

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-1, AHMEDABAD

ITEM No.301
IA/295(AHM)2026
In
C.P.(IB)/3(AHM)2024

Under Sec 114 IBC 2016 r/w Rule 11 NCLT Rules, 2016
IN THE MATTER OF:

Nitin Om Kothari RP of
Yakub Khan PG of Dmb Paper Mills Pvt. Ltd.

...Applicant

V/s

Mr. Yakub Khan

...Respondent

Order delivered on: 06/05/2026

CORAM:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-SD-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

IA/295(AHM)2026

In

C.P.(IB)/03(AHM)2024

*(Application under Section 114(1) of the IBC, 2016 r/w Rule 11
of the NCLT, Rules, 2016)*

MEMO OF PARTIES

Mr. Nitin Om Kothari

Resolution Professional of
Yakub Khan Personal Guarantor of
Dmb Paper Mills Private Limited
Having office at:
51/301, Alica Nagar,
Lokhandwala Township,
Kandivali (E), Mumbai-400101

.... Applicant

VERSUS

Mr. Yakub Khan

Address 1: 02, Warsi Compound,
Lliyasa Nagar, Dargah Road, K
Hajrana, Indore-452001
Address 2: 211, Shagun Building,
Vijay Nagar, AB Road,
Above Apna Sweets, Indore,
Madhya Pradesh-452001

.... Personal Guarantor/Respondent

In the Matter of: CP(IB) No. 3(AHM) 2024

Krishkan Investment Private Limited,

Having Its Office situated at
602, Sunteck Crest Plot 3 CTS No.189,
Mukund Nagar Rd., Andheri east,



Marol Naka, Mumbai,
Maharashtra-400059.

... **Financial Creditor**

VERSUS

Mr. Yakub Khan

(Personal guarantor of Corporate Debtor-
M/s. DMB Paper Mills Private Limited)

Residing at:-

211, Shagun Building,
Vijay Nagar, AB Road,
Above Apna Sweets,
Indore, Madhya Paresh-452001.

... **Personal Guarantor**

Order Pronounced On: 06.05.2026

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant : Mr. Sumitra Chaturvedi, Advocate
a/w. Mr. Nitin Om Kothari, RP in
Person

For the Respondent/FC : Mr. Yuvraj Thakore, Advocate
a/w. Mr. Pankaj Yadav,
Authorized Person

For the PG : None

ORDER
(Per: Bench)

1. This application has been filed on 26.02.2026 (through e-mode) by **Mr. Nitin Om Kothari**, appointed as the Resolution Professional in the Insolvency Resolution Process of Mr.



Yakub Khan, Personal Guarantor to DMB Paper Mills Private Limited, (hereinafter as, “the **Applicant**”) under Section 114(1) of the IBC, 2016 r/w Rule 11 of the NCLT, Rules, 2016 seeking following reliefs: -

- a. *To allow the present application*
- b. *To take the Report under Section 112 of the IB Code on record and further be please to Pass an appropriate order as per Section 114 of the IB Code;*
- c. *To Pass an order to close the Insolvency Resolution Process of. Yakub Khan along with liberty to initiate the Bankruptcy Process, as may be required, in accordance with law:*
- d. *To relieve the Applicant-Resolution professional of the Personal Guarantor in view that non- Receipt of Repayment Plan from the Guarantor:*
- e. *To grant any other relief or reliefs as may deem fit in the interest of justice;*

2. The Applicant has placed the facts through the I.A. and documents in the following manner: -

2.1. It is submitted that the present Interlocutory Application has been filed by the Applicant, Mr. Nitin Om Kothari, Resolution Professional, under Section 114(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016, seeking appropriate directions including closure of the Personal Guarantor Insolvency Resolution Process.



