from the date of admission of application and the appointment of Interim Resolution Professional, the management of the affairs of the Corporate Debtor is to vest in the Interim Resolution Professional. With such appointment, the powers of the Board of Directors or the Partners of the Corporate Debtor shall stand suspended. Section 17 of the Code declares that the powers of the Board of Directors or the partners are to be exercised by the Interim Resolution Professional. Financial Institutions are to act on the instructions of the Interim Resolution Professional. It was held that with the declaration of the moratorium, the prohibitions mentioned under Section 14 of the Code come into force and the impact of the moratorium includes prohibition of transferring, encumbering, alienating, or disposing of by the Corporate Debtor of any of its assets. Additionally, the assets of the company include the amounts lying to the credit in the bank account.

6. The dates of the transactions and the amounts withdrawn by the Respondent behind the back of the Applicant after the initiation of CIRP, are tabulated below:

After initiation of CIRP but before the intimation of the order to the Respondent No. 1:

Date of Transaction	Transaction Amount
10.10.2023	Rs. 12,000/-
10.10.2023	Rs. 18,000/-
10.10.2023	Rs. 2,80,000/-
10.10.2023	Rs. 818/-
10.10.2023	Rs. 24,700/-
10.10.2023	Rs. 34,800/-
10.10.2023	Rs. 40,300/-
10.10.2023	Rs. 23,800/-
10.10.2023	Rs. 31,000/-
11.10.2023	Rs. 4,00,000/-
11.10.2023	Rs. 1,000/-
12.10.2023	Rs. 1,000/-
12.10.2023	Rs. 55,261/-
12.10.2023	Rs. 75,000/-
12.10.2023	Rs. 9,50,000/-
12.10.2023	Rs. 4,00,000/-
12.10.2023	Rs. 8,00,000/-
12.10.2023	Rs. 2,16,000/-
12.10.2023	Rs. 20,000/-
TOTAL	**Rs. 33,83,679/-**

ASHOK MITTAL IBBI/PA-001/ IP-P-02579 2021-2022/ 13689 INSOLVENCY

7. It is submitted that the admission order dated 09.10.2023 was pronounced in the open court, wherein the counsel for Corporate Debtor was present.

After intimation of the admission order dated 09.10.2023 Respondent No. 1 made the following submissions:

Date of Transaction	Transaction Amount
13.10.2023	Rs. 20,000/-
13.10.2023	Rs. 50,00,000/-
13.10.2023	Rs. 1,200/-
TOTAL	**Rs. 50,21,200/-**

(Copy of the HDFC, Ulsoor II Branch, Bank Account Statement of the Corporate Debtor is placed as **ANNEXURE A-5.)**

8. The Applicant has relied on the decision of NCLT Jaipur Bench in the case of ***S. Metal Works v/s M/s Jeph Bev Private Limited [CP No. 26/7/JPR/2020]*** which following the decision rendered by Hon'ble NCLAT, New Delhi in the case of ***Manoj K. Daga v/s Isgec Heavy Engineering Pvt. Ltd (Company Appeal (AT) (Ins) No. 1113 of 2019)***, noted that the order was pronounced in the Open Court; therefore the defence of the Suspended Director that he got the knowledge of the order few days later is not legit. The Respondent has violated the provision of Section 14 of the Code and therefore, is liable to be prosecuted under Section 74 of the Code.

9. It is stated that the Applicant has observed discrepancies in the bank statement of the Corporate Debtor pertaining to certain withdrawal entries by the Suspended Directors of the Corporate Debtor after the initiation of CIRP. Accordingly, the Applicant vide email dated 13.12.2023, sought an explanation from Respondent No.1 and asked Respondent No.1 to facilitate the reversal of the transactions. The Applicant also sent reminder emails dated 19.12.2023 and 05.01.2024 to the Respondent No.1, however the Applicant received no response from the Respondent No.1. It is stated that Respondent No. 1 despite being aware of the initiation of CIRP, transferred an amount of Rs. 84,04,879/-from the bank account of the Corporate Debtor, maintained with the HDFC Bank Limited at Ulsoor II Branch, to various accounts between the period 10.10.2023 to 13.10.2023, which is illegal and in contravention to the moratorium declared by this Tribunal, under Section 14 of the Code, and the same is punishable under Section 74(2) of IBC. Copy of the email dated 13.12.2023, 19.12.2023 and 05.01.2024 are placed as ANNEXURE A-6 (COLLY.).

10. The Applicant relied on the decision in the case of ***Vikas Jeph vs Anoop Bhatia Resolution Professional for Jeph Bev Pvt. Ltd. [Comp. App. (AT) (Ins) No. 1608 of 2023]***, wherein Hon'ble NCLAT, Principal Bench, New Delhi, has held that once the order of admission is passed and moratorium is imposed under Section 14 of the Code, the powers of the Board get suspended and management and the affairs of the Corporate Debtor vest with the IRP. The Hon'ble NCLAT upheld the order of NCLT, Jaipur Bench, which directed the Suspended Director of the Corporate Debtor to reinstate the Corporate Debtor in the same position as it was at the time of initiation of CIRP.

