

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

01.12.2025

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)
MR. ARUN BAROKA, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.914 of 2025

Omkara Asset Reconstruction Private Limited **...Appellant**

Vs

1. Amit Vijay Karia, **...Respondent No.1**
Erstwhile Resolution Professional of
Chinar Realty Private Limited

2. Mohd. Raees Sheikh **...Respondent No.2**

(Arising out of Order dated 11th June, 2025 passed by the Adjudicating Authority
(National Company Law Tribunal, Indore Bench) in I.A.(LIQ) No.1/MP/2025 in
C.P. (IB) No.53/MP/2023)

For Appellant: Mr. Abhijeet Sinha, Sr. Adv. with Ms. Kiran Sharma,
Ms. Niharika Sharma, Mr. Somdutta Bhattacharya,
Mr. Saikat Sarkar, Ms. Heena Kochar, Adv.
For Respondents: PCS Alam Khan for R2

WITH

Company Appeal (AT) (Ins) No.915 of 2025

The Committee of Creditors of Chinar Retails and **...Appellant**
Infrastructure Private Limited
through Omkara Asset Reconstruction Private Limited

Vs

1. Amit Vijay Karia

Erstwhile Resolution Professional of Chinara Retails
and Infrastructure Private Limited

...Respondent No.1

2. Mayuri Daga

Liquidator of Chinara Retails and Infrastructure Private Limited

...Respondent No.2

(Arising out of Order dated 11th June, 2025 passed by the Adjudicating Authority
(National Company Law Tribunal, Indore Bench) in I.A.(LIQ) No.3/MP/2024 in
C.P. (IB) No.54/MP/2023)

For Appellant:	Mr. Abhijeet Sinha, Sr. Adv. with Ms. Kiran Sharma, Ms. Niharika Sharma, Mr. Somdutta Bhattacharya, Advocates
For Respondents:	Mr. Shankari Mishra, Mehak Khandelwal, Advocates Mr. Bharat Gupta, Mr. Varun Tyagi, Mr. Vishesh Chauhan, Mr. Ishan Srivastava, Ms. Shagun Gupta, Snigdha S. Jena, Advocates for R2

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

These two cases involve a common question of law: As between the CoC and the Adjudicating Authority, who has the authority to appoint the liquidator? The situation arose when the Adjudicating Authority appointed the second respondent in each of the two cases as liquidator, overlooking the choice of the CoC.

Facts:

2. The bare minimum fact which are required for the current purpose may be stated:
 - a) The appellant in both the cases is same and in one case it has cent percent voting share and in another about 98% voting share in the CoC. CIRP failed and the CoC had resolved that the CD must go to liquidation.
 - b) Earlier, during the CIRP the CoC had appointed two separate RPs in both the cases. However, when liquidation was ordered, it named M/s **Stress Credit Resolution Pvt Ltd (SCRIL)** as the liquidator, which is a different entity from the RP.
 - c) When the Adjudicating Authority took up the matter, it appointed the second respondent in each of the cases in this batch as a liquidator, who is neither the RP appointed during the CIRP, nor is the candidate of CoC's choice.

Asserting that the right to appoint the liquidator rests with the CoC, the appellant, who, constitutes one member CoC in one case, and has about 98% voting share in the CoC in the other case, has preferred these appeals, challenging the decision of the Adjudicating Authority to appoint a liquidator of its choice.

Arguments

3. Learned counsel for the appellant made the following submissions:
 - a) Under Sec.27 IBC, the CoC is vested with the right to appoint a resolution professional, and in terms of Sec.34(1) he, she or such entity

as the CoC appoints as the resolution professional is entitled to continue as the liquidator unless such resolution professional so appointed does not consent to be appointed as a liquidator.

- b) Be that as it may on 18.07.2023 IBBI came out with a circular and instructed that RP and the liquidator cannot be the same person or entity. This circular came to be challenged in ***Manish Jaju Case Vs CoC and others*** [C.A.(AT)(Ins.) 1165 of 2025] and this Tribunal, vide its Order dated 01.08.2025 has held that the IBBI does not have the authority to overriding the statutory scheme for appointing a liquidator as envisaged and embodied under Sec. 34(4) IBC and issue a circular of the kind that it has issued. The judgment in ***Manish Jaju Case***, in effect has cleared the way for the RP, who is the CoC's choice to be the liquidator.
- c) The second part of Sec.34(1) only has authorised the Adjudicating Authority to replace the RP, but does not vest any authority in it to supersede the choice of CoC.