- 2.2. It is submitted that the Financial Creditor, Krishkan Investment Private Limited, had filed an application under Section 95 of the Code on 12.12.2023 for initiation of insolvency resolution process against the Personal Guarantor, Mr. Yakub Khan.
- 2.3. It is submitted that this Hon'ble Tribunal, vide order dated 05.01.2024, appointed the Applicant as Interim Resolution Professional for submission of report under Section 99 of the Code.
- 2.4. It is submitted that pursuant to submission of report recommending admission, this Hon'ble Tribunal admitted the petition under Section 100 of the Code vide order dated 03.09.2024, thereby commencing the Insolvency Resolution Process against the Personal Guarantor.
- 2.5. It is submitted that in compliance with Section 102 of the Code, a public announcement was made on 06.09.2024 in newspapers including Business Standard (Bhopal Edition) and Loksatta Jansatta (Surat Edition), inviting claims from creditors.
- 2.6. It is submitted that pursuant to such public announcement, only one claim was received from the Financial Creditor, and accordingly, the List of Creditors was prepared under Section 104 of the Code.
- 2.7. It is submitted that immediately upon commencement of the process, the Resolution Professional called upon the Personal Guarantor to submit financial disclosures,



asset and liability details, income tax returns, Statement of Affairs, and a Repayment Plan under Section 105 of the Code.

2.8. It is submitted that despite repeated communications dated 06.09.2024, 17.10.2024, and several subsequent reminders issued from September 2024 till February 2025, the Personal Guarantor failed to submit:

- Statement of Affairs
- Financial disclosures
- Repayment Plan
- Any meaningful response or cooperation

2.9. It is submitted that due to non-submission of the Repayment Plan, the Resolution Professional filed an application seeking extension of time; however, the same was rejected by this Hon'ble Tribunal vide order dated 05.03.2025.

2.10. It is submitted that the Resolution Professional filed a Progress Report for the period from 04.09.2024 to 04.01.2025, which was taken on record by this Hon'ble Tribunal vide order dated 17.02.2025.

2.11. It is submitted that the First Meeting of the Committee of Creditors was convened on 18.01.2025, wherein it was noted that:

- Only one claim had been received and verified;
- The Personal Guarantor had failed to submit disclosures and repayment plan;
- Repeated reminders had yielded no response.



- 2.12. It is submitted that during the said meeting, the Committee of Creditors deliberated upon conducting an asset tracing exercise to ascertain the financial position of the Personal Guarantor.
- 2.13. It is submitted that thereafter, the Second Meeting of the Committee of Creditors was held on 09.02.2026, wherein it was recorded that:
- No repayment plan had been submitted;
 - Statutory timelines had expired;
 - Extension had already been declined by this Tribunal.
- 2.14. It is submitted that in the said meeting, the Committee of Creditors, holding 100% voting share, unanimously resolved to file an application before this Hon'ble Tribunal seeking closure of the insolvency resolution process with liberty to initiate bankruptcy proceedings.
- 2.15. It is submitted that as per Section 106 of the Code, the Repayment Plan along with the Resolution Professional's report is required to be submitted within 21 days from the last date of submission of claims, however, in the present case, no repayment plan has been submitted till date.
- 2.16. It is submitted that in absence of any repayment plan, no proposal could be placed before the Committee of Creditors and the process has reached a statutory and procedural deadlock.



- 2.17. It is submitted that the Corporate Debtor, DMB Paper Mills Private Limited, had availed various credit facilities to the tune of approximately Rs. 42.43 Crores from the erstwhile Financial Creditor (Union Bank of India) vide sanction letter dated 09.05.2016.
- 2.18. It is submitted that to secure the said facilities, the Personal Guarantor executed a Deed of Guarantee dated 13.05.2016, thereby undertaking co-extensive liability with the Corporate Debtor.
- 2.19. It is submitted that the Corporate Debtor committed default and the loan account was classified as Non-Performing Asset on 30.11.2017.
- 2.20. It is submitted that thereafter, CIRP was initiated against the Corporate Debtor vide order dated 24.11.2021, and upon failure of resolution, an order of liquidation was passed on 29.08.2023.
- 2.21. It is submitted that the debt of the Corporate Debtor was assigned by Union Bank of India to the present Financial Creditor vide Assignment Agreement dated 12.04.2023.
- 2.22. It is submitted that the Financial Creditor issued a Demand Notice dated 21.07.2023 (Form-B) invoking the personal guarantee; however, despite service, no payment was made by the Personal Guarantor.
- 2.23. It is submitted that under Section 112 of the Code, the Resolution Professional submitted a report stating that:

- No Repayment Plan has been received;



- No effective meeting for approval of plan could be conducted;
- Statutory timelines have lapsed;
- The process has reached a deadlock.