11. It is stated that the Applicant informed about these withdrawals to the members of the CoC in the 2nd meeting held on 18.12.2023, stating that he has asked the suspended management to reverse the debit transactions made in the bank account from 10.10.2023 onwards and in case the suspended director fails to do so, he will seek directions from the Tribunal to reverse the transactions. Copy of the minutes of the 2nd CoC meeting dated 18.12.2023 is placed as **ANNEXURE A-7.**

Reply and Written submission filed by the Respondents

12. The Respondents have filed their reply in the form of affidavit on 03.07.2024. The Respondents stated that Application is not maintainable as the Applicant is not empowered to initiate prosecution under Section 70 and 74 of the IBC and the Application goes against the provisions laid down under Section 236 of the IBC. It is trite law, that the Resolution Professional cannot initiate prosecution against the suspended directors under Section 70 of the IBC in the absence of a complaint by the Insolvency and Bankruptcy Board of India ("Board") or the Central Government.

13. The Respondents stated that the transactions were completely genuine and bona fide and that they have not violated Section 19 of the IBC as the substantial sum of Rs. 84,04,789/- did not belong to the Corporate Debtor. They stated that certain amount was credited to the Bank account accidentally from the sister concerns of the Corporate Debtors and hence, the Respondents withdrew the said sums to return to the bank accounts of the sister concerns of the Corporate Debtor. The Respondents also stated that certain sums of monies out of Rs. 84,04,789/- were paid towards the salaries of the employees of the Corporate Debtor and towards payments to the Electricity Department of Bangalore, BESCOM.

14. The details of the transactions as mentioned in Paragraph No. 10 (a) of the application are as follows:-

Sr. No.	Date	Amount Withdrawn (In Rs.)	Remarks
1.	10-Oct-23	12,000	Salary Paid to the Employee of the Corporate Debtor, Mrs. Chandrakala Devi
2.	10-Oct-23	18,000	Salary Paid to the Employee of the Corporate Debtor, Mr. C P Narasimhalu
3.	10-Oct-23	2,80,000	Loan Repayment to Respondent No. 1, against 25 crs loan
4.	10-Oct-23	818	BESCOM payment on behalf of Group company of the Corporate Debtor, Ozone Infracon Pvt. Ltd.
5.	10-Oct-23	24,700	Salary Paid to the Employee of the Corporate Debtor, Mrs. Aurosmitha
6.	10-Oct-23	34,800	Salary Paid to the Employee of the Corporate Debtor, Mr. Shankarappa H
7.	10-Oct-23	40,300	Salary Paid to the Employee of the Corporate Debtor, Mrs. Harsha Srivastava
8.	10-Oct-23	23,800	Salary Paid to the Employee of the Corporate Debtor, Mr. Krishna N
9.	10-Oct-23	31,000	Amount Transferred to Group company Positive Housing Pvt Ltd for salary payment
10.	11-Oct-23	4,00,000	Amount returned to the bank account of Tuscan Agrow, the group company of the Corporate Debtor, which was accidentally credited on the same day.
11.	11-Oct-23	1,000	Amount transferred to Platinum Holdings Pvt Ltd., one of the group

Sr. No.	Date	Amount Withdrawn (In Rs.)	Remarks
			companies of the Corporate Debtor, for admin expenses
12.	12-Oct-23	1,000	Amount transferred to Platinum Holdings Pvt Ltd., one of the group companies of the Corporate Debtor, for admin expenses
13.	10-Oct-23		Rs. 15,00,000 transferred to the account accidently by Ozone Holdings Pvt. Ltd, one of the group company of Corporate Debtor
14.	12-Oct-23	55,262	Payment made to BESCOM on behalf of the Group company made out of Rs. 15 Lakhs credited.
15.	12-Oct-23	75,000	Payment made to one Mr. S Venkatesh on behalf of the Respondent No. 1 of Rs. 15 Lakhs credited.
16.	12-Oct-23	9,50,000	Withdrawn by the Respondent No. 1 from the Rs. 15 Lakhs credited.
17.	12-Oct-23	4,00,000	Amount transferred to Tuscan Properties Pvt. Ltd, one of the group company of the Corporate Debtor, from the remaining amount of Rs. 15 Lakhs credited.
18.	12-Oct-23	8,00,000	Amount returned to Ozone Urbana Infra Developers Pvt Ltd, one of the group company of the Corporate Debtor as it was accidentally credited by another group company of the Corporate Debtor.
19.	12-Oct-23	20,000	Amounts paid towards scanning, notary & other expenses in relation to the proceedings before this Hon'ble Tribunal
20.	12-Oct-23	2,16,000	Audit fee 2020-21 paid to Pani & Associates from the Rs. 2 Lakhs deposited by one of the group

Sr. No.	Date	Amount Withdrawn (In Rs.)	Remarks
			companies of the Corporate Debtor on October 12, 2023
	Total	84,04,879	

15. With respect to the transactions stated in Paragraph No. 10 (b), the Respondents stated that on October 13, 2023, the contractor of the group company of the Corporate Debtor, Shapoorji Pallonji Company Development had deposited a sum over Rs. 50 Lakhs and the same was returned to Ozone Holdings Pvt. Ltd., one of the group companies of the Corporate Debtor.

16. The Respondents in their written submission filed on 27.09.2024 stated that the Application is not maintainable and liable to be dismissed for the following reasons:

a. That the Applicant has sought prosecution under Sections 70 (1) (a) and 74 (2) of IBC which are included under the Chapter- **"Offence and Penalties"**. It is trite law that the offences and penalties as prescribed and dealt with in Chapter VII of the IBC deal with appropriate order of punishment which can be passed only by way of trial of offences by a Special Court in terms of Section 236 of the Code.

b. It is apposite to reproduce Section 236 of IBC. It reads as –

*"**Section 236: Trial of offences by Special Court. 236.***

(1) Notwithstanding anything in the Code of Criminal Procedure, 1973, offences under this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013.

