



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

IA/971/2024 IN C.P. (I.B) No. 2392/MB/2019

[Under Rule 31-A (11) of the Insolvency and
Bankruptcy Board of India (Liquidation Process)
Regulations, 2016]

In the matter of

Stressed Assets Stabilisation Fund,

Having its Principle Office at 3rd Floor, D Wing, IDBI
Tower, WTC Complex Cuffe Parade, Mumbai -
400005

...Applicant

Vs

Ms. Rekha Kantilal Shah,

Liquidator of Adya Oils and Chemicals Limited,

Having its Registered Office at 2001, 2nd Floor, Sai
Sadan, 37th Road, Bandra (West), Mumbai -
400050, (Maharashtra)

... Respondent

And in the matter of

Stressed Assets Stabilisation Fund

...Orig. Petitioner

Vs

Adya Oils and Chemicals Ltd.

... Corporate Debtor

Order Dated: 22.01.2025

Coram:

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)



Appearances:

For the Applicant: Adv. Amit Tungare (VC)
For the Respondent: Adv. Devarajan Raman (VC)

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ORDER

Per: Reeta Kohli, Member (Judicial)

I. The above application I.A. No. 971 OF 2024 is filed by **Stressed Assets Stabilisation Fund** (hereinafter referred as the “**Applicant**”) seeking directions against **Ms. Rekha Kantilal Shah** (hereinafter referred as the “**Respondent**”) under **Rule 31-A (11)** of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, praying for following reliefs :

- A. To replace the Respondent / Liquidator of the Corporate Debtor with the proposed Liquidator viz. Shri. Chirag Rajendra Kumar Shah (IBBI/IPA-001/IP-P01169/2-1 8-19/111837);*
- B. That Pending the hearing and final disposal of the aforesaid IA the present liquidator be restrained from acting further as the liquidator of the Corporate Debtor;*
- C. Any other relief in the interest of justice as this as this Tribunal may deems fit;*

II. Brief facts of the case-

1. The Applicant, Stressed Assets Stabilisation Fund (herein after referred to as “SASF”), is a secured financial creditor of the Corporate Debtor, i.e., Adya Oils and Chemicals Limited. The Applicant has filed CP(IB) No. 2392 of 2019 against the Corporate Debtor under Section 7 of the Code and the same has been admitted for CIRP by this Hon’ble Tribunal vide an Order dated 16.09.2019. In view of the same, the Respondent was appointed as the Interim Resolution Professional of the Corporate Debtor.



2. As submitted by the Applicant, the Respondent, pursuant to the admission of claims, formed the CoC of the Corporate Debtor wherein the Applicant was the sole CoC Member with 100% voting share. Further, as submitted, in the 1st CoC Meeting held on 29.10.2019, the Respondent informed the Applicant that some blocks of the immovable property of the Corporate Debtor still have the status listed as “Agriculture”. Furthermore, in the said Meeting, the Respondent, who was the Interim Resolution Professional, was confirmed as the Resolution Professional of the Corporate Debtor.
3. The Applicant stated that in the 4th CoC Meeting held on 31.01.2020, the COC dissented for introducing a scheme of compromise and arrangement as well as sale of assets as per Regulation 32 (e) and (f) since there is no operational activity in the Corporate Debtor for more than a decade. Further, as no expression of interest was received by the Respondent, it was resolved that the Corporate Debtor be liquidated and the Respondent was appointed as the Liquidator of the Corporate Debtor. Furthermore, in the said meeting, the Respondent informed the CoC that during her visit to the factory premises on 03.01.2020, she observed a huge wall constructed by neighbouring factory just in front of the main gate of factory of Corporate Debtor which was not observed during her first visit undertaken on 10.10.2019, the Respondent further intimated that after carrying out a visit to survey number 77 it was observed that there was an access from highway directly to the plant and now there was a wall constructed by the neighbouring factory owner. It was also informed that the said wall was erected by Jord Group and the Promoter of the Corporate Debtor is allegedly the son-in-law of the landowners of the said Group.



4. As contended, the 5th Meeting of CoC took place on 29.02.2020, wherein the agenda with respect to obtaining search report & issuance of title clearance report and finding/obtaining the Original Deed were dissented upon by the CoC with 100% vote as the Applicant expressed its desire to not go for title investigation at that stage. Further, it was also stated that the Applicant is not in possession of the Original Title Deed as the same was never handed over by the Corporate Debtor. Furthermore, pursuant to the Liquidation Resolution passed by the CoC, the Respondent filed Miscellaneous Application No. 571 of 2020 before this Hon'ble Tribunal seeking Liquidation of the Corporate Debtor and the said Application was allowed by this Hon'ble Tribunal vide Order dated 04.03.2020, triggering the Liquidation of the Corporate Debtor, with the Respondent as the Liquidator.
5. Further, as submitted by the Respondent, on 08.02.2021, the Respondent called for consultation with the stakeholders wherein it was concluded that only three blocks of land can be sold by the Liquidator and in view of the same, the Applicant suggested the respondent to retrieve some documents from appropriate authorities and further stated that the Applicant was indemnified for the losses as per the Deed of Indemnity given by the Corporate Debtor and no cost with respect to the said lands (like penalty, premiums, etc.) shall be borne by the Applicant.
6. The Applicant submitted that the 1st Meeting of the Stakeholders Consultation Committee (SCC) was held on 02.12.2021, wherein the Respondent informed that the 2nd auction for plant & machinery was held on 18.01.2021 and the entire sale consideration of Rs. 88,75,000/- has been received from buyers/bidders. Further, the Respondent also informed the members of SCC that Block No. 80



and 81 were in the name of Government of Gujarat on account of noncompliance under section 63AA of Bombay Tenancy and Agricultural Land Act, 1948 and Section 73AA of Bombay Land Revenue Code, 1879, however, no steps whatsoever were ever taken by the promoters of the Corporate Debtor to retrieve the said lands. With reference to block no. 82, the said land was restored to the original