

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, BENCH**

**IA No.1148/2020**

In CP (IB) No. 278/7/ HDB/2018  
Under section 60(5) of IB Code, 2016 R/w  
Section 34(4) to 34(7) of the IBC, 2016 &  
Rule 11 of NCLT Rules, 2016

**In the matter of:  
M/S. BS LIMITED.**

- 1) IFCI Limited  
Rep. by General Manager  
8<sup>th</sup> Floor, Taramandal Complex,  
5-9-13, Saifabad, Hyderabad-500004, TS
- 2) Bank of India  
Rep. by Deputy General Manager  
Bank of India,  
Hyderabad Large Corporate Branch,  
10-1-1199/2, First Floor, PTI Building,  
A.C. Guards, Masab Tank, Hyderabad-500004, TS
- 3) Punjab National Bank  
(Formerly United Bank of India)  
Rep. by Chief Manager  
Zonal SASTRA Centre  
2<sup>nd</sup> Floor, Saeed Plaza Lakdi Ka Pul,  
Hyderabad
- 4) IDBI Bank  
Rep. by General Manager  
NPA Management Group, #5-9-89/1&2,  
Chapel road, Hyderabad-500001 TS
- 5) Canara Bank  
(Formerly Syndicate Bank)  
Rep. by General Manager  
No-104, 1<sup>st</sup> Floor, 6-3-639/640/642  
Golden Edifice Complex, Khairatabad,  
Hyderabad - 500004, TS
- 6) Laxmi Vilas Bank  
Rep. by Deputy General Manager  
No. 2B & 2C, Aditya Trade Centre,  
Next lane to Huda Mytrivan,  
Ameerpet, Hyderabad-500038, TS

**.... Applicants**

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Vs.

M/s. BS Limited (in liquidation)  
Rep. by its Liquidator Mr. Yadavilli Sai Karunakar  
Flat No. 205, 'B' Block 2<sup>nd</sup> Floor, Kushal Towers,  
D. No. 6-2-975, Khairatabad, Hyderabad – 500004

... Respondent/Corporate Debtor

Date of Order: 07.01.2021

**Coram: Shri. K. Anantha Padmanabha Swamy, Member Judicial.  
Dr. Binod Kumar Sinha, Member Technical.**

**Parties/counsels present:**

For the Applicants:- Mr. Y. Suryanarayana, counsel

For the Respondent:- Mr. Yadavilli Sai Karunakar, Liquidator and  
Mr. Anil Kumar, counsel for Liquidator

**Per: K. Anantha Padmanabha Swamy, Member Judicial.**

**ORDER**

1. The present Application bearing IA No.1148/2020 is filed under Section seeking following prayers:-
  - a. To pass an order for replacing the present Liquidator, Mr. Yadavilli Sai Karunakar by removing him as such and appoint another competent Insolvency Professional as Liquidator in his place.
  - b. The applicants pray for passing of direction to freeze/suspension of the transactions in the Liquidation Bank account No. 043702000001979 being maintained by the Liquidator with Indian Overseas Bank, Lakadikapul branch, Hyderabad and to open the liquidation bank account with any of applicant banks separately with the monitoring and supervision of this Hon'ble Adjudicating Authority.
  - c. Pass any other order as the Hon'ble Adjudicating Authority may deem fit and proper in the circumstances of the case.

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2. Brief facts of the case as stated by the counsel for the Applicant are as follows:-

- a. That the State Bank of India filed an application to initiate Corporate Insolvency Resolution Process (CIRP) against M/s. BS Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"). The Adjudicating Authority on 01-11-2018 admitted the application and appointed Dr. K.V. Srinivas as an Interim Resolution Professional ("IRP") and subsequently he was appointed as Resolution Professional on 29-11-2018 with the consent of CoC.
- b. That this Adjudicating Authority passed an order for liquidation of the Corporate Debtor on 17-10-2019 and vide subsequent order dated 25-10-2019 appointed Mr. Yadavilli Sai Karunakar (Liquidator) to act as Liquidator of the Corporate Debtor.
- c. That since the commencement of Liquidation of the Company, the Liquidator has indulged in professional misconduct and displayed his professional incompetence which has led to his exercising the powers beyond his scope under the various provisions of the Code as well as the regulations made there under. The liquidator has failed to perform his duties as mentioned under Section 35 of the Code and has indulged in various acts which had led to his abuse of his powers as laid down by the Code as well as the Regulations.
- d. That the Liquidator has not taken any tangible measures to address the issues connected with the claims of the applicants herein as well as the other stake holders. The communication which is purported to be sent by the liquidator regarding various issues concerning the corporate debtor have not been intimated in

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time nor the liquidator taken any steps to address the issues relating to the claims of the applicants in time.