(2) No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf.

(3) The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor. (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in case of a complaint under sub-section (2), the presence of the person authorised by the Central Government or the Board before the Court trying the offences shall not be necessary unless the Court requires his personal attendance at the trial.

17. The Respondents stated that it is undisputed that no complaint has been made by the Board or Central Government as mandated under Section 236 of IBC. In the absence of fulfilment of the ingredients of Section 236, this Application is not maintainable. It is stated that Hon'ble NCLAT has, on multiple occasions, held that the Adjudicating Authority does not have the powers to initiate proceedings under Section 70 of the IBC. In order to initiate prosecution under Section 70 of the Code, complaint has to be filed by the Insolvency and Bankruptcy Board of India (IBBI) or Central Government or person authorized by the Central Government. The Respondents have relied on the following judgments of Hon'ble NCLAT:

i. Vivek Prakash (Suspended Director & MD) v. Dinesh Kr. Gupta, Liquidator of M/s Jarvis Infratech Pvt. Ltd. C.A.(AT)(Ins.) No. 169 of 2022. Relevant extract is as under:

> *"8. Thus, prosecution under Section 70 has to be on complaint filed by the Board or Central Government or person authorized by the Central Government. The submission of the Learned Counsel for the Appellant that Resolution Professional is not empowered to initiate the prosecution is correct. Learned Counsel for the Resolution- Resolution Professional has however, explained that no prosecution has been initiated under Section 70 by the Resolution Professional and he has only sent the information to the Board and it is for the Board to take appropriate action. We, thus, clarify that any prosecution under Section 70 can be initiated only in accordance with the procedure as provided under Section 236(2) and not by the Resolution Professional. However, with regard to any other offences including the offences under Indian Penal Code, if any complaint is filed by the Resolution Professional before a Police Station that is separate issue and has no concern with the offences under Section 70 and the order impugned shall have no bearing on such proceedings by a Police Station and they are independent proceedings which has to be considered and decided in accordance with law."*

ii. Mr. Lagadapati Ramesh Vs. Mrs. Ramanathan Bhuvaneshwari Company Appeal (AT) (Insolvency) No. 574/2019. Relevant extract is as under:

> *"27. The 'offences and penalties' as prescribed and dealt with in Chapter VII and appropriate order of punishment can be passed only by way of trial of offences by a Special Court in terms of Section 236 of the 'I&B Code'. However, no such Court can take cognizance of any offence punishable under the Act, save on a complaint made by the 'Insolvency and Bankruptcy Board of India' (IBBI) or the Central Government or any person authorized by the Central Government in this behalf. This will be apparent from the relevant provisions of Section 236 as quoted below…"*

iii. Sapan Mohan Garg, Resolution Professional of Sort India Enviro Solution Ltd. v. Manish G Patel & Anr. C.A. (AT) (Ins.) No. 837 of 2021. Relevant extract is as under:

> *"…..in the matter of Vivek Prakash (Suspended Director & MD) vs. Dinesh Kr. Gupta, Liquidator of M/s Jarvis Infratech Pvt. Ltd. & Anr.' dated 21.02.2022, passed by National Company Law Appellate Tribunal in which it has been held that the RP is not empowered to initiate the prosecution but at the same time, it has been held that in order to initiate prosecution under Section 70 the complaint has to be filed by the Insolvency and Bankruptcy Board of India (IBBI) or Central Government or person authorized by the Central Government. In view of the aforesaid facts and circumstances, we do not find any error in the order of the Ld. Tribunal, therefore, the present Appeal is hereby dismissed. However, liberty is granted to the RP to file an appropriate application to the IBBI in this regard, if so advised."*

Rejoinder and written submissions filed by the Applicant

18. In response to the reply of Respondents, the Applicant filed the rejoinder on 17.07.2024. Written submission was also filed by the Applicant on 29.08.2024.

19. It is stated that the Respondent No.1 despite being aware of the initiation of the CIRP, transferred an amount of Rs. 84,04,879/- from the bank account of the Corporate Debtor, maintained with the HDFC Bank Limited at Ulsoor II Branch, to various accounts between the period 10.10.2023 to 13.10.2023, at the back of the Applicant (Annexure A-5 at page no.62 to 65 of the Application), which has been admitted by the Respondents in their Counter (page 2, at para 5 of the Counter). The Respondent No.1 has therefore acted illegally and in contravention of the moratorium declared by this Tribunal under Section 14 of the Code. Reliance is placed on the decision in ***Mr. Ajay Joshi (RP) vs. Union***

Bank of India on 03.04.2024 [(2024) ibclaw.in 340 NCLT] where the NCLT, Mumbai Bench has held:

> *"8. ...the amount lying in the current account of the Corporate Debtor, even if it was subject to a charge, continues to be an asset of the Corporate Debtor and adjustment or deduction of amounts from the current account of the Corporate Debtor during the moratorium period is not justifiable."*

20. The Applicant also submitted that the Hon'ble NCLAT, Principal Bench in the matter of ***P J Network Pvt. Ltd. vs. Mr. Pardeep Kumar Lakhani [Company Appeal (AT) (Insolvency) No. 427 of 2021]*** on 09.12.2021 upheld the order of NCLT, New Delhi. The relevant extract is as under:

> *"16. Further, From the perusal of the paragraph 4 of the impugned order at page 24 of the Appeal Paper Book (supra), all payments were made after the CIRP in the matter (M/s Mykind Vacations Pvt. Ltd. (Operational Creditor) Vs. M/s Dion Global Solutions Ltd. (Corporate Debtor) vide order dated 18.08.2020. Therefore, the Ld. Adjudicating Authority has rightly passed the impugned order to refund all payments received by them on 19.08.2020 and 20.08.2020 respectively. "*

21. Drawing a parallel, it is imperative to state that the Respondents unjustifiably paid monies towards salaries, to the electricity department and made accidental transfer to the sister concerns of the Corporate Debtor. It is evident that the transactions made by the Respondents just after the initiation of CIRP are unreasonable and unethical, only for their own benefits.