4. Conceding that the second respondent in both the cases do not have a vested right either to be appointed as a liquidator or to continue as a liquidator, the learned counsel for these liquidators as appointed by the Adjudicating Authority, made the following submissions:

- a) A liquidator is appointed under Sec. 34(1) IBC according to which the RP can continue as a liquidator only if he tenders a written consent to be appointed as a liquidator. And if he does not give any written consent to act as a liquidator he may be replaced by the

Adjudicating Authority under Sec. 34(4)(c) IBC. Indeed, the Adjudicating Authority has been given the exclusive authority to replace the Resolution Professional if the Resolution Professional fails to submit his written consent as required under Sec. 34(1). In other words, the legislature consciously excludes CoC's interference in the matter of replacing the liquidator. In the present batch of two appeals, both the RP's did not give their respective consent to function as a liquidator, and this necessitated that a replacement be found for them, and this authority to replace vests exclusively with the Adjudicating Authority.

- b) Nowhere in the entire scheme of IBC or in IBBI (liquidation process) Regulation 2016, is the CoC or the Stakeholders' Consultation Committee (hereinafter SCC) is empowered to appoint a liquidator. Indeed, Regulation 31(A)(11) only provides that the SCC may apply for replacing the liquidator on grounds to be stated.

Summing up their arguments, both the counsel submitted that while in terms of Sec. 27 IBC the CoC has the authority to appoint the RP, so far as appointment of a liquidator is concerned the entire authority rests with the Adjudicating Authority.

5. Replying to the same learned counsel for the appellant would submit that in terms of the scheme of Sec. 34(1) IBC, the Adjudicating Authority only has a power to replace, and not any power to appoint. If the CoC's appointee who a RP is, can continue as a liquidator, necessarily, the strings will still be with the CoC to appoint the liquidator. Secondly, the

circumstance under which the CoC has appointed the liquidator different from the RP has to be understood in the backdrop of the circular of the IBBI dated 18.07.2023.

Discussion & Decision

6. Given the nature of the issue before us, we consider it appropriate to commence the discussion with an understanding of the scheme of the IBC from the stage of appointment of an IRP:
 - a) So far as the appointment of an Interim Resolution Professional (IRP), goes, the choice rests with the petitioning creditor in terms of Sec.7(3)(b), if the creditor is a financial creditor, and Sec.9(4), where a creditor is an Operational Creditor (but it is only an option for an Operational creditor need not name an IRP). In cases of debtor's petition for commencing a CIRP under Sec.10 IBC, the CD has the choice to recommend an IRP.
 - b) An IRP, so recommended by a creditor (both financial creditor and operational creditor) as well as the debtor, as the case may be, eventually may be appointed by the Adjudicating Authority under Sec.16 IBC. However, so far as cases falling under Sec.9 is concerned, where an operational creditor does not nominate an IRP, the Code provides vide Sec.16(3) that the Adjudicating "*shall make a reference to the Board for recommendation of an insolvency professional*".
 - c) In all cases, be it a creditor's petition under Sec.7 or Sec.9, or a debtor's petition under Sec.10, if an IRP as suggested by the petitioner faces any

disciplinary action, the Adjudicating Authority has been statutorily instructed to dismiss the very petition instituted for initiating CIRP.

7. What the scheme of Sec.7, 9, 10 read with Sec.16 of IBC informs is that,
 - (a) if the IRP as recommended by the petitioner does not face any disciplinary action, then Adjudicating Authority, subject to the approval of the Board, is required to appoint him; (b) if the IRP faces any disciplinary proceedings, then the petitions filed under Sec.7, 9 and 10 IBC is required to be dismissed; and (c) where no IRP is named by an operational creditor, then the IRP as recommended by the IBBI must be appointed. What could be derived from this is that at no stage, the Adjudicating Authority has been given any independent authority to appoint the IRP of its choice. Indeed, the IBC's conscious design not to grant any such authority to the Adjudicating Authority is evident from the fact that even when the IRP as recommended by the petitioners (of Sec.7,9 or 10 IBC petitions) is found to face any disciplinary proceeding, or in cases falling under Sec.16(3), the Code has not authorised the Adjudicating Authority to appoint an IRP of its choice. If only IBC required the Adjudicating Authority to play a role in appointing an IRP, it could have authorised it to nominate one of its choice as the IRP, at least in cases where the IRP as recommended by the creditor or debtor faces disciplinary proceedings, or where an operational creditor has not named an IRP. The legislative idea therefore, is to separate the selection process or procedure involved in appointing an IRP from a formal appointment. To state it differently, selection of the IRP will be with the petitioner initiating a CIRP and the Board, and the Adjudicating Authority

is only required to appoint the one so chosen as the IRP. In other words, an Adjudicating Authority is not the part of the selection process, nor is it vested with any power to veto the choice of the petitioner in the matter of appointing the IRP.