2.24. It is submitted that under Section 114(1) of the Code, where no repayment plan is approved, this Hon'ble Tribunal is empowered to pass appropriate orders including closure of the process.

2.25. It is submitted that failure to submit a repayment plan within statutory timelines is equivalent to rejection under Section 114 of the Code.

2.26. It is submitted that in the present case, the Personal Guarantor has failed to submit any repayment plan despite repeated opportunities, and therefore continuation of the process would serve no purpose and would be contrary to the scheme and timelines prescribed under the Code.

2.27. It is submitted that the entire delay and failure of the process is attributable to the continuous non-cooperation of the Personal Guarantor and absence of any repayment proposal.

2.28. It is submitted that the Committee of Creditors has, with 100% voting share, resolved to seek closure of the process and to initiate appropriate proceedings, including bankruptcy, in accordance with law.

2.29. It is submitted that in view of the aforesaid facts and statutory framework, the present application has been



filed seeking closure of the Personal Guarantor Insolvency Resolution Process with appropriate liberty.

2.30. It is submitted that the issue is no longer res integra and has been settled by this Tribunal in ***Iqbal Singh Gandhi (RP) v. Laxmi Devi Baid & Ors. IA/1540(AHM)2025 in CP(IB)/143(AHM)2025, (Order dated 05.01.2026)***, wherein it has been held that failure to submit a Repayment Plan within statutory timelines is equivalent to rejection under Section 114, and closure with liberty to initiate bankruptcy proceedings is warranted.

2.31. It is therefore prayed that this Tribunal may be pleased to take the Report under Section 112 on record and pass appropriate orders for closure of the Insolvency Resolution Process with liberty to initiate Bankruptcy Proceedings in accordance with law.

3. In compliance of order dated 06.03.2026, the Applicant RP filed an additional affidavit on 23.03.2026 vide Inward No. D-2565 stating the following:

3.1. It is submitted that the insolvency proceedings of the Personal Guarantor are governed by the provisions of the Insolvency and Bankruptcy Code, 2016, read with the applicable rules and regulations governing personal guarantor insolvency resolution.

3.2. It is submitted that after appointment, the Resolution Professional issued several communications and reminders to the Personal Guarantor seeking



submission of the repayment plan, financial disclosures, and relevant documents; however, copies of such communications are annexed to the application.

- 3.3. It is submitted that despite repeated communications, the Personal Guarantor failed to provide the requisite financial information, repayment plan, and supporting documents within the statutory timelines prescribed under the Code.
- 3.4. It is submitted that the lack of cooperation on the part of the Personal Guarantor materially impeded the progress of the resolution process and constrained the Resolution Professional from effectively formulating a repayment plan before the creditors.
- 3.5. It is submitted that during the First Meeting of Creditors held on 18.01.2025, the Resolution Professional informed the Financial Creditor regarding the continued non-cooperation of the Personal Guarantor and sought directions; however, no substantive response or financial disclosures were received from the Personal Guarantor thereafter.
- 3.6. It is submitted that considering the absence of cooperation, the Resolution Professional approached the Financial Creditor and obtained approval on 03.05.2025 for extension of the timeline, as the process could not be concluded within the prescribed period.



- 3.7. It is submitted that a Progress Report was filed by the Resolution Professional on 04.03.2025 and 04.04.2025, which was taken on record by this Tribunal vide order dated 17.02.2025, and copies of the same are annexed with the application.
- 3.8. It is submitted that the Resolution Professional also informed the Financial Creditor that an application seeking extension of the timeline would be filed before this Tribunal.
- 3.9. It is submitted that during discussions, the Financial Creditor suggested that an Asset Tracing Agency be appointed to identify the assets and ascertain the financial position of the Personal Guarantor.
- 3.10. It is submitted that pursuant to the said suggestion and with the approval of the Financial Creditor, the Resolution Professional appointed CLA Global Indus Value Consulting as the Asset Tracing Agency, and the said appointment was approved vide email dated 13.02.2025.
- 3.11. It is submitted that the Resolution Professional filed an application seeking extension of timeline before this Tribunal; however, the said application came to be rejected, with observations recorded by the Tribunal regarding the delay in the process.
- 3.12. It is submitted that thereafter, the Resolution Professional continued to coordinate with the Asset Tracing Agency and undertook necessary follow-ups to



ascertain the assets and financial position of the Personal Guarantor.