22. The Applicant referred the decision in the case of ***Committee of Creditors of Amtek Auto Ltd. through Corporation Bank vs. Mr. Dinkar T.***

Venkatasubramaniam & ors. [Comp. App. (AT) (Ins) No. 219 of 2019], wherein the Hon'ble NCLAT, New Delhi has held:

> *"42. The I&B Code' is silent on the issue as to whether the Adjudicating Authority has any jurisdiction to pass any order referring the matter to the Central Government or the Insolvency and Bankruptcy Board of India for action under Section 74(3) of the 'I&B Code' or under any of the provisions 'for punishment' as prescribed under Chapter VII of Part II of the 'I&B Code'.*
>
> *……….*
>
> *44. From sub-section (2) of Section 236, it is clear that no Special Court can take cognizance of any offence punishable under the I&B Code', including punishment prescribed under Section 74(3) of Chapter VII of Part II, save on a compliant made by the Insolvency and Bankruptcy Board of India or the Central Government or any person authorized by the Central Government in this behalf.*
>
> *45. Normally, the Insolvency and Bankruptcy Board of India or the Central Government are not made a party respondent to any of the 'Corporate Insolvency Resolution Process'. Therefore, they cannot have any idea as to whether any offence has been committed by any 'Corporate Debtor' or its members, including 'Successful Resolution Applicant' ('Corporate Debtor') under Section 74(3) or any of the provisions of Chapter VII of Part II of the 'I&B Code'.*
>
> *46. In this background, we are of the view that it is the Adjudicating Authority who is required to refer such matter to the Insolvency and Bankruptcy Board of India or the Central Government to take up the matter to the Special Court if on investigation, if any case of offence under Chapter VII, including Section 74(3) is made out.*
>
> *…………*
>
> *49. Section 213 of the Companies Act, 2013 may not be directly applicable to the proceeding under the 'I&B Code' However, it relates to "Investigation into company's affairs in other cases". As per clause (b) of sub-section 213, on an*

application made to it (Adjudicating Authority/ Tribunal) by any other person (say, the Resolution Professional' or the 'Committee of Creditors") or otherwise (suo moto), if the Tribunal (Adjudicating Authority) is satisfied that there are circumstances suggesting that the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or misfeasance or other misconduct towards the company ('Corporate Debtor' through 'Successful Resolution Applicant'), after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government...

50.... Therefore, we are of the opinion that before referring any matter to the Insolvency and Bankruptcy Board of India or the Central Government, the Adjudicating Authority/ Tribunal is required to provide reasonable opportunity of hearing to the parties concerned/alleged offenders of provisions of Chapter VII of Part II and if satisfied may request the Central Government to investigate the matter by an Inspector or Inspectors and then to decide on such opinion whether to refer and lodge any case before the Special Judge for trial under Section 236 of the 'I&B Code' for alleged offence under Section 74(3) or any other provision under Chapter VII of Part II of the 'I&B Code' and for punishment under Section 447 of the Companies Act, 2013."

23. It is stated that it is for the Adjudicating Authority to decide as to whether the matter is required to be referred for taking any action under Section 74 of the Code. The Applicant herein has therefore, held the instant application seeking remittance of the amount to the tune of Rs. 84,04,879/- to the Corporate Debtor from the Respondents. The Applicant is also seeking appropriate proceedings against the Respondents in terms of Sections 70(1)(a) and 74(2) of the Code.

24. The Applicant stated that the reliance of the Respondents on the cases of ***'Vivek Prakash (Suspended Director& MD) vs. Dinesh Kr. Gupta, Liquidator of***

M/s Jarvis Infratech Pvt. Ltd. & Anr.'and 'Mr. Rahul Gupta vs. Chandra Prakash (Erstwhile Resolution Professional)', is purely with an intent to mislead and misdirect this Tribunal from adjudicating the Application. Further, the facts, scenario and prayer of above-mentioned case and instant Application are different. In both of the cases, the Application was filed under Section 19(2) for the non-corporation of Suspended Management, wherein the instant Application has been filed under Sections 14, 70(1)(a), 74(2) to direct the Suspended Management i.e., Respondents to remit the amount which has been illegally transferred to Respondents. The Applicant in instant Application is requesting to issue necessary direction under Section 70(1)(a), 74(2) of the Code and therefore Tribunal has jurisdiction to refer the matter to Central Government for investigation. In para 25 to 30 of the ***'Vivek Prakash' (supra)*** six judgments of the Appellate Tribunal have been referred, wherein in ***Lagadapati Ramesh v. Mrs. Ramanathan Bhuvaneshwari [(2019) SCC OnLine NCLAT 1153 and Union of India v. Maharashtra Tourism Development Corporation [(2019) SCC OnLine NCLAT 1414***]) Hon'ble NCLAT has held that the Tribunal may refer the matter to Central Government for investigation. The Applicant stated that the application is maintainable and well within the jurisdiction of this Tribunal.