- e. That the genuine and legitimate claims of one of the financial creditors, IFCI Limited, Applicant No. 1 herein have not been considered/admitted by the Liquidator quoting a reason as frivolous as illegible statement of account compelling the Applicant No. 1 to file a separate interlocutory application i.e. IA No. 61 of 2020 to seek inter alia, relief for admission of their claims as well as other matters connected with the security interest and the said IA No. 61 of 2020 was disposed by allowing the application vide its order dated 17.03.2020.
- f. That the liquidator has not even made any effort to communicate to all the stake holders about the progress being made with respect the liquidation process of the Corporate Debtor. That instead of calling a meeting of all the financial creditors and deliberating on the aspect of formation of Stakeholders Consultation Committee ("SCC") at such meeting, the Respondent had sent emails to all the secured creditors to nominate themselves for inclusion in SCC. That when the Liquidation Regulations clearly provide for a limit on the number of representatives that can represent each class of creditors, the Liquidator was bound to deliberate as to who will form part of the SCC at a meeting of all the secured creditors rather than expecting emails from each secured creditor. Further, the Liquidator has failed to understand that a Secured Creditor has an option not to relinquish its Security Interest in the assets of the Corporate Debtor, as per the provisions of the Code. By displaying utter lack of professionalism and incompetence the liquidator has contravened the provisions of the code and the

regulations and also failed to take along the collective and concerted advice of stake holders in the liquidation process of the corporate debtor which is reflective of his lack of understanding/professional acumen. That the applicants have come to know from the market sources as well as from the professional bodies in which the Respondent is a member, that this is his first major assignment in the capacity of a "Liquidator" and he has no prior professional experience in handling liquidation assignments of this magnitude which is being reflected in his discharging of statutory duties under the code.

- g. That the Bank account opened with M/s Indian Overseas Bank Lakadikapul, Hyderabad is being used for making payments for unproductive purposes there by misutilization of precious funds of the CD which requires to be freezed/halted in the light of unwarranted/unproductive usage of the same.
- h. That the Committee of Creditors ("CoC") of the Corporate Debtor (comprising of the Applicants herein) and erstwhile Resolution Professional had initiated the whole process of identifying the preferential, undervalued and fraudulent transactions and for this purpose the CoC in their meeting held on 02.01.2019, decided to appoint a transaction auditor for carrying out a Transaction Audit of the Corporate Debtor for a period of two years from 01.04.2016 to 31.10.2018 with a specific purpose of identifying and examining any preferential, undervalued, extortionate credit transactions and fraudulent transactions. Based on the report filed by the Transaction Auditor and the observations made by the erstwhile Resolution Professional, the I.A. No. 323 of 2019 was filed by the

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erstwhile Resolution Professional before this Adjudicating Authority.

- i. That the Respondent/Liquidator has blindly filed an application i.e. I.A No. 62 of 2020 for impleading the Applicants (members of CoC) herein in I.A. No. 323 of 2019 (Application filed by erstwhile Resolution Professional under Section 43, 44 & 66 of the Code) without any basis and acting according to his whims and fancies. The Liquidator is acting beyond his scope without understanding the position of the law. That the liquidator is abusing his position by levelling baseless and unfounded allegations against the Financial Creditors about their purported involvement in fraudulent activities and questioning the commercial decision making or judgment of the financial creditors in extending financial accommodation to the corporate debtor. That the applicants, based on the forensic audit reports as well as their internal enquiry reports, have classified the account of the Corporate Debtor as "FRAUD ACCOUNT" and have taken appropriate measures Viz, reporting the matter to the Central Bureau of Investigation (CBI) for conducting detailed probe for the alleged acts of the erstwhile promoters of the Corporate Debtor (Ex- Management). That the extant circulars and guidelines of the RBI prescribe various actions to be undertaken by the financial creditors in the event of the account being classified as "FRAUD" which involves more detailed, statutory process which *inter-alia* involves criminal prosecution of the erstwhile promoters and the persons or entities connected with the purported siphoning/diversion of funds of the corporate debtor. That the Respondent is abusing his powers under the provisions of the