- 3.13. It is submitted that the Asset Tracing Agency submitted its report dated 27.05.2025, along with supporting documents and annexures, which were subsequently shared with the Financial Creditor vide email dated 03.06.2025.
- 3.14. It is submitted that upon submission of the Asset Tracing Report, the Resolution Professional remained in continuous communication with the Financial Creditor and apprised it of the developments and findings.
- 3.15. It is submitted that the Resolution Professional sought clarification from the Financial Creditor regarding the appropriate course of action, including whether to proceed towards closure of the process or take further steps.
- 3.16. It is submitted that during this period, the Financial Creditor informed the Resolution Professional that it was internally deliberating upon the appropriate commercial decision regarding the continuation of the process.
- 3.17. It is submitted that the Resolution Professional continued to follow up with the Financial Creditor and also presented the Asset Tracing Report and related findings.



- 3.18. It is submitted that pursuant to such discussions, the Financial Creditor, vide email dated 04.01.2026, advised the Resolution Professional to take appropriate steps in the matter.
- 3.19. It is submitted that thereafter, the Resolution Professional convened the Second Meeting of Creditors on 09.03.2026.
- 3.20. It is submitted that during the said meeting, the Financial Creditor approved the closure of the Personal Guarantor Insolvency Resolution Process and filing of an appropriate application before this Tribunal.
- 3.21. It is submitted that the minutes of the Second Meeting of Creditors dated 09.03.2026 are annexed to the application.
- 3.22. It is submitted that pursuant to the said decision, the Resolution Professional proceeded to file the present application before this Tribunal seeking closure of the process with liberty to initiate appropriate proceedings, if required.
- 3.23. It is submitted that the delay in the conduct of the process occurred due to circumstances beyond the control of the Resolution Professional, including the non-cooperation of the Personal Guarantor and the time taken by the Financial Creditor in arriving at a commercial decision.
- 3.24. It is submitted that throughout the process, the Resolution Professional has acted bona fide, diligently,



and in compliance with the provisions of the Insolvency and Bankruptcy Code, 2016, and has not committed any wilful default or misconduct.

3.25. It is submitted that the Resolution Professional respectfully submits that the delay was neither intentional nor attributable to any negligence but arose due to practical constraints and dependencies inherent in the process.

4. In compliance with order dated 07.04.2026, the Financial Creditor/Krishkan Investment Private Limited filed its Affidavit-of-Reply on 13.04.2026 vide Inward No. D-3197 stating the following:

4.1. It is submitted that the present proceedings pertain to a case where the Financial Creditor is the sole creditor, holding 100% voting share in the Committee of Creditors, and no other creditor has submitted any claim pursuant to the public announcement made by the Resolution Professional, thereby rendering the process non-adversarial and devoid of competing or third-party claims.

4.2. It is submitted that the role of the Financial Creditor in the present proceedings has been confined to evaluating the feasibility and viability of any repayment plan and to take a commercial decision based on the material placed before it, and accordingly, the progress of the process was inherently dependent upon the



cooperation of the Personal Guarantor and availability of complete financial disclosures.

4.3. It is submitted that despite repeated communications and opportunities extended by the Resolution Professional, the Personal Guarantor failed to submit the requisite financial information and repayment proposal, thereby necessitating an independent assessment of the financial position of the Personal Guarantor through an asset tracing exercise.

4.4. It is submitted that pursuant to deliberations with the Resolution Professional, an Asset Tracing Agency was appointed, and an Asset Tracing Report dated 03.05.2025, along with supporting documents, was prepared and placed on record (Exhibit-D), which included identification of assets, verification of ownership details, and collation of financial information relating to the Personal Guarantor.