<u>FINDINGS OF THE TRIBUNAL</u>

25. We have heard the Learned Counsel for the parties and perused the documents.

26. This Application has been filed seeking a direction against the Respondents to remit a sum of Rs. 84,04,879/- to the account of the Corporate

Debtor, which is alleged to have been wrongfully debited during the period from 10.10.2024 to 13.03.2025 in violation of the moratorium imposed under Section 14 of the Insolvency and Bankruptcy Code, 2016.

27. At this juncture, we refer to Section 14(1)(b) of the Code, which is extracted as under:

> *"Section 14: Moratorium*
> *Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:--*
> .
> .
> *(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
> .
> *..."*

28. The object of the moratorium under the Code is to ensure that the assets of the Corporate Debtor remain preserved, thereby facilitating a smooth and time-bound CIRP. The object of moratorium has been elucidated in the landmark decision of the Hon'ble Supreme Court in the case of ***Swiss Ribbons Pvt. Ltd. V. Union of India (2019) 4 SCC 17,*** the relevant paragraphs is extracted hereunder,

> *12. … The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.*

29. The Corporate Debtor was admitted to CIRP by order of this Tribunal dated 09.10.2024. The order was pronounced in the open court. Consequently, the moratorium under Section 14 came into force from the said date. Upon commencement of CIRP, the management of the affairs of the Corporate Debtor vested with the Interim Resolution Professional, and the powers of the Board of Directors stood suspended.

30. It is an admitted fact that the Respondents debited an aggregate sum of Rs. 84,04,879/- from the account of the Corporate Debtor towards various expenses, including those pertaining to group companies, as recorded in paragraph 14 of this Order. Any claims arising prior to the insolvency commencement date are required to be submitted and dealt with strictly in accordance with the mechanism prescribed under the Code. Any operation or adjustment in the accounts of the Corporate Debtor during the subsistence of the moratorium can only be undertaken with the authorization of the Interim Resolution Professional. The transactions in question, having been carried out by the suspended directors post commencement of CIRP, despite being aware of the admission of the petition, constitute a violation of the moratorium. In view thereof, such transactions are in clear violation of Section 14 of the Code.

31. For the foregoing reasons, suspended directors/ Respondents are directed to remit the amount of Rs. 84,04,879/- to the bank account of the Corporate Debtor within three weeks from the date of this order.

32. We refer to Section 70(1)(a), Section 74(2) and Section 236 of IBC which deal with the jurisdiction for the offences under the Code. On a combined reading of the provisions, we find that adjudication of wilful contravention as contemplated under Section 74, sub-section (3) is with the Special Courts under Section 236. The relevant sections are extracted below:

*"**<u>Section 70. Punishment for misconduct in course of corporate insolvency resolution process.</u>***

(1) On or after the insolvency commencement date, where an officer of the corporate debtor

(a) does not disclose to the resolution professional all the details of property of the corporate debtor, and details of transactions thereof, or any such other information as the resolution professional may require; or…

<u>Section 74: Punishment for contravention of moratorium or the resolution plan.</u>

(2) Where any creditor violates the provisions of section 14, any person who knowingly and willfully authorized or permitted such contravention by a creditor shall be punishable with imprisonment for a term which shall not be less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

<u>Section 236: Trial of offences by Special Court.</u>

236. (1) Notwithstanding anything in the Code of Criminal Procedure, 1973, offences under this Code shall be tried by the Special CourtJ1 established under Chapter XXVIII of the Companies Act, 2013.

(2) No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf.

(3) The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in case of a complaint under sub-section (2), the presence of the person authorised by the Central Government or the Board before the Court trying the offences shall not be necessary unless the Court requires his personal attendance at the trial."

33. The observations in ***Committee of Creditors of Amtek Auto Ltd. through Corporation Bank vs. Mr. Dinkar T. Venkatasubramaniam & ors. [Comp. App. (AT) (Ins) No. 219 of 2019, (Supra),*** enunciates the role of adjudicating authority in referring matters for prosecution under Section 70, 74 to the Central government or the Insolvency and Bankruptcy Board of India to undertake actions against such violations. The same has also been upheld by the Hon'ble NCLAT in the case of ***Almas Global Opportunity Fund SPC v. CA Kannan Triuvengadam, (Company Appeal (AT) (Insolvency) No. 683 of 2022).*** It was held:

"28. Now we come to the last submission of learned Counsel for the Appellant, i.e., directions issued with regard to under Section 74, sub-section (3). Section 74, sub-section (3) is a provision contained in Chapter-VII – "Offences and Penalties". Section 74, sub-section (3) of the Code is as follows:

> *"74(3) Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer, creditor or person shall be punishable with imprisonment of not less than one year, but*

may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both."

29. The keywords in Section 74, sub-section (3) is that when "the Corporate Debtor or any of its officers or creditors or any person on whom the approved Resolution Plan is binding under Section 31, knowingly and wilfully, contravenes any of the terms of such Resolution Plan or abets such contravention, such persons shall be punishable…..". Section 236 of the Code provides for 'Trial of offences by Special Court". Section 236, sub-section (2) provides as follows:

"236 (2) No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf."