Code as an officer of the court and also levelling baseless allegations against the officials of the Public Sector banks which discharge their duties as public servants under the above stated banking laws. All the above acts of commission on the part of the Respondent only amount to his professional misconduct. That in the first stakeholders meeting on 04.02.2020, the Liquidator has allowed some unauthorized persons along with him to participate in the meeting, further, even after the committee members asked the Liquidator to ensure that Mr. Rajesh Agarwal, the suspended board of director be present in the meeting of Stakeholders Committee, the Liquidator failed to make sure that Mr. Rajesh Agarwal is present at the committee meetings.

- j. That the stakeholders in general and the Applicants will be prejudiced against if appropriate action is not taken against the Respondent herein and if he is not replaced, which might eventually cause irreparable loss and injury to all the stakeholders.
- k. That the Liquidator has also filed I.A. 64 of 2020 and has sought for co-operation of the Applicants herein in the ongoing liquidation process of the Corporate Debtor. In the said I.A, the Liquidator has also sought a relief from this Hon'ble Tribunal to direct the Applicants herein not to dispose off the assets of the Corporate Debtor till the entire information/data /documents /assets are furnished to the Liquidator. It is submitted that on one hand the Applicant has filed I.A 64 of 2020 for seeking cooperation from the Applicants herein and on the other hand the Applicant has made the Applicants herein as parties to the I.A. No. 62 of 2020 alleging

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collusion of the Applicants herein (members of CoC) with the Corporate Debtor.

1. That the Adjudicating Authority is empowered by law to pass appropriate orders by invoking inherent powers in order to meet ends of justice, whenever a situation arises for invocation and exercise of the inherent powers.
- m. That the liquidation order is dated 25.10.2019 and its receipt thereon acknowledged as 4.11.2019. However, the liquidator has conducted stakeholders meeting on 4.02.2020 and thereafter on 20.06.2020. The Liquidator has failed to apprise the stakeholder's consultation committee on the steps to be initiated by Liquidator towards various matters in relation to Liquidation of the Corporate Debtor.
- n. Section 35(2) of the Code enables the Liquidator to consult any of the stakeholders entitled to a distribution of proceeds under section 53 of the Code subject to the condition that such consultation shall not be binding on him. In the instant case, the Liquidator has not taken any steps nor seems to have an inclination to seek the valuable advice from stakeholders given the value and complications involved in transactions.
- o. That the applicants of the instant application submit that the actions of the respondent (liquidator) call for stringent measures to be taken by this Hon'ble Adjudicating Authority as there is absolute trust deficit between the stake holders and the Respondent. That a smooth and legitimate liquidation process can only be achieved if the respondent is replaced with a person having domain expertise and professional competence in handling IBC matters unlike the present incumbent.

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- p. Reiterating above, counsel for the Applicant prayed to allow the Application as prayed for.
3. During the hearing held on 10.12.2020, Counsel for Respondent/Liquidator was asked to file counter by 24.12.2020, but the same was not filed. Therefore, on 24.12.2020, both parties were asked to file written submissions.
4. The Respondent thereafter filed both counter and written submissions both of which are on similar lines, and *inter-alia*, states as under:-
- a. That the First and Second Petitioners in IA No. 1148/2020 are Financial Institution and Public Sector Bank respectively and jointly hold charge on the Fixed Assets of the Company which include, apart from others, Land, Buildings, Plant & Machinery, Structures etc., against the term loan advanced by them to the Corporate Debtor.
- b. That the Applicant No.1 i.e., IFCI Ltd was not a secured\* creditor as on today because the Liquidator has not yet treated the said Applicant as Secured Creditor and further submit that the Plant & Machinery which was shown to have been supplied by various entities were not in existence and the Liquidator further verified it from the MCA website. Then Liquidator requested the Applicant No.1 to submit and produce all the invoices, Installation Certificates, Fixed Assets details maintained by them in accordance with the orders of this Adjudicating Authority dated 17.03.2020 in IA No.61/2020, but the Applicant failed to produce the same till date and the same is still awaited from the Applicant. Hence, the Liquidator has not yet adjudicated the claim of the First Applicant even as on today to treat him as a Secured Creditor. In

view of the above, the Liquidator submits that the Applicant in this IA claiming as a Secured Creditor presently is not correct and therefore, the Application should be dismissed on this ground alone.