4.5. It is submitted that upon receipt of the said Asset Tracing Report, the Financial Creditor undertook a detailed internal evaluation of the findings and other relevant aspects concerning the Personal Guarantor, which involved a commercial assessment, verification of data, and examination of recoverability prospects, and such evaluation cannot be construed as a mere procedural formality.

4.6. It is submitted that the time consumed in the present matter is attributable to the aforesaid evaluation process, which became necessary in view of the



complete absence of cooperation from the Personal Guarantor and the failure to submit any repayment proposal, thereby requiring the Financial Creditor to independently assess whether continuation of the process would yield any meaningful outcome.

- 4.7. It is submitted that upon completion of such evaluation and internal deliberations, the Financial Creditor, exercising its commercial wisdom, arrived at a conclusion that continuation of the Personal Guarantor Insolvency Resolution Process was not viable in the facts and circumstances of the case.
- 4.8. It is submitted that accordingly, in the Second Meeting of the Committee of Creditors held on 09.02.2026, the Financial Creditor resolved to seek closure of the insolvency process with liberty to initiate appropriate proceedings in accordance with law.
- 4.9. It is submitted that the aforesaid decision was taken bona fide and after due consideration of all material on record, and the time taken in arriving at such decision was necessitated by the requirement of proper commercial evaluation and cannot be construed as deliberate delay.
- 4.10. It is submitted that the apprehension that the Personal Guarantor may have derived any undue benefit due to continuation of the process is misconceived, inasmuch as the moratorium under the Insolvency and Bankruptcy Code is co-terminus with the lifecycle of



the process and does not confer any unintended protection beyond statutory limits.

4.11. It is submitted that upon expiry of statutory timelines and in the absence of a viable repayment plan, continuation of the proceedings does not result in any undue advantage to the Personal Guarantor, and at no point of time was any such benefit intended to be conferred either by the Financial Creditor or the Resolution Professional.

4.12. It is submitted that the delay, if any, occurred solely due to the non-cooperation of the Personal Guarantor and the necessity of undertaking a bona fide commercial evaluation by the Financial Creditor.

4.13. It is submitted that the Resolution Professional has acted diligently and in a bona fide manner throughout the process and has discharged all duties in accordance with the provisions of the Insolvency and Bankruptcy Code, acting on the basis of directions and decisions of the Financial Creditor, and therefore no lapse or misconduct can be attributed to the Resolution Professional.

5. We have heard the Learned Counsel for the Applicant/Resolution Professional ("RP") and the Learned Counsel for the Financial Creditor ("FC"), and have carefully perused the material placed on record, including the pleadings, additional affidavit, documents, minutes of



meetings, and statutory reports filed in the present proceedings.

6. It is observed that the present Interlocutory Application has been filed by the Resolution Professional under Section 114(1) of the Insolvency and Bankruptcy Code, 2016 (“the Code”) seeking, inter alia, closure of the Personal Insolvency Resolution Process and grant of liberty to initiate bankruptcy proceedings on the premise that no repayment plan has been received and that the process has reached a deadlock.
7. It is further observed from the record that the insolvency process against the Personal Guarantor came to be admitted vide order dated 03.09.2024 and, therefore, the statutory timeline for completion of the process commenced from the said date. The Code mandates that such process is to be completed within a period of 120 days.
8. It is an admitted position that the process has continued for a period of 534 days, thereby resulting in a delay of 414 days beyond the prescribed statutory period. Such delay is not only substantial but also contrary to the time-bound framework envisaged under the Code.