30. The provision of the Code contemplates filing of a complaint by Board or the Central Government or any person authorized by the Government in this behalf. It is true that Adjudicating Authority while exercising jurisdiction under the Code is not required to return any finding of an offence within the meaning of Section 74, sub-section (3). It is a prerogative of the Special Court under Section 236 to try an offence and award punishment if any. The Adjudicating Authority at best can draw attention of the Board or the Central Government to facts and features of a particular case to consider as to whether it is an appropriate case for filing a complaint within the meaning of Section 236, sub-section (2). The order passed by the Adjudicating Authority under paragraph 8.1(ii) has to be treated only a direction to the effect that order of NCLT be forwarded to the Board and Central Government to consider as to whether present is a fit case for initiating/ filing any complaint under Section 236, sub-section (2) of the Code. It is necessary to clarify that any observations made by Adjudicating Authority in the impugned order regarding ingredients of offence under Section 74, sub-section (3) are neither binding nor determinative of any issue when the Special Court where a complaint is filed proceed with the trial of offence. The observations made by the

Adjudicating Authority has to be read only for the purpose of sending the copy of the order to the Board for consideration for filing a complaint and order of the Adjudicating Authority cannot be treated to any direction to initiate action under Section 74, sub-section (3), which is in the domain of the Board and Central Government as per the statutory Scheme of the Code.

31. In view of the foregoing discussions, we uphold the order of the Adjudicating Authority issued under paragraph 8.1.(i), (iii) and (iv). However, directions issued in 8.1.(ii) are modified to the extent that a copy of the order passed by Adjudicating Authority shall be sent to the Insolvency and Bankruptcy Board of India and the Secretary, Ministry of Corporate Affairs to consider in terms of Section 236, sub-section (2) to initiate appropriate complaint before the Special Court as envisaged under Section 236(1). The direction cannot be read to be a direction to initiate complaint, rather it has to be treated to be a direction to consider for filing a complaint."

34. Although, it has been held that the transactions enumerated in para 14 of this order are in violation of the Section 14 moratorium, but the same have been seemingly made towards the bona fide payments of the Corporate Debtor's expenses such as salary and electricity bills. In view of the directions to remit such sum to the account of the Corporate Debtor, this Tribunal is not inclined to pass any directions under Section 70(1)(a) and Section 74(2) of IBC, 2016.

35. **IA(IBC)/300(CHE)/2024** in **CP(IB)/81(CHE)/2023** is accordingly, ***disposed of.***

-Sd-	**-Sd-**
VENKATARAMAN SUBRAMANIAM	**SANJIV JAIN**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

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

IA(LIQ.)/36(CHE)/2024
In
CP(IB)/81(CHE)/2023
(filed under Section 33 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)

In the matter of ***Tuscan Consultants and Developers Private Limited***

Mr. Ashok Mittal,
Resolution Professional of ***Tuscan Consultants and Developers Private Limited***
Registration Number: IBBI/IPA-001/IP-P02549/2021-2022/13889
S-138, 2nd Floor, B-Wing, Express Zone Commercial Hub,
Western Express Highway, Goregaon East, Mumbai -400063

……. Applicant/ Resolution Professional

Order Pronounced on 27th March, 2026

CORAM

SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
SHRI. VENKATARAMAN SUBRAMANIAN, MEMBER (TECHNICAL)

For Resolution Professional: Mr. Amir Bavani

ORDER
(Heard through Hybrid mode)

1. This application has been filed under Section 33 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 seeking reliefs as follows:

"i. Allow the instant Application for the initiation of liquidation of M/s. Tuscan Consultants and Developers Private Limited in terms of Section 33 of Insolvency and Bankruptcy Code, 2016;

ii. To appoint Mr. Kailash Shah [Insolvency Professional bearing Registration No. IBBI/IPA-001/IP P00267/2017-2018/10511] as Liquidator of Corporate Debtor; and

iii. Pass any other order(s) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case."

2. Briefly the facts are that on the petition filed by IDBI Trusteeship Services Limited, CIRP was initiated against the Corporate Debtor vide an order dated 09.10.2023. Applicant was appointed as the IRP. He made a publication in the newspaper inviting the claims from the creditors. He constituted the CoC. In the 1st CoC meeting held on 07.11.2023, he was confirmed as RP. He informed the Suspended Directors about the commencement of CIRP and declaration of moratorium. He sought the information documents of the Corporate Debtor from the Suspended Directors, but got no cooperation. He placed the matter before the 2nd CoC held on 18.12.2023, where one of the member viewed that since substantial information has not been received, Form G be published later. Thereafter, the Suspended Directors filed an appeal before Hon'ble NCLAT, which the applicant apprised to the CoC.

3. It is alleged that the Suspended Directors illegally withdrew/ divereted an amount of Rs. 84,04,879/- from the account of the Coporate Debtor during the period from 10.10.2023 to 13.10.2023. He sought the explanation from the

Suspended Directors, but did not get satisfactory response. He filed an application IA 300 of 2024 against the Suspended Directors, which is pending.

4. The applicant convened the 3rd CoC meeting on 16.01.2023, where CoC members asked the applicant to wait for the order of Hon'ble NCLAT. It, however authorized the applicant to file an application under Section 19(2) of IBC against the Suspended Directors. He filed the application IA 414 of 2024, which was disposed of vide an order dated 30.07.2024 with directions. In the 4th CoC meeting held on 28.02.2024, he informed the CoC that no information documents have been forthcoming. He also apprised the CoC about the status of appeal pending before Hon'ble NCLAT. Thereafter the CoC resolved to keep the Form G publication on hold. 5th CoC meeting was held on 23.02.2024, where applicant apprised the CoC members of the status of the appeal pending before Hon'ble NCLAT. He also shared draft Form G, but CoC did not approve the same. He informed the CoC that CIRP timeline is going to expire on 06.04.2024. The CoC then with 80.35% resolved to seek extension for 90 days. He filed an application IA 888 of 2024, which was allowed vide an order dated 22.04.2024, extending the CIRP period by 90 days. In the CoC meeting held on 10.05.2024, he apprised the latest status of appeal to the CoC members, shared the draft Form G, but CoC again rejected the same. He convened the 7th CoC meeting on 21.06.2024, and again shared draft Form G, but CoC did not approve the same. He informed the CoC that last date for completion of CIRP is 05.07.2024. On this, CoC with 80.35% voting authorized the applicant to file another extension application seeking extension for 60 days. He filed IA 109 of 2024, which was

allowed vide an order dated 24.07.2024, extending the time by 60 days with effect from 24.07.2024.

