



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

I.A. (IB) No. 1035/KB/2021

And

I.A. (IB) No. 406/KB/2023

And

I.A. (IB) No. 1173/KB/2020

And

RST. A. (IB) No. 16/KB/2022

In

Company Petition No. (IB) No. 1684/KB/2018

IN THE MATTER OF:

Jayanta Banerjee

... Operational Creditor.

Versus

INCAB Industries Limited

... Corporate Debtor.

And

I.A. (IB) No. 1035/KB/2021

*An application under Section 60(5) read with Sections 69, 236 of the
Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the
National Company Law tribunal Rules, 2016.*

IN THE MATTER OF:

Bhagwati Singh

... Applicant.

Versus

Leader Universal (Mauritius) Company Limited & Ors.

... Respondents.

And

I.A. (IB) No. 406/KB/2023

*An application under Section 60(5) read with Sections 69, 236 of the
Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the
National Company Law tribunal Rules, 2016.*



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**In
Company Petition No. (IB) No. 1684/KB/2018**

IN THE MATTER OF:

Bhagwati Singh

... Applicant.

Versus

Leader Universal (Mauritius) Company Limited & Ors.

... Respondents.

And

I.A. (IB) No. 1173/KB/2020

An Application under Section 42 of the I&B Code.

IN THE MATTER OF:

Bhagwati Singh

... Applicant.

Versus

Mr. Shashi Agarwal, Liquidator

... Liquidator/ Respondent.

And

RST. A. (IB) No. 16/KB/2022

*An Application under Rule 11 of the National Company Law tribunal
Rules, 2016.*

IN THE MATTER OF:

Bhagwati Singh

... Applicant.

Versus

Mr. Pankaj Kumar Tibrewal, RP of INCAB Industries

... Resolution Professional/ Respondent.

Date of Pronouncement: January 08, 2025.



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CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For Bhagwati Singh (Jamshedpur Workers):

Mr. Akhilesh Kr. Shrivastava, Adv.;
Mr. Akash Sharma, Adv.;
Mr. Prince Verma, Adv. and
Mr. Kiran Gupta, Adv.

For RP:

Mr. Shaunak Mitra, Adv. and
Mr. Siddharth Makkar, Adv.

For Tropical Venture:

Mr. Kevic Setalvad, Sr. Adv.;
Mr. Anirban Ray, Adv. and
Mr. Prantik Garai, Adv.

For Kamala Mills:

Mr. Kuldip Mallick, Adv. and
Ms. Divya Sharma, Adv.

For Pegasus:

Ms. Aasia Hasan, Adv.
Mr. Pathik Choudhury, Adv. and
Mr. Arghya Chakraborty, Adv.

For SRA:

Mr. Avishek Manu Singhvi, Sr. Adv.;
Mr. Jishnu Saha, Sr. Adv.;
Mr. Avishkar Singhvi, Adv.;
Mr. Orijit Chatterjee, Adv.;
Mr. Amit Bhandari, Adv.;
Ms. Swati Dalmia, Adv. and
Ms. Sabarni Mukherjee, Adv.



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ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through a hybrid mode.

I.A. (IB) No. 1035/KB/2021

2. Through this application preferred under Section 60(5) read with Sections 69 and 237 of the Insolvency and Bankruptcy Code, 2016, for brevity “I&B Code” read with Rule 11 of the NCLT Rules, 2016, the applicant Bhagwati Singh, representative of 277 workers of Incab Industries Limited, the corporate debtor herein, has alleged the illegalities committed by the respondents including the RP and has sought the following reliefs:

a. Declaration to exclude the entire time spent by erstwhile IRP/RP/Liquidator Shashi Agarwal w.e.f 07/08/2019 till 16/12/2019 and 12 days till the new IRP was appointed [is the only aggregate time required for exclusion from the CIRP as the rest i.e., from 17th December 2019 till 04/06/2021 has already been excluded by the Hon'ble NCLAT (Para 88(c))] in view of removal of the Shashi Agarwal as IRP/RP/Liquidator by the Hon'ble NCLAT Order dated 04/06/2021;

b. Direction to the IRP/RP to intervene in the ongoing proceeding before the Hon'ble Bombay High Court in Misc. Petition Nos. 40 & 30 both of 2000 and all connected applications therein before THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992 under the judicature of the Hon'ble Bombay High Court with prayer to stay the proceedings with further direction to all the purported operational and financial creditors agitating under the said proceedings to file all their claims before the proceeding undergoing before this Hon'ble Bench under IBC and also with further direction to declare the appointment of Custodian as