9. It is observed that the justification advanced by the Resolution Professional for the said delay is primarily the alleged non-cooperation of the Personal Guarantor in not submitting the Statement of Affairs, financial disclosures, and repayment plan despite repeated communications.
10. It is further observed that the Financial Creditor has supported the said contention by submitting that due to such non-cooperation, an asset tracing exercise had to be undertaken and thereafter time was consumed in internal commercial deliberations.
11. It is, however, observed that while non-cooperation of the Personal Guarantor may pose practical difficulties, the same by itself cannot fully justify an inordinate delay of 414 days in completion of the process. The Code provides a structured and time-bound mechanism and does not contemplate indefinite continuation of proceedings.
12. It is observed that Regulation 22 of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 specifically empowers the Resolution Professional to approach this Adjudicating



Authority for necessary directions in case of non-cooperation by the Personal Guarantor. The extract of the said Regulation is as follows:

“22. In the event of non-cooperation of the guarantor at any time during the resolution process period or during the implementation of the repayment plan, the resolution professional shall prepare a statement to this effect and file the same with the Adjudicating Authority for appropriate directions.”

13. It is further observed that despite availability of such statutory remedy, the Resolution Professional has failed to demonstrate that any timely application was moved as has not placed on record any material to demonstrate that any timely application was moved before this Adjudicating Authority seeking directions against the Personal Guarantor for ensuring cooperation. The failure to invoke Regulation 22 at an appropriate stage indicates lack of due diligence on part of the Resolution Professional, as the said provision is specifically intended to address situations of non-cooperation.

14. It is also observed that the Resolution Professional is not merely a facilitator but is an officer of the Court, entrusted with statutory duties and responsibilities, and is expected to



act with utmost diligence, promptness, and adherence to the provisions of the Code.

- 15.** It is, therefore, observed that mere issuance of reminders and communications, without invoking available legal remedies, may not be sufficient to constitute due discharge of duties cast upon the Resolution Professional.
- 16.** It is further observed that if there was any delay or inaction on the part of the Financial Creditor in taking a commercial decision, it was incumbent upon the Resolution Professional to approach this Adjudicating Authority seeking appropriate directions for expeditious progression of the process.
- 17.** It is also observed that the Resolution Professional, being the custodian of the process, cannot remain a passive spectator and attribute the delay either to the Personal Guarantor or to the Financial Creditor, without taking proactive steps under the framework of the Code.
- 18.** It is a matter of record that an application seeking extension of time was filed by the Resolution Professional, which came to be rejected by this Adjudicating Authority vide order dated 05.03.2025.



19. It is observed that despite such rejection, which clearly indicated that the process must adhere to statutory timelines, the Resolution Professional permitted the process to continue for a prolonged period without seeking appropriate directions or adopting corrective measures.
20. It is observed that the conduct of the Resolution Professional, in allowing the process to continue in violation of statutory timelines without invoking available remedies, raises concerns regarding adherence to the statutory framework and timelines prescribed under the Code.
21. It is further observed that such conduct, prima facie appears not to be in consonance with the standards expected from an Insolvency Professional under the Code and attracts disciplinary proceedings by the Insolvency and Bankruptcy Board of India (IBBI).
22. It is also observed that the Resolution Professional, being an officer of the Court, is answerable to this Adjudicating Authority and is under an obligation to ensure that the process is conducted strictly in accordance with law and within the prescribed timelines.



23. It is observed that the Financial Creditor has sought to justify the delay on the ground of internal commercial evaluation; however, such explanation cannot override the statutory mandate of time-bound completion of the process.
24. It is further observed that Section 60(5)(c) of the Code confers wide jurisdiction upon this Adjudicating Authority to adjudicate issues arising out of insolvency proceedings and to take corrective measures in cases where material irregularity is established.
25. It is observed, in light of the judgment in ***Roseland Buildtech Pvt. Ltd. v. Vihaan 43 Reality Pvt. Ltd. & Ors., (2026) ibclaw.in 18 HC***, that Section 60(5)(c) confers broad jurisdiction on the NCLT to adjudicate any question of law or fact arising out of or in relation to insolvency resolution or liquidation proceedings. The relevant extract of the said judgment is as follows:

“66. Generally, on the interpretation of Section 60(5)(c), the following conclusions may safely be drawn from the discussion above—first, under Section 60(5)(c) of the IBC, the NCLT has the jurisdiction to adjudicate upon any dispute having a nexus with the insolvency of the corporate debtor; and second, the power so recognised under Section 60(5)(c) must be incidental and ancillary to an explicitly provided provision under the IBC.”



26. It is further observed, as reiterated in *Mr. Amit Sangal v. Mr. Kairav Anil Trivedi and Ors., (2025) ibclaw.in 130 NCLAT*, that fraud or collusion by Resolution Professional with the Corporate Debtor, or any other stakeholder involved in the CIRP concealment of material facts, non-adherence to significant CIRP Regulations etc. constitutes a material irregularity. If a material irregularity is established, the Adjudicating Authority is empowered under the IBC to take corrective measures. The relevant extract of the said judgment is as follows:

">Fraud or collusion by the resolution professional with the corporate debtor, or any other stakeholder involved in the CIRP concealment of material facts, non-adherence to significant CIRP Regulations etc. also constitutes a material irregularities. Any act of misrepresentation, concealment, or fraudulent conduct undermines the transparency and fairness of the process.

Similarly, mismanagement of the corporate debtor during the CIRP can give rise to material irregularity. The resolution professional is entrusted with the responsibility of managing the affairs of the corporate debtor in a manner that preserves its value. Any instance of mismanagement, including diversion of funds, dissipation of assets, or any conduct that is detrimental to the corporate debtor, may be considered a material irregularity.

> If a material irregularity is established, the Adjudicating Authority is empowered under the Code to take corrective measures. Such measures may include setting aside decisions taken during the CIRP, directing an investigation into the conduct



of the resolution professional, or imposing sanctions on the parties involved.”

27. Applying the aforesaid principles, it is observed that the delay of 414 days, coupled with failure to invoke statutory remedies such as filing an application under Regulation 22 for non-cooperation or seeking directions in case of delay attributable to the Financial Creditor, constitutes a material irregularity in conduct of the process.
28. It is also observed that the submission of the Resolution Professional that failure to submit a repayment plan warrants automatic closure of the process with liberty to initiate bankruptcy proceedings cannot be accepted in a mechanical manner as requires careful consideration in light of the conduct of the process, particularly when the process itself has been conducted in violation of statutory timelines.
29. While Section 114 of the Code contemplates appropriate orders in absence of an approved repayment plan, such power must be exercised in consonance with the conduct of the process. Where the process itself is vitiated by material irregularity and non-compliance with statutory timelines, the Adjudicating Authority is not bound to mechanically proceed towards closure or bankruptcy, and may instead exercise its



jurisdiction under Section 60(5) to pass appropriate corrective orders.

30. It is further observed that permitting such relief in the present case would amount to condoning procedural lapses and would dilute the discipline envisaged under the Code.
31. It is, therefore, observed that the Resolution Professional cannot be permitted to take advantage of a situation arising out of its own inaction and failure to take timely recourse to remedies available under law.
32. It is also pertinent to examine the conduct of the parties in entirety. From the sequence of events on record, including prolonged delay, absence of meaningful steps for resolution, and continued pendency despite rejection of extension, this Adjudicating Authority is constrained to observe that the insolvency proceedings have not been pursued in a bona fide manner consistent with the object of the Code.
33. It is observed that the manner in which the process has been conducted, coupled with inaction and unexplained delay, gives rise to a reasonable inference that the proceedings under Section 95 of the Code were initiated and continued with a preconceived and malicious intent, contrary to the



very object and spirit of the Code, which is to ensure time-bound resolution and not to enable misuse of the insolvency framework.

34. It is further observed that such misuse of the insolvency mechanism cannot be permitted, and this Adjudicating Authority, in exercise of its jurisdiction under Section 60(5) of the Code, is empowered to take appropriate corrective measures to prevent abuse of process.
35. In this regard, reliance is placed on ***Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr., (2018) ibclaw.in 158 NCLAT***, wherein it has been held that upon dismissal of proceedings under the Code, all consequential orders including moratorium and appointment of the Resolution Professional stand set aside and the entity is released from the rigour of the insolvency process. The relevant extract of the said judgment is as follows:

“11. In effect, order (s), passed by the Adjudicating Authority appointing ‘Resolution Professional’, declaring moratorium, freezing of account, and all other order (s) passed by the Adjudicating Authority pursuant to impugned order and action taken by the ‘Resolution Professional’, including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by Respondent under Section 9 of the I&B Code, 2016 is dismissed. The Adjudicating Authority will now close



the proceeding. The 'Corporate Debtor' (company) is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect."