5. In the 8th CoC meeting held on 29.07.2024, the Applicant apprised the CoC members that the essential information such as books of accounts, tally data and the data related to the subsidiaries are yet to be received. Lack of such information has been causing delay in valuation, transaction audit and publishing Form G. In the 9th CoC meeting held on 26.08.2024, the Applicant apprised the CoC members regarding the valuation methodology for valuation of the Corporate Debtor. The CoC members resolved that once the valuation report is received, they will focus on publishing Form G. In the 10th CoC meeting held on 16.09.2024, the Applicant submitted the valuation report and shared the draft Form G with CoC members for approval. The CoC members realizing that since the significant amount of time has lapsed in the CIRP process and no realizable value can be obtained from the Corporate Debtor's assets, decided to go for the liquidation of Corporate Debtor. Accordingly, CoC members with 81.12% voting share authorized the Applicant to file an application seeking liquidation of Corporate Debtor. In the meeting, a resolution was put forth for voting to sell the Corporate Debtor and the business of Corporate Debtor as a going concern under clause (e) & (f) of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, but, the CoC members with 80.35% voted against the said resolution. The CoC resolved and approved, with 81.12% voting, to appoint **Mr. Kailash Shah** [Insolvency Professional Bearing Registration No. IBBI/IPA-001/IP P00267/2017-2018/10511] as Liquidator of Corporate Debtor. It also approved the fees of the

Liquidator as **Rs. 2,00,000/- (plus GST**) per month. Copy of minutes of the 10th CoC meeting along with voting result and copy of Form AA dated 16.09.2024 along with Authorization for Assignment & IBBI registration certificate of proposed liquidator are placed as **ANNEXURE A-12 (COLLY.).**

6. The Applicant also filed the memorandums dated 18.08.2025, and 12.09.2025 stating that the order admitting Section 7 petition by this Tribunal was appealed by the Suspended Directors in the Hon'ble NCLAT and the appeal has been dismissed upholding the order of this Tribunal. Consequently, an appeal against Hon'ble NCLAT's dismissal was preferred, which was also dismissed by the Hon'ble Supreme Court.

7. Clarifications by the Applicant.

7.1 This Tribunal vide an order dated 13.10.2025, directed the Applicant to place the Asset Memorandum and Information Memorandum for consideration.

7.2 The Applicant filed a clarificatory memo dated 24.10.2025, wherein he stated that preparation of Information Memorandum prior to the publication of Form-G is not mandatory under the statutory framework governing the Corporate Insolvency Resolution Process ('CIRP'). In support of the submission, he placed reliance on the following statutory provisions:

- ***Regulation 36 - Information Memorandum:***

> *(1) Subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to each member of the*

committee on or before the ninety-fifth day from the insolvency commencement date, and its subsequent updates thereof.

- ***Regulation 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.

Section 33 - Initiation of liquidation:

…..(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 as referred to in sub-clauses (i), (11) and (iii) of clause (b) of sub-section (1).

Explanation—For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.

7.3 It was stated that the Information Memorandum and Asset Memorandum were not prepared since the very step of publication of Form-G, could not be fructified within the statutory period due to the reasons mentioned in the CoC meeting minutes. The Applicant highlighted the post Form-G preparation of Information Memorandum in the matters of ***Greater Noida Industrial Development Authority (GNIDA) vs. Roma Unicon Designex Consortium [(2023) ibclaw.in 90 NCLAT],*** and ***BASF India Limited vs. Meghaarika International Private Limited [2024 SCC OnLine NCLT 1923]***, wherein, in both the matters the opposing party did not raise any objection qua the process of preparation of the Information Memorandum after the publication of Form-G.

7.4 The Applicant also relied on the following decisions:

I. ***In Sunil Surrendrakumar Kakkad vs. Sujyot Infrastructure Pvt. Ltd. and = Ant. [(2024) ibclaw.in 741 NCLAT***], Hon'ble NCLAT, Principal Bench, New Delhi held as under:

> *"7, A plain' reading of the aforementioned Section 33(2) of the IBC unambiguously shows that it is not incumbent upon the CoC to complete the steps for resolution of the Corporate Debtor before exercise of its jurisdiction to pass an order of liquidation of the Corporate Debtor. Such a decision can be taken "any time" during the CIRP as long as it precedes confirmation of the resolution plan. Significantly, the phrase "'any time" has been used again in the Explanation clause under Section 33(2) which was inserted later by an amendment vide Act No. 26 of 2019. This use of the phrase "any time" twice clearly reinforces the legislative intent to empower the CoC to take decision to liquidate the Corporate Debtor any time after its constitution even prior to the preparation of the Information*

Memorandum ("IM" in short) but before confirmation of the resolution plan."