8. Moving to the next stage, after the constitution of the CoC, under Sec.22(2) IBC, the CoC is given the choice to appoint (a) the IRP as the Resolution Professional (RP); or (b) to replace the IRP and to appoint a RP of its choice. Sec.22(3) provides, when the CoC chooses to retain the IRP and requires him to be the RP, it must secure a written consent of the IRP to function as RP. After all, RP is paid remuneration for the work done, and none can be forced to do a job against his will. But, where the CoC decides to replace IRP, then it is required to apply to the Adjudicating Authority along with the consent of the proposed RP under Sec.22(3)(b). And such RP as recommended by the CoC will be appointed when his name is confirmed by IBBI. Again, the Adjudicating Authority is not given any participatory role in selecting the RP nor is it vested with any authority to supersede the decision of the CoC. Here, Sec.22(5) only says that if the IBBI's confirmation does not reach the Adjudicating Authority within the stipulated 10 days, the Appointing Authority is granted power to require the IRP to act as RP till confirmation is obtained. This, at the best, is only an interim arrangement.

9. Arrives Sec.27 IBC. This enables the CoC to seek replacement of a RP. The procedure contemplated is similar to the one for replacing the IRP with

a new RP as provided in Sec.22. Sec.27, however, does not require the CoC to give any reasons for replacing the RP when it forwards the name of the successor RP to the Adjudicating Authority as contemplated under Sec.27(3) IBC.

10. Now we come to the issue at hand. It is rooted in an understanding of Sec.34(1), 34(4)(c) with a reference to Regulation 31A(11) of the Liquidation Regulation. They are tabulated below:

Provision	Text of Section
Sec. 34(1) of IBC	<i>“(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 1 [Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form,] act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4)”</i>
Sec. 34(4)(c) of IBC	<i>“The resolution professional fails to submit written consent under sub-section (1).”</i>
Reg. 31A (11) of IBBI (Liquidation Process) Regulation 2016	<i>“The consultation committee, after recording the reasons, may by a majority vote of not less sixty-six per cent., propose to replace the liquidator and shall file an application, after obtaining the written consent of the proposed liquidator in Form AA of the Schedule II, before the Adjudicating Authority for replacement of the liquidator:”</i>

11. In terms of Sec.34(1), the RP, who may either be the IRP originally appointed or replaced under Sec.22 or the one who may have stepped in under Sec.27 IBC, will be the liquidator provided the RP has given his/its consent to be the liquidator. The point is, merely because a certain RP did not give his consent to be the liquidator, implies that the Adjudicating Authority should have the exclusive authority to replace an unwilling resolution professional with the one of its choice? Now, if the second part of Sec.34(1) and Sec.34(4)(c) is read carefully, it only has authorised the Adjudicating Authority to replace the resolution professional and not to appoint a liquidator. But, the authority to replace the resolution professional is left to the CoC under Sec.27 as per the procedure contemplated therein. Even in terms of Sec.27, the Adjudicating Authority appoints only that RP whom the CoC has chosen, subject only to the confirmation by the Board. Therefore, replacement of RP within the meaning of Sec.34(1) read with Sec.34(4)(c) can be done only as per the procedure contemplated in Sec.27. Otherwise, it will create an anomaly that may not fit in with the statutory scheme of the IBC if the Adjudicating Authority is presumed to have been vested with the authority to replace the resolution professional of its choice in a solitary situation where a replacement for a RP is necessitated owing the unwillingness of RP to be the liquidator as contemplated in the first part of Sec.34(1) IBC.

12. We, therefore, have little hesitation in holding that only CoC has the authority to select the candidate for replacing the RP for the purposes of Sec.34(4)(c) of the IBC, even though the authority to formally appoint such

RP as selected by the procedure contemplated in Sec.27 IBC rests with the Adjudicating Authority.