- c. That the counsel for the Applicant who appeared on behalf of BS Limited at the time of CIRP process and further filed IA No.323/2019 before this Adjudicating Authority and presently he filed an Application against the BS Limited (in Liquidation). That the Liquidator has filed an IA No.62/2020 in IA No.323/2019. Even in the said IA No.62/2020 the counsel i.e., M/s. YSN Law Offices of which he is a partner, is representing the Respondent Secured Creditors. IA No.323/2019 was filed by M/s. YSN Law Office themselves and he filed vakalat on behalf of the BS Limited as Applicant. Now, the M/s. YSN Law Offices filed vakalat as a Respondents in IA No.62/2020. The question arises whether the same counsel can represent on behalf of the Petitioner and also the Respondent in any case. Therefore, it is against the moral conduct of Advocate Code and against the Bar Counsel Code. The Liquidator wants to refer the said issue to the Bar Counsel of Telangana.
- d. That the Liquidator has been prosecuting the matter and collecting the data to maximize the value of the Corporate Debtor and its Assets and cause as much higher distribution of the proceeds of the Assets as possible to the Stakeholders in accordance with their priorities and rights. Simultaneously the Liquidator, notwithstanding the non-cooperation of the Petitioners and the Ex-Management, has been trying his best and putting in all his efforts to ascertain the Assets, their Location, Acquisition and

Disposal, if any, as part of his job to render a true and fair account of the liquidation estate of the Corporate Debtor to this Adjudicating Authority and the Stakeholders. In the process, the liquidator had to file certain Applications.

- e. That the IAs in question were filed inter-alia seeking to remove the Liquidator. But the Liquidator was not made the Respondent at all. The Respondent is the Corporate Debtor and not the Liquidator as such. The Liquidator while representing the Corporate Debtor/Company in Liquidation is the Liquidator and Officer of this Adjudicating Authority and removal of the Liquidator has to be sought against the person who occupied the post of the Liquidator, but not the Corporate Debtor represented by its Liquidator. There is a clear distinction between the Corporate Debtor represented by its Liquidator and the person appointed as the Liquidator by virtue of which he is representing the Corporate Debtor. Therefore, the Petition in the first instance itself is liable to be dismissed not only because of improperly arraying of the parties but also due to filing of such Application with flimsy and unsubstantiated allegations.
- f. That the Applicants filed the IA No.1148/2020 under section 34(4) & (7) of the IBC, 2016, in this regard it is submitted that the above said provision only meant to replace the Resolution Professional by the Adjudicating Authority and Sub-Section 7 says the Adjudicating Authority shall on receipt of the Proposal of the Board for the Appointment of the Insolvency Professional as Liquidator, by an order, appoint such IP as the Liquidator. That the above said provisions doesn't apply for the removal of the Liquidator. Therefore, the IAs should be dismissed on this ground.

- g. That the Liquidator has been prosecuting the IA No.323/2019 filed by the erstwhile RP to undo the Preferential, Undervalued and Fraudulent transactions carried out by the Corporate Debtor. Apparently, the Petitioners were not comfortable with the verification process carried out by the Liquidator into the Affairs and Assets of the Company, as otherwise, there was no reason for them to move Applications for removal of the Liquidator without substantiating any single instance of allegation.
- h. That necessary ingredient to establish for the removal of the Liquidator there must be a misconduct, fraud and misfeasance/professional incompetence of the Liquidator showing that the Liquidator is not being diligent in discharging his duties. Unless such incompetence is proved beyond any reasonable doubt an Application for removal of the Liquidator is not maintainable.
- i. That one of the Quasi Judicial Authorities under the control of the Central Government had made several comments relating to the sham transactions and further observed that there are fake companies that were also involved in the transactions and further stated that the purchases and sales have been made without movement of goods. It further stated that the Banks have not conducted the proper due diligence while issuing LCs and BGs. Therefore, the Liquidator feels that it is necessary to go through those documents and further feels that it requires the investigation in to the Affairs of the Company. That if any recoveries are made out of the Investigations, those recoveries directly go to the Petitioners at the time of distribution.
- j. That the Liquidator upon his appointment, apart from carrying out his duties as Liquidator has simultaneously invited claims and

started adjudicating/examining the record to ascertain the Assets and Liabilities without exclusively depending upon the earlier available details of Assets and Liabilities as provided to and by the erstwhile Resolution Professional, for the purpose of rendering a true and fair view of the account of Estate of the Corporate Debtor to this Adjudicating Authority.

- k. That the Liquidator is a Quasi Judicial Authority and is having power to adjudicate the claims of the Creditors of the Company in Liquidation. The RP concerned is not an Adjudicating Authority and he can't adjudicate claim and he can only collate the information and submit to the NCLT. Therefore, the Liquidator has not relied on the information provided by the Resolution Professional and the Liquidator has conducted the proceedings as per the Code and IBBI (Liquidation Process) Regulations.
- l. That the Liquidator is duty bound under Regulation 35 of IBC, 2016 to look into every aspect and angle of the Corporate Debtor to maximize the value of the Corporate Debtor and this is what has made the Liquidator to prosecute/to file application to investigate into the affairs of the Company.
- m. That the Secured amount is about Rs.2506 crores, which is a whopping figure for which involves considerable scrutiny and examination not merely on account of huge value, but also on account of other surrounding facts like improper and inappropriate representation of Assets to the above valued Liability of the Petitioning Creditors.
- n. That the average Liquidation Value of the Assets of the Corporate Debtor as per the Valuation Reports submitted by Mr. Inturiveeraiah, dated 21.02.2019, by K. Dhanapathi Rao &

Valuers, dated 27.05.2019, by P. Prabhakara Reddy, dated 21.03.2019 and by M/s. Sagar and Associates dated 23.03.2019 has no match to the value of the Secured Liability of the Petitioners.

- o. That on reading of the Audited Financial Statements of the Corporate Debtor for the Financial Years 2015 – 16, 2016 – 17 and latest available for the FY 2017 – 18, which are all available in public domain even to the lay man in the MCA website it was found that an aggregate of Rs. 944 crores of Trade Debtors have been written off/ adjusted by passing Journal Entries, and during the same period, LCs and BGs worth about Rs.215 crores were sanctioned by the Petitioners, while on the other side LCs and BGs worth about Rs.200 crores were devolved because of clear default on the part of the Corporate Debtor to honor the payments to the vendors of the Corporate Debtor. These basic and naked facts apart from other evidence prove beyond any reasonable doubt that something is amiss in the conduct of the business of the Corporate Debtor which requires to be ascertained during the course of Liquidation. Else the purpose of liquidation gets frustrated and object of the Code to maximize the value of the Corporate Debtor for the benefit of the Stakeholders too gets defeated in totality.
- p. Details of the debts written off year wise aggregating to Rs.944 is as under:

Sl.No.	Financial Year	Amount (Rs)
1	2016 – 17	188,53,76,430
2	2017 – 18	694,96,48,861
3	2018 - 19	60,05,25,357
TOTAL		943,55,50,648

- q. That these debts are actionable claims hypothecated to Applicants against the Working Capital Facilities granted by them to the Corporate Debtor. It is bounden duty of the Secured Creditor even as per RBI guidelines to verify each and every stock, receivables and other working capital statements on monthly basis. If they have verified the above books then the Secured Creditors is also held liable for the above transactions. Further, there was no explanation from the Applicant Lenders as to what action they have initiated to ascertain the correctness of these book debts, in as much as these book debts apparently appeared to have been inflated to facilitate finances into the Company from all or some of the Applicant Secured Creditors. This revelation by the Liquidator based on his efforts is considered by the Applicant Creditors as the misconduct on the part of the Liquidator.
- r. That the Liquidator has only been following up the above matter along with all other issues concerned with the Liquidation Proceedings of the Corporate Debtor. As part of this process Liquidator sought information from the Petitioning Lenders and members of the Ex-management vide email communications dated 05.11.2019, 09.11.2019, 23.11.2019, 11.12.2019, 13.12.2019, 18.12.2019, 19.12.2019, 20.12.2019 and 30.12.2019, but none of the above has submitted any worthy information or information with reference to specific inquiry and this non-cooperation and silence on the part of the Lenders has been delaying the whole process of the Liquidation for which Liquidator cannot be blamed.
- s. That the Liquidator is unable to understand what are the frivolous and malafide applications filed before this Adjudicating Authority as alleged by the Applicants. That the RP has filed IA

No.323/2019 with the permission of CoC. The said Application was filed under section 43, 45 and 66 of the Code and the same application was continued by the Liquidator and the only other application was filed by the Liquidator to investigate into the affairs of the Company. If these two applications are frivolous and mala-fide Applications, why the Applicants have not filed the counter in IA No.65/2020 before this Adjudicating Authority and sought the dismissal of the Application. This itself shows the Applicants' contention/statements have not come before this Court, for the reasons best known to them.

- t. That the Liquidator has no personal involvement and has no conflict of interest and he has performed his duties passionately and in a fair and transparent manner with a proper disclosure with all the facts before this Adjudicating Authority and to the Stakeholders to the extent required and permissible.
- u. That from the Transaction Audit Report and the Forensic Audit Report, the Liquidator during the course of appreciation of the record has come across the search assessment order passed by the ACIT dated 29.11.2017, wherein it was observed by the IT Officer that the management representative voluntarily disclosed the undisclosed income of Rs.60 crores and apart from that the said order speaks about various sham transactions, and use of fly by night companies/entities for siphoning and mis-appropriating the funds of the Company. All these transactions require thorough investigation and thereafter necessary action and this could be possible only when there is a fair amount of cooperation by the Applicant Creditors and the Ex-Management personnel. Similarly, huge write off of the debts and devolvement of the LCs and

Invocation of BGs which were sanctioned to the company even when there was writing off of the debts and defaults by the Corporate Debtor during the financial years 2015 – 16, 2016 – 17 and 2017 – 18 and the Applicants having not taken any action for recovery of the said amounts from the Corporate Debtor, itself shows that the Ex-Management and the Applicants are in collusion/hand in glove with the Corporate Debtor and this is the reason the Liquidator has sought to make Applicants as Respondents in IA No.62/2020 and IA No.65/2020 respectively.

- v. That the Liquidator has minimized the cost when compared with the cost incurred during the Resolution Process stage. However, the Applicant creditors were silent as far as the cost incurred during the CIRP and making wild allegations against the Liquidator for the far less cost incurred by the Liquidator. Appointment of consultants is part of the liquidation process as per Regulation 7 and all these facts are placed before this Adjudicating Authority. Thus, there is a fair amount of disclosure in the conduct of the liquidation proceedings by the present Liquidator. That the Liquidator has been carrying out his duties and putting all his efforts relentlessly without receiving even a penny, with the use of his own office and resources. The Creditors instead of voluntarily recommending an advance to the Liquidator, have been non-cooperative with the Liquidator causing delay in the realization of the assets. For these reasons, there is no reason for the liquidator to intentionally delay or dodge the proceedings as hastily as alleged by the Applicant Creditors.
- w. That he has no conflict or personal interest and he has no ill will against the Applicant Creditors or the persons of the Ex-

management. The Liquidator's efforts in discharging of his duties and performing his job as Liquidator as per the provisions of IBC at times may not be upto the liking of some of the Stakeholders. At the end, the liquidator is fair and acting at the best interest of all the Stakeholders. The Financial Creditors have to understand that besides themselves, there are other Stakeholders also whose interest is also to be protected by the Liquidator.

- x. Reiterating the above, it is stated by the Liquidator that the instant Application is not maintainable either in law or on merit, is ill founded and filed with an intent to frustrate the efforts of the liquidator to achieve the objectives of the IBC and his appointment and prayed to dismiss the same.
5. Heard both sides and perused record, counter and written submissions filed by both sides.
6. It is the case of the Applicant that the present liquidator of the Corporate Debtor has failed to perform his duties as mentioned under Section 35 of the IB Code, 2016, which has led to various acts of omission and commission and abuse of power on his part. It is also alleged that instead of taking tangible measures to address the issues related to the claims of the Applicants and other stakeholders, he has been indulging in filing frivolous IAs which is delaying the process and causing loss to all the stakeholders.
7. It is also pointed out by the Applicants that the Liquidator has on one hand filed IA No. 64/2020 seeking co-operation from the Applicants on the on-going liquidation of the Corporate Debtor and on the other hand he has filed an IA No. 62/2020 for impleading the Applicants herein as necessary parties in IA No. 323/2019, which was filed by the erstwhile

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- RP for avoiding fraudulent and preferential transactions based on the transactional audit/ forensic audit report.
8. It is also alleged that the liquidator has not been seeking valuable advice from stakeholders to carry out the Liquidation process smoothly and that there is an absolute trust deficit between the Applicants and the Respondent.
  9. The Respondent on the other hand has denied the aforesaid allegations and has stated that notwithstanding the non-cooperation of the Applicants herein and the Ex-management of the corporate Debtor, he has been trying his best and putting in all his efforts to ascertain the assets, their location, acquisition and disposal as part of his mandatory duty to render a true and fair account of the Liquidation Estate of the Corporate Debtor to the stakeholders as well as this Adjudicating Authority. He further contends that in this process, the Liquidator has been prosecuting the IA No. 323/2019 filed by erstwhile RP to undo preferential, undervalued and fraudulent transactions carried out by the Ex-management of the Corporate Debtor and in that process; he has filed IA No. 62/2020 for bringing out the actual facts to light.
  10. Giving certain specific examples, like writing off of trade debtors to the extent of Rs. 944 Crores by passing journal entries during the financial years 2015-16, 2016-17 & 2017-18 and sanctioning of LCs and BGs of worth about Rs. 215 Crores by the Financial Creditors during the same period, the Liquidator has found it necessary to look into every aspect of these transactions to arrive at a true and fair view of the Liquidation Estate of the Corporate Debtor.
  11. Denying all the allegations of misconduct, incompetency or lack of diligence, the Liquidator has stated that based on specific facts of finding, given by the Income Tax Department in the search assessment

of the Corporate Debtor, he felt that it was necessary to look into those facts/ documents referred to in the assessment orders to find out if any recoveries could be made , and if any there are any recoveries made on the basis of this enquiry, those amounts will directly benefit the Applicants herein, who are the claimants in the Liquidation process.

12. Stating the above, the Liquidator has denied any conflict of interest with the Applicants and prayed to dismiss the Application.
13. On due consideration of the facts and arguments advanced by both sides, we frame the following two questions which are required to be answered for adjudicating upon the issue of removal of the Liquidator as prayed for by the Applicants herein:

*(I) Whether the actions of the Liquidator in this case have been beyond the scope of his powers and duties as expressly provided in Section 35 of IB Code, 2016 ?*

*And*

*(II) Whether the IB Code, 2016 provides for any provisions for process of removal of Liquidator on an Application made by Financial Creditor(s)/ Member(s) of erstwhile CoC?*

14. To answer the first question, we need to refer to the provisions of section 35 of IB Code, 2016, which are extracted below:

*"35. Powers and duties of liquidator. -*

*(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:*

*- (a) to verify claims of all the creditors;*

*(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;*

*(c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;*

*(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;*

*(e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;*

*(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified:*

*[Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor*

in liquidation to any person who is not eligible to be a resolution applicant.]

(g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;

(h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;

(i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;

(j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;

(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor;

(l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;

(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;

(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and

(o) to perform such other functions as may be specified by the Board.

(2) The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53:

Provided that any such consultation shall not be binding on the liquidator:

Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.

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15. On a perusal of the above-extracted section, particularly Sub-Section (1) and especially Clauses (d) (l) and (m) thereof , it is seen that these provisions enjoin upon the Liquidator to (d)take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary; (l) to investigate the Financial affairs of the Corporate Debtor to determine the undervalued or preferential transactions and (m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator. Therefore, the Liquidator has been endowed with very wide powers as a quasi-judicial functionary under the IB Code. Subsection (2) of Section 35 empowers the Liquidator to consult any of the stakeholders entitled to a distribution of proceeds under section 53, but the proviso makes it amply clear that such consultation is not binding on the Liquidator.
16. Keeping in view the powers and duties of the Liquidator as enumerated above, the actions initiated by the Liquidator would not fall beyond the scope of Liquidator's duties to protect and preserve the assets and properties of the Corporate Debtor, and to investigate the Financial affairs of the Corporate Debtor, to determine undervalued or preferential transactions, which, when undone, ultimately would benefit the claimants or the stakeholders of the Corporate Debtor in Liquidation.
17. Accordingly, keeping in view the provisions of Section 35 of the Code, the first question framed above has to be answered in the negative i.e., the action initiated by the Liquidator is not beyond the scope as provided under the Law.

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18. As to the second question framed above, it is seen that the Application has been made under Section 60(5) read with 34(4) to 34(7) of the IB Code, 2016 and Rule 11 of NCLT Rules, 2016.
19. Provisions of Section 34 of the IB Code, 2016 stipulate as under:-

**34. Appointment of liquidator and fee to be paid. –**

- (1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under 3 [Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form,] shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub section (4).
- (2) On the appointment of a liquidator under this section, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.
- (3) The personnel of the corporate debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor and provisions of section 19 shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the interim resolution professional.
- (4) The Adjudicating Authority shall by order replace the resolution professional, if-
- (a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or
- (b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded [in writing; or]
- [(c) the resolution professional fails to submit written consent under sub-section (1).]
- (5) For the purposes of 3 [clause (a) and clause (c)] of sub-section (4), the Adjudicating Authority may direct the Board to propose name of another insolvency professional to be appointed as a liquidator.
- (6) The Board shall propose the name of insolvency professional 4 [along with written consent from the insolvency professional in the specified form] within ten days of the direction issued by the Adjudicating Authority under sub-section (5).
- (7) The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.
- (8) An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation

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*proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.*

*(9) The fees for the conduct of the liquidation proceedings under sub-section (8) shall be paid to the liquidator from the proceeds of the liquidation estate under section 53.*

20. A reference to section 34, as extracted above, reveals that sub section (4) deals with replacement of RP in three situations as enumerated in clauses (a),(b) and (c) therein. It therefore does not deal with replacement or removal of the Liquidator at the instance of Creditors/claimants.
21. As far as Sub-section (7) is concerned, it relates to the power of this Adjudicating Authority to appoint an Insolvency Professional as a Liquidator on receipt of recommendation for such appointment from the Board. This subsection also does not provide for replacement or removal of the Liquidator at the instance of Creditors/claimants.
22. In the instant case, Mr. Yadavilli Sai Karunakar was appointed as Liquidator on 25.10.2019, on the recommendations of IBBI vide its letter No. IP-13011/1/2019-IBBI/599/5044 Dated 24.10.2019.
23. Therefore, the legal provisions under which this Application has been sought to be filed are not relating to replacement or removal of the Liquidator.
24. It is extremely pertinent to note here that the Hon'ble NCLAT in the matter of PNB Vs Mr. Kiran Shah, Liquidator of ORG Infomatics Ltd in Company Appeal (AT) 102 of 2020 dated 21.01.2020, have dealt with the issue of the removal of the Liquidator at the instance of Creditors/Claimants in the following manner:-

**"21.01.2020:** *In the 'Corporate Insolvency Resolution Process' of 'M/s. ORG Informatics Limited'- ('Corporate Debtor'), the 'Committee of Creditors' of which the 'Punjab National Bank' is the lead Bank, decided to move application for liquidation of the 'Corporate Debtor'.*

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2. The 'Resolution Professional' was asked to move an application for liquidation under Sections 33 & 34 of the Insolvency and Bankruptcy Code, 2016. The said application has been accepted by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad by impugned order dated 20th November, 2019. The 'Resolution Professional' has been asked to continue as Liquidator.

3. The grievance of the Appellant is that he is against the appointment of the Liquidator. However, we are not inclined to interfere with the impugned order as after the liquidation the 'Committee of Creditors' has no role to play and they are simply a claimant whose matters are to be determined by the Liquidator and cannot move an application for removal of Liquidator in absence of any provisions under the law.

*We find no merit in this appeal. It is accordingly dismissed. No costs."*

25. Thus, the Hon'ble NCLAT have categorically laid down that after the Liquidation process is initiated, the 'erstwhile CoC members' have no role to play and they remain simply a group of claimants, whose claims are to be determined by the Liquidator and they cannot move any Application for removal of Liquidator, since there are no such provisions under the Law.
26. Following the guidance available in the form of the orders of Hon'ble NCLAT *supra*, we observe that the prayers sought in the instant Application cannot be allowed.
27. Further, the Liquidator is at liberty to conduct the Liquidation process strictly in accordance with the provisions of the IB Code, 2016 and Regulations made thereunder, so as to maximize the value of the Liquidation Estate of the Corporate Debtor and to balance the interest of the stakeholders.
28. With the above observation, IA No. 1148/2020 stands disposed. No order as to costs.

- Sd -

**Dr. Binod Kumār Sinha**  
Member Technical

- Sd -

**K. Anantha Padmanabha Swamy**  
Member Judicial