II. Decision of Hon'ble NCLAT, Principal Bench, New Delhi in ***Sunil S Kakkad Vs Atrium Infocom Pvt. Ltd. and Ors., [(2020) ibclaw.in 42 NCLAT],*** was upheld by Hon'ble Supreme Court. The relevant extract is as under:

> *"13. Based on the added explanation to sub-section (2) of Section 33 of the I&B Code, 2019, it is evident that the Committee of Creditors after its constitution under sub-section (1) of Section 21 of the Code, at any stage during Corporate Insolvency Resolution Process and before the confirmation of Resolution plan, including at any time _ before preparation of Information Memorandum, is authorized to take a decision to liquidate the Corporate Debtor.*
>
> *……..*
>
> *……..*
>
> *21. Thus, it is clear that the decision of CoC to liquidate the Corporate Debtor without taking any steps for Resolution of the Corporate Debtor is covered under explanation to subclause (2) of Section 33 of the I&B Code and the same being decision on commercial wisdom, is non-justiciable given the law laid by Hon'ble Supreme Court of India in case of K. Sashidhar (supra). Thus, it is clear that there is no illegality in the decision of CoC in liquidating the Corporate Debtor before taking any steps for inviting Expression of Interest for submission of Resolution Plan."*

III. In ***Bhotika Trade & Services Pvt. Ltd. vs. Avinash EM Projects Private Limited [1A/6451/2023 in CP(IB)-598/ND/2022***], which was upheld by Hon'ble NCLAT, Principal Bench, New Delhi, it was held as under:

"7. As can be seen from the explanation below subsection (2) of Section 33 of IBC, 2016, the committee of creditors may take the decision to liquidate the Corporate Debtor any time after its constitution under sub-section (1) of Section 21 and before' the confirmation of the resolution plan, including at any time before the preparation of the information memorandum."

IV. ***In Pankaj Khetan (RP) vs. Kushal International Limited 2019 SCC OnLine NCLT 4896],*** NCLT Allahabad Bench, at para 19 & 22 while examining whether the Resolution Professional had taken all the steps that are required to be taken in the CIRP, noted that RP had not prepared information memorandum or published Form- G on account of the non-co-operation from the Suspended Directors of the Corporate Debtor. The CoC members had resolved to liquidate the Company by 100% voting share considering that the information memorandum was not finalized, expression of interest was not published and the Suspended Directors were not cooperative. The relevant extract is as under:

"23. In the case on hand, there is no resolution plan at all. In fact there is no expression of interest also. The CoC by 100% voting share resolved to go for liquidation. Basing upon that resolution, RP filed this application U/s. 33(2) of the Code. Section 33(2) of the Code enjoins on the Adjudicating Authority to

pass a liquidation order, if the CoC passed the resolution approving for liquidation by a 66% voting share, on the application of the RP. Here the sole Financial Creditors that constitute CoC by 100% voting share resolved to go for liquidation. Therefore, this Authority has no right to interfere with the wisdom of the CoC in going for liquidation, more so, on the ground that RP has not followed the various steps in the CIRP. It appears that RP is unable to follow the various steps in CIRP period due to noncooperation of the promoters of the Corporate Debtor."

7.5 It is stated that in accordance with the statutory scheme envisaged under the IBBI Regulations, there exists no mandatory requirement for preparation and circulation of the Information Memorandum to the Members of the Committee of Creditors prior to the issuance of Form-G. As per Regulation 34 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the preparation of an Asset Memorandum arises only upon commencement of liquidation proceedings, and therefore, the same is not required to be submitted during the pendency of the CIRP.

7.6 It is also clarified that there is no mandatory requirement to prepare Information Memorandum and Asset Memorandum before publication of Form-G. In many cases, the resolution to liquidate the corporate debtor was made even prior to the preparation of the information memorandum and those decisions have been upheld.

8. Considering the application seeking an order for liquidation of the corporate debtor, we observe that this application has been made for the reason that the entire time period under Section 12 of the Code to carry out the CIRP has ended and there is no successful resolution plan adopted. The CoC has resolved in 10th CoC meeting held on 16.09.2024 to liquidate the corporate debtor as there are no realizable assets of the corporate debtor and significant time has already elapsed. In these circumstances, this Tribunal concludes that this application should be allowed. As a consequence, thereof, **we allow the application and order for the Liquidation of the Corporate Debtor** as per Section 33(2) of IBC, 2016.

9. In the present case, **Mr. Kailash Shah** [Insolvency Professional bearing Registration No. IBBI/IPA-001/IP P00267/2017-2018/10511] has been proposed to act as the Liquidator of the Corporate Debtor. On verification from the IBBI Website, it is seen that the Authorization for Assignment (AFA) **Mr. Kailash Shah** is valid up to 30.06.2027. The written consent by the proposed liquidator has been obtained and placed on record.

10. We hereby appoint **Mr. Kailash Shah** [Insolvency Professional bearing Registration No. IBBI/IPA-001/IP P00267/2017-2018/10511], as the Liquidator of the Corporate Debtor, to carry out the liquidation process subject to the following terms of the directions:

a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.

b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.

d) The Liquidator shall proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.

e) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency.

f) As resolved by the CoC, the fee of the Liquidator is fixed as Rs. 2,00,000/- plus GST/ month to be paid by the CoC as per regulation 4 of IBBI(Liquidation) Regulations, 2016.

11. The Registry is directed to communicate the order to the Registrar of Companies and to the Insolvency and Bankruptcy Board of India.

12. The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

13. Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

-Sd-	**-Sd-**
VENKATARAMAN SUBRAMANIAM	**SANJIV JAIN**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)