13. Having stated thus, it must be observed that there is still a solitary circumstance where the Adjudicating Authority might have to act independent of the CoC or the SCC in seeking the replacement of a resolution professional or the liquidator. That will be when the Adjudicating Authority has reasons to believe on the basis of any tangible and incontrovertible facts that the resolution professional or the liquidator, as the case may be, has committed gross misconduct vis-à-vis the office he holds, with the connivance or collusion of the CoC or SCC as the case may be, and leave the integrity and purity of the resolution process or the liquidation process to bleed. It will then be futile for the Adjudicating Authority to look to the CoC or the SCC to seek replacement of the resolution professional or the liquidator. Any collusion, or tacit approval through connivance between those – the one who will be the beneficiary of the outcome of a resolution or liquidation process (the CoC or the SCC) and the one who is required to play a critical role in achieving that outcome (the RP or the liquidator), to outmanoeuvre the statutory intent and to defeat the statutory purposes would be a dangerous betrayal of Parliamentary trust on them. Plainly, it would be a fraud on the statute. Does the IBC require the Adjudicating Authority to remain a mute spectator to acts constituting fraud on statute? In ***Moore Vs Dempsey*** [261 US 86 (1923)], the immortal Oliver Wendell Holmes J. has declared:

“..if the case is that the whole proceeding is a mask – that counsel, jury and judge were swept to the fatal end by an irresistible wave of public passion, and that the State Courts failed to correct the wrong, neither perfection in the machinery for correction nor the possibility that the trial court and counsel saw no other way of avoiding an immediate outbreak of the mob can prevent this Court from securing to the petitioners their constitutional rights.”

The context is different, but the instructions are unambiguous. Therefore, no judicial forum, guided solely by its conscience with the consciousness to perform its Constitutional obligations can be reduced to a cheer-leader when fraud on statute is on display. The power to arrest and interfere with statutory frauds is inherent in the very structure of our judicial system of which the tribunals are a part and it does not require the statute to spell the authority to do it. (For the purists of positive law school who refuse to acknowledge a power unless it is conferred in law Rule 11 of the NCLT and also NCLAT Rules will come in handy). It may be that the IBC may have assigned minimal role to Adjudicating Authority in working its purpose, but it has not reduced the need for a neutral judicial forum entirely irrelevant. In an entirely different context, in a criminal law setting in ***Y. Balaji Vs Karthik Desari & another*** [2023 SCC OnbLine SC 645], speaking through V. Ramasubramanian J, the Hon’ble Supreme Court has observed:

“36. The investigation and trial of a criminal case cannot be converted by the complainant and the accused into a friendly match. If they are allowed to do so, it is the Umpire who will lose his wicket.”

If this idea is allowed to be reflected on the IBC setting, then the umpire – the Adjudicating Authority, shall not lose a wicket – lose the public confidence in the tribunal, merely because the CoC or the SCC choose to play a friendly match with the RP or the liquidator. To let it happen will be the death knell for fairness of justice under the Constitution in this country.

14. Turning to the facts of the present case, the CoC has chosen to appoint a new liquidator without reference to the willingness or unwillingness of the RP. The learned counsel for the appellant would submit the liquidator came to be appointed when IBBI's circular dated 18.07.2023 was in force when its legitimacy is believed to exist. In other words, what the learned counsel canvasses is that the need for appointing a liquidator arose because the circular of the IBBI, now under reference, mandated that RP and the liquidator cannot be the same. Now that this tribunal in **Manish Jaju Case** [C.A.(AT)(Ins.) 1165 of 2025, dated 01.08.2025] has held that the IBBI cannot issue any circular contrary to Sec.34 of the IBC, whatever situation that might have been believed to have necessitated the appointment of a new liquidator based on the said circular no more exists. On facts, the Minutes of the Meetings of the CoC in which the RP was replaced, neither speaks of any unwillingness of the erstwhile RP nor about the need to comply with the circular of the IBBI dated 18.07.2023. This however, need not halt this tribunal from approving the choice of M/s Stress Credit Resolution Pvt Ltd (SCRIL) which

the CoC has made for being the liquidator. It has been held earlier that the right to replace the for the purposes of Sec.34(1) rests with the CoC and that Sec.27 is required to be followed. Therefore, the only requirement is that one whom the CoC has now named as a liquidator (M/s Stress Credit Resolution Pvt Ltd (SCRIL), can only be a RP and its nomination must now be confirmed by the Board. And once the Board approves it, M/s Stress Credit Resolution Pvt Ltd (SCRIL) is required to be appointed as a liquidator by the Adjudicating Authority.

Conclusion:

15. To conclude, both the Appeals are allowed and the Orders of the Adjudicating Authority (National Company Law Tribunal, Indore Bench) in I.A.(LIQ)No.1/MP/2025 in C.P. (IB) No.53/MP/2023) and I.A.(LIQ)No.3/MP/2024 in C.P. (IB) No.54/MP/2023, both dated 11th June, 2025, are set aside. Once the Board confirms M/s Stress Credit Resolution Pvt Ltd (SCRIL), the Adjudicating Authority is required to appoint it as the liquidator. No costs.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)