- 36.** Though the aforesaid decision rendered in the context of corporate insolvency, the underlying principle regarding consequences of invalid proceedings is considered. Therefore, applying the aforesaid principle, it is observed that continuation of the present proceedings cannot be sustained and the same is liable to be terminated with immediate effect on account of material irregularity in conduct of the process and violation of statutory timelines.
- 37.** It is further observed that once the very initiation of the insolvency proceedings is found to be flawed and contrary to the object of the Code, all consequential actions taken pursuant thereto cannot be allowed to survive.
- 38.** Accordingly, this Adjudicating Authority holds that the insolvency proceedings initiated under Section 95 of the Code against the Personal Guarantor are liable to be terminated from their inception, and all consequential effects including moratorium shall stand ceased and set aside.
- 39.** In view of the foregoing, this Adjudicating Authority is of the considered opinion that:



- (i) the insolvency process has been conducted in violation of statutory timelines;
- (ii) the delay of 414 days is unjustified;
- (iii) the justification of non-cooperation is insufficient in absence of timely invocation of remedies under Regulation 22;
- (iv) the Resolution Professional has failed to act with due diligence expected under the Code;
- (v) such conduct warrants scrutiny and invites disciplinary action by the IBBI; and
- (vi) the case involves material irregularity warranting exercise of jurisdiction under Section 60(5) of the Code.

40. Accordingly, this Adjudicating Authority holds that the present Interlocutory Application is devoid of merit and is liable to be **dismissed**.

41. In view of the detailed observations and findings recorded hereinabove, and upon dismissal of the present Interlocutory Application, this Adjudicating Authority proceeds to issue the following directions in exercise of its powers under the Insolvency and Bankruptcy Code, 2016:

- i. The present Interlocutory Application bearing **IA/295(AHM)2026** stands **dismissed**, being devoid of



merit and for the reasons elaborately recorded in the preceding paragraphs.

- ii. The insolvency proceedings initiated under Section 95 of the Insolvency and Bankruptcy Code, 2016 against the Personal Guarantor are hereby **terminated ab initio**, being vitiated by material irregularity and having been initiated and conducted in a manner contrary to the object of the Code.
- iii. In consequence of the above, all actions taken pursuant to initiation of the said insolvency proceedings, including appointment of the Resolution Professional, conduct of meetings, reports, and all ancillary steps undertaken during the process, stand **set aside**.
- iv. The moratorium declared in the present matter shall **stand terminated forthwith and cease to have any effect**, and all legal rights and remedies of the parties shall stand restored as they existed prior to initiation of the proceedings.
- v. It is observed that the Resolution Professional has failed to discharge his statutory duties with the degree of diligence expected under the Code, and has allowed the process to continue far beyond the prescribed timeline without invoking available remedies under law, including seeking directions from this Adjudicating Authority in cases of non-cooperation or delay.



- vi. In view of the aforesaid conduct, this Adjudicating Authority deems it appropriate to direct the Registry to forward a copy of this order to the Insolvency and Bankruptcy Board of India for consideration of appropriate action, if deemed fit to initiate appropriate disciplinary proceedings against the Resolution Professional, Mr. Nitin Om Kothari, in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the applicable regulations governing insolvency professionals.
- vii. The Resolution Professional stands discharged from his role in the present process, subject to compliance with the directions contained herein and without prejudice to any disciplinary proceedings that may be initiated by the Insolvency and Bankruptcy Board of India.
- viii. The Registry is directed to communicate this Order to all concerned parties, including the Resolution Professional, the Financial Creditor, and the Personal Guarantor, forthwith.

42. With the above directions, the present application i.e. **IA/295(AHM)2026** in C.P.(IB)/03(AHM)2024, is hereby disposed of.

SANJEEV SHARMA
MEMBER (TECHNICAL)

Jeel/LRA

SHAMMI KHAN
MEMBER (JUDICIAL)