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invalid allowing the IRP/RP to take control and possession of the assets under the Custodian appointed by the Hon'ble Special Court under the judicature of the High Court of Bombay;

c. To implead the Banks, FIs and ARC which have illegally assigned the debts to the private parties and hear the issue of assignment of debts in view of the setting aside the Order dated 07/02/2020 by the Hon'ble NCLAT vide its final Judgment and Order dated 04/06/2021;

d. Direction for Forensic Inquiry and/or Internal Audit by the new Statutory Auditor to be appointed by this Hon'ble Bench or any Internal Auditor which this Hon'ble Bench may be pleased to appoint, into the allegations of fraud and misappropriation committed by the Respondent No.27;

e. Direction for inquiry into the affairs of the Corporate Debtor relating to the fraudulent transactions in terms of the provisions of Section 69 of the IBC;

f. Direction for the Special Court pursuant to Section 236 of the IBC to take cognizance of the offences committed under Section 409, 420, 467 of IPC, 1860 read with Section 447 of the Companies Act, 2013 read with other applicable provisions of IPC, Companies Act and IBC and proceed against the accused persons;

g. Consequential directions into the gigantic fraud committed by M/s Kamala Mills Ltd., M/s Fasqua Investment Pvt. Ltd, Ramesh Ghamandiram Gowani, Yadappa Ramappa Kori, Mahendra Bakthawar Shah and Kesri Nariman Amaria, the later three all Ramesh Ghamandiram Gowani's men, Universal Leader and the two IRP/RPs/Liquidator;

h. Any other direction that the Hon'ble Bench may deem fit and proper for the proper adjudication of issue.



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3. In view of the reliefs sought for, we have considered the rival contentions advanced by the parties and accordingly pass order thereon:

SN	Reliefs sought for	Plea of RP	Order thereon
a.	<i>Declaration to exclude the entire time spent by erstwhile IRP/RP/Liquidator Shashi Agarwal w.e.f 07/08/2019 till 16/12/2019 and 12 days till the new IRP was appointed [is the only aggregate time required for exclusion from the CIRP as the rest i.e., from 17th December 2019 till 04/06/2021 has already been excluded by the Hon'ble NCLAT (Para 88(c))] in view of removal of the Shashi Agarwal as IRP/RP/Liquidator by the Hon'ble NCLAT Order dated 04/06/2021;</i>	It is submitted that Hon'ble NCLAT in its Order dated 04.06.2021 in <i>Company Appeal (AT) (Insolvency) No. 348 of 2020</i> and <i>Company Appeal (AT) (Insolvency) No. 720 of 2020</i> has set aside the Order of this Adjudicating Authority initiating liquidation of the corporate debtor by observing that the formation of the Committee of Creditors in the instant case is a nullity in the eyes of the law. In the same Order the NCLAT has already excluded the period from 17.12.2019 to 04.06.2021. In view of the Order dated 04.06.2021 of the Hon'ble NCLAT, this relief is infructuous.	We observe that at para 88(i)(c) of the Order dated 04.06.2021, the Hon'ble NCLAT has directed that: <i>"The time spent from the date of earlier filing of the application under Section 33 of the IBC, i.e. 17th December 2019, till date is excluded from the period of CIRP."</i> Hence, in view of the Order passed by the NCLAT on 04.06.2021, this relief is infructuous and dismissed accordingly.



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b.	<i>Direction to the IRP/RP to intervene in the ongoing proceeding before the Hon'ble Bombay High Court in Misc. Petition Nos. 40 & 30 both of 2000 and all connected applications therein before THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992 under the judicature of the Hon'ble Bombay High Court with prayer to stay the proceedings with further direction to all the purported operational and financial creditors agitating under the said proceedings to file all their claims before the proceeding undergoing before this Hon'ble Bench under IBC and also with further direction to declare the appointment of Custodian as invalid allowing the IRP/RP to take control and possession of the</i>	It is submitted that the RP was apprised about the Miscellaneous Petition No. 10/2000, 92/2006, 280/2006 and 30/2000 before the Special Court under Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, for brevity "Special Court (TORTS) Act" under the judicature of the Hon'ble Bombay High Court and the Special Court on 21.12.2018, allowed the attachment of certain properties of the corporate debtor and the custodian to take control of the same on 08.07.2021, the custodian has filed its revised claim in Form B amounting to Rs. 6,72,31,150/- which was provisionally admitted by the RP.	In view of such, we find no reason to allow the prayer and the same has already been dealt with and considered by the Special Court under the judicature of the Hon'ble Bombay High Court. The prayer is dismissed.
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	<i>assets under the Custodian appointed by the Hon'ble Special Court under the judicature of the High Court of Bombay;</i>		
c.	<i>To implead the Banks, FIs and ARC which have illegally assigned the debts to the private parties and hear the issue of assignment of debts in view of the setting aside the Order dated 07/02/2020 by the Hon'ble NCLAT vide its final Judgment and Order dated 04/06/2021;</i>	It is submitted that based on the claimed submitted by the banks, financial institutions and the ARC, the RP upon verification of their claims has duly admitted or rejected their claims. There are applications pending for consideration before this Adjudicating Authority whereby the assignments of debts are already under adjudication.	The application relating to the admission or rejection of claims as well as the validity of the deed of assignment has already been dealt with in the respective applications and are being adjudicated. Therefore, this prayer needs no considerations.
d.	<i>Direction for Forensic Inquiry and/or Internal Audit by the new Statutory Auditor to be appointed by this Hon'ble Bench or any Internal Auditor which this Hon'ble Bench may be pleased to appoint, into the allegations</i>	It is submitted that the RP appointed a CA firm namely R. B. Roy & Co. on 13.01.2022 for preparation of books of accounts from 01.01.2000 till 07.08.2019. the same was informed to the CoC on 04.03.2022 in its 13 th meeting. Further the RP on	We are in agreement with the argument made by the RP in this regard and as such no merit in the relief claimed.



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	<i>of fraud and misappropriation committed by the Respondent No.27;</i>	19.08.2021 appointed BDO India LLP as the transaction auditors of the corporate debtor. The	
e.	<i>Direction for inquiry into the affairs of the Corporate Debtor relating to the fraudulent transactions in terms of the provisions of Section 69 of the IBC;</i>	transaction auditor has submitted their 'draft report' on 18.04.2022 wherein one transaction as preferential transaction amounting to Rs. 12.247 Lakh to Kamala Mills Limited were observed. Kamala Mills provided clarifications for the transactions, except for a transaction of Rs. 5 Lakh. The CoC decided the said amount of Rs. 5 Lakh can be adjusted from the amount of their final entitlement and the Kamala Mills through an email dated 03.06.2022 has agreed to the same.	
f.	<i>Direction for the Special Court pursuant to Section 236 of the IBC to take cognizance of the offences committed under Section 409, 420, 467 of IPC, 1860 read with Section</i>	It is submitted that with regard to the allegations raised by the applicant in regard to the Special Court taking cognizance of offences under IPC and Companies Act, the applicant in his	We find that as the issue has already been dealt with the Special Court under the judicature of the Hon'ble Bombay High Court, we find



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	<i>447 of the Companies Act, 2013 read with other applicable provisions of IPC, Companies Act and IBC and proceed against the accused persons;</i>	application has failed to provide details substantiating its claim for the same.	no reason or power to interfere into that. Hence, the prayer is dismissed.
g.	<i>Consequential directions into the gigantic fraud committed by M/s Kamala Mills Ltd., M/s Fasqua Investment Pvt. Ltd, Ramesh Ghamandiram Gowani, Yadappa Ramappa Kori, Mahendra Bakthawar Shah and Kesri Nariman Amaria, the later three all Ramesh Ghamandiram Gowani's men, Universal Leader and the two IRP/RPs/Liquidator;</i>	It is submitted that provision of the Code does not empower this Adjudicating Authority to inquire into the fraud. Further, the transaction auditor has submitted their 'draft report' on 18.04.2022 wherein one transaction as preferential transaction amounting to Rs. 12.247 Lakh to Kamala Mills Limited were observed. Kamala Mills provided clarifications for the transactions, except for a transaction of Rs. 5 Lakh. The CoC decided the said amount of Rs. 5 Lakh can be adjusted from the amount of their final entitlement and the Kamala Mills through an email	In view of the transaction audit report, against which there are no objections. We find no merit in this relief claimed.



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		dated 03.06.2022 has agreed to the same.	
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4. We also find that the applicant on 15-02-2021, preferred an application being I.A. (IB) No. 226/KB/2021, sought for similar prayers against the erstwhile RP and vide Order dated 20.10.2021, this Adjudicating Authority dismissed the application by observing that:

“4. IA(IBC)/226(KB)2021

(i) This application has been on Board since 18/01/2021. The applicant in this application has sought the following reliefs:

(a) Declaration of all sales, transfer, alienation of assets and properties of the Corporate Debtor effected by all the officers in default and the charges created on its assets and properties after 1985 is invalid, null and void;

(b) Direction for internal audit to determine the total money misappropriated by the officers in default including Ramesh Ghamandiram Gowani from 1985 till date and consequential direction for mechanism to recover the entire amount legally accruing and belonging to the Corporate Debtor;

(c) Inquire into the affairs of the Corporate Debtor relating to the fraudulent transactions in terms of the provisions of Section 69 of the IBC;



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(d) Direct the Special Court pursuant to Section 236 of the IBC to take cognizance of the offences committed under Section 409, 420, 467 of IPC, 1860 read with Section 447 of the Companies Act, 2013 read with other applicable provisions of IPC, Companies Act and IBC and proceed against the accused persons;

(e) Any other direction that the Hon'ble Bench may deem fit and proper for the proper adjudication of issue.

*(ii) When the Ld. Counsel for the applicant was asked as to what provisions of the IBC he has made this application, Ld. Counsel for the applicant could not give any reason. There is no question of keeping this application as the reliefs sought cannot be granted by the Adjudicating Authority. The applicant does not have any speaking reliefs from this Adjudicating Authority, which are otherwise cannot be granted and rejected. The application stands **dismissed**.*

5. We find that the said order was assailed higher up before the Hon'ble NCLAT by way of an appeal being Company Appeal (AT) (Insolvency) No. 914 of 2022 and vide Order dated 31.01.2023, has observed that:

“5. In facts of the present case and the stage in which the CIRP has been proceeded, we are of the view that the Appellant's grievances can be raised by way of objection before the Adjudicating Authority and the Adjudicating Authority at the stage of approval of the plan may take consideration of the objections and pass appropriate orders in accordance with law. It is open for the Appellant to file objections



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before the Adjudicating Authority and also make prayers as may be advised. We are not expressing any opinion on various contentions raised in the Appeal. In view of the facts of the present case and the stage in which CIRP has been gone into, we are not inclined to interfere with the impugned order. With these observations, the Appeal is disposed of.

6. In view of above and also in view of the fact that we have already dealt with and considered all the objections to the plan in respective applications, we find no merit in this application being **I.A. (IB) No. 1035/KB/2021**, hence, the same is **dismissed**.

I.A. (IB) No. 406/KB/2023

7. By way of this application preferred under Section 60(5) read with Sections 69 and 237 of the Insolvency and Bankruptcy Code, 2016, for brevity “I&B Code” read with Rule 11 of the NCLT Rules, 2016, the applicant Bhagwati Singh, representative of 277 workers of Incab Industries Limited, the corporate debtor herein, has sought the following reliefs:

- a. *To direct compliance with Chapter II of the Insolvency and Bankruptcy Code, 2016, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 Chapter IV, V, VI, VII, VIII, IX, Hon'ble Delhi High Court Order dated 16-01-2016, Hon'ble NCLAT Order dated 04-06-2021 passed in Company Appeal (AT) Insolvency No.348 of 2020 and in Company Appeal (AT) Insolvency No.348 of 2020 and Order dated 31-01-2023 passed in*



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Company Appeal (AT) Insolvency No.914 of 2022 and also under paras 72 to 74 of the Order passed by this Hon'ble Adjudicating Authority on 07-02-2020 and consequential direction for mechanism to recover the entire amount legally accruing and belonging to the Corporate Debtor misappropriated by Mr. Ramesh G Gowani, Universal Leaders, the erstwhile RP/liquidator, Mr. Shashi Agarwal and the present RP, Mr. Pankaj Tibrewal.

- b. Declaration of CoC, appointment of new IRP as RP, all valuations purportedly done, any forensic audit report et al including Information Memorandum and Expression of Interest as invalid and null and void;*
- c. Removal of the RP, Mr. Pankaj Tibrewal for gross misconduct and gross violation of law, Order of the Hon'ble High Court Delhi dated 06-01- 2016, Hon'ble Supreme Court Order dated 01-07-2016, Order of the Hon'ble Adjudicating Authority dated 07-02-2020 more specifically paras 72 to 74, Order of the Hon'ble NCLAT dated 04-06-2021 and violation of mandate of law and also for committing contempt of court;*
- d. Direction to the new IRP on appointment as RP by a new and valid CoC to intervene in all proceedings before various authorities as enumerated in this IA and any other authority where the proceedings are pending relating to the CD which may affect its successful CIRP and comply under law to conclude the CIRP for successful resolution of the Corporate Debtor;*
- e. Direction to the erstwhile current RP, Mr. Pankaj Tibrewal and erstwhile IRP/RP/Liquidator Mr. Shashi Agarwal to refund every penny of remuneration appropriated by them and the expenses incurred by them @18% interest during the course of purported CIRP in view of declaration of CoC as illegal by the Hon'ble NCLAT and consequential direction to the members of erstwhile CoC for recovery of the same in case of failure of the current RP, Pankaj Tibrewal and erstwhile RP/*



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Liquidator Shashi Agarwal in refunding the entire amount immediately with proper accounting;

- f. Direct the Special Court pursuant to Section 236 of the IBC to take cognizance of the offences committed under Section 409, 420, 467 of IPC, 1860 read with Section 447 of the Companies Act, 2013 read with other applicable provisions of IPC, Companies Act and IBC and proceed against the accused persons.*
- g. Restoration of IA No. 1171/2019 filed by the applicant in view of the final Judgment and Order of the Hon'ble NCLAT dated 04.06.2021.*
- h. Any other direction that may be deemed fit and proper.*

8. Considering the reliefs sought for in this application and in view of the order passed in I.A. (IB) No. 1035/KB/2021 which deal with the similar issues, we deem no separate order required to be passed and thus, this application being **I.A. (IB) NO. 406/KB/2023** is **dismissed**.

I.A. (IB) No. 1173/KB/2020

9. This application preferred on 30.10.2020, under Section 42 of the I&B Code, by the applicant Bhagwati Singh, authorized representative of the workmen of corporate debtor against the Liquidator Mr. Shashi Agarwal has sought for the following reliefs as under:

- a. Direction to the admit the entire legitimate claims of the Workmen;*



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- b. *Refrain from Auction of the Assets and properties of the Corporate Debtor without admitting the entire claim and determining the assets and liabilities of the Corporate Debtor correctly and filing a report thereon before the Hon'ble AA, NCLT;*
- c. *Refrain from acting as Liquidator before Investigating into the misappropriation of fund of the Corporate Debtor by Ramesh G Gowani, Director of the M/s Kamala Mills Ltd and M/s Fasqua Investments Pvt Ltd and file the same before the Hon'ble AA, NCLT as directed to him at para 72 of the Order dated 07/02/2020;*
- d. *Any other direction that this Bench may deem fit and proper for the proper adjudication of issue.*

10. The Hon'ble NCLAT in its Order dated 04.06.2021 in Company Appeal (AT) (Insolvency) No. 348 of 2020 and Company Appeal (AT) (Insolvency) No. 720 of 2020, has set aside the Order of this Adjudicating Authority initiating liquidation of the corporate debtor by observing that the formation of the Committee of Creditors in the instant case is a nullity in the eyes of the law. In the same order, the Hon'ble NCLAT at para 88(i)(b) and (d) has laid down that:

“(b) The Adjudicating Authority is directed to appoint another IRP/ Resolution Professional in place of Respondent No.1- Shashi Agarwal, at the earliest, preferably within seven days (from the list, if any, maintained by the Adjudicating Authority or urgently getting names from IBBI).

xxx

xxx

xxx

(d) Respondent No.1- Shashi Agarwal will immediately hand over the complete charge of the Corporate Debtor to the new IRP/ Resolution



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*Professional as the Adjudicating Authority may
appoint.”*

11. As the Liquidator Mr. Shashi Agarwal has already been discharged by the Hon'ble NCLAT on 04.06.2021, a direction has been given that the initiation of liquidation proceedings against the Corporate Debtor- 'INCAB Industries Limited' is quashed and set aside. Further, it has been directed by the Hon'ble NCLAT that the actions taken pursuant to impugned order are also quashed and set aside and shall not be binding on the corporate debtor. The Original Application under Section 9 of IBC is restored to the file of the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata). In view of the direction purported by the Hon'ble NCLAT, a fresh CIRP was initiated by this Adjudicating Authority. Thus, the allegation against the erstwhile resolution professional i.e., Mr. Shashi Agarwal does not sustain. Hence, this application is fructuous and accordingly, we deem fit to **dismiss** this application being **I.A. (IB) No. 1173/KB/2020**.

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12. This application of Bhagwati Singh has been preferred under Rule 11 of the NCLT Rules, 2016, praying for a direction for restoration of CA No. 46 of 2020 in its original form.

13. Bhagwati Singh on behalf of workmen of the corporate debtor Incab Industries preferred a company application numbered CA No.



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I.A. (IB) No. 1173/KB/2020, RST. A. (IB) No. 16/KB/2022**

**In
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46 of 2020 before this Adjudicating Authority on 06.01.2020. CA 46 of 2020 was filed seeking the following reliefs:

- a. *To cancel the assignment of Debts to Kamala Mills, Fasqua Investment and Pegasus Assets and any other entities which have been assigned the debts of the corporate debtor anytime in the past by the original creditors.*
- b. *Restoration of previous secured creditors to be made members of the CoC as envisaged strictly in law.*
- c. *To allow or direct the Workmen to furnish their formal resolution plan for takeover of the company.*
- d. *Direct the RP to allow the professionals appointed by the workmen to visit the plants of both Jamshedpur and Pune and other properties to take stock of the corporate debtor, its revival constraints, valuation of assets and properties, SWOT analysis which are sine qua non for any takeover in the present situation.*
- e. *Determination of eligibility of the RP in view of his future to commence the CIRP of the corporate debtor.*
- f. *Any other direction may be deemed fit and proper.*

14. Ld. Counsel for the applicant Bhagwati Singh would submit that C.A. No. 46 of 2020 was disposed of vide a common Order dated 07.02.2020 by the Adjudicating Authority wherein the Adjudicating Authority initiated a liquidation process in respect of the corporate debtor. the said Order was assailed higher up before the Hon'ble NCLAT and vide Order dated 04.06.2021, the liquidation order was set aside by the Hon'ble NCLAT.

15. It is submitted that in view of the judgment passed by the Hon'ble NCLAT on 04.06.2021, C.A. 46 of 2020 should be restored



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so that the substantial dispute involved in the case could be adjudicated upon on its merits by this Adjudicating Authority.

16. *Per contra*, Ld. Counsel for the RP would submit that disposal of C.A. 46 of 2020 was not put to challenge before any higher forum, hence, the Order dated 07.02.2020 has attained the finality in respect of C.A. No. 46 of 2020. It is further submitted that no provision available under the I&B Code as well as the NCLT Rules to grant a liberty to restore an application which has been decided on merits as the present one.

17. Further, the Ld. Counsel for RP would submit that upon setting aside the Order of liquidation on 07.02.2020 by the Hon'ble NCLAT, Mr. Pankaj Kumar Tibrewal, RP herein has been appointed in place of erstwhile Liquidator Mr. Shashi Agarwal by this Adjudicating Authority on 16.06.2021. At 22nd CoC meeting convened on 22.06.2022, the CoC with majority voting shares of 99.37% has approved the resolution plan submitted by the Vedanta Limited and the same is filed by way of an application being I.A. (IB) No. 646 of 2020 for its final sanction and the same is pending before this Adjudicating Authority for consideration. Thus, at this belated stage, this application should not be entertained.

18. We would note that while disposing of the C.A. No. 46 of 2020 in the Common Order dated 07.02.2020, the Adjudicating Authority at page 15-20 to the order, has thoroughly recorded the rival contentions of both the parties. The order dated 07.02.2020 passed by this Adjudicating Authority, was assailed higher up and the same



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was set aside by the Hon'ble NCLAT on 04.06.2021. The Hon'ble NCLAT has pleased to record at the ab-ovo of its judgment dated 04.06.2021, that:

*“These two Appeals emanate from the Common Order dated **7th February 2020** passed by the Adjudicating Authority/National Company Law Tribunal, Kolkata Bench, Kolkata in **C.A. (I.B.) No. 1748/K.B./2019** and **C.A. (I.B.) 57/K.B./2020** in **C.P. (I.B.) No 1684/K.B./2018**, whereby the Adjudicating Authority/NCLT initiated liquidation proceedings against the Corporate Debtor 'INCAB Industries Limited', wherein the Appellant of Appeal No.348 of 2020 was employed until the date of passing the order of liquidation. Parties original status in the Company Petition represents them in these Appeals for the sake of convenience.”*

19. Further, the Hon'ble NCLAT at para 88(i)(a) of its judgment dated 04.06.2021, has held that:

“(i) The Company Appeal (AT) (Insolvency) Nos. 348 of 2020 and 720 of 2020 are allowed with the following directions:-

*(a) The impugned order passed in **C.A. (I.B.) No. 1748/K.B./2019** and **C.A. (I.B.) 57/K.B./2020** in **C.P. (I.B.) No 1684/K.B./2018** whereby the Adjudicating Authority directed initiation of liquidation proceedings against the Corporate Debtor- 'INCAB Industries Limited' **is quashed and set aside.** Actions taken pursuant to impugned order are also quashed and set*



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aside and shall not be binding on the corporate debtor. The Original Application under Section 9 of IBC is restored to the file of the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata)."

20. We find that the applicant has not pressed any appeal challenging the Order dated 07.02.2020 in respect of C.A. No. 46 of 2020. The appeal was preferred in respect of the order passed in C.A. (I.B.) No. 1748/K.B./2019 and C.A. (I.B.) 57/K.B./2020 in C.P. (I.B.) No 1684/K.B./2018 by this Adjudicating Authority, as recorded by the Hon'ble NCLAT in its judgment. Further, we find that the Hon'ble NCLAT while passing the judgment setting aside our Order dated 07.02.2020, has not given any direction to restore this application.

21. As per Rule 48 of the NCLT Rules, 2016, restoration of an application may only be allowed when the application is dismissed in absence of the applicant. Rule 48 of the NCLT Rules reads as under:

"48. Consequence of non-appearance of applicant.-

(1) Where on the date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

(2) Where the petition or application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the



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Tribunal that there was sufficient cause for his non-appearance when the petition or the application was called for hearing, the Tribunal shall make an order restoring the same:

Provided that where the case was disposed of on merits the decision shall not be re-opened.”

22. We find that the proviso of Rule 48 of the NCLT Rules clearly envisages that where the case was disposed of on merits the decision shall not be re-opened. In view of above, this application lacks its merits and accordingly we are of the considered opinion to reject the application.

23. Accordingly, **RST. A. (IB) No. 16/KB/2022** is **dismissed**.

TO SUM UP:

24. **I.A. (IB) No. 1035/KB/2021; I.A. (IB) No. 406/KB/2023; I.A. (IB) No. 1173/KB/2020 and RST. A. (IB) No. 16/KB/2022** are **dismissed**. We make no order as to cost.

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

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Order signed on January 08, 2025.

Bose, R. K. [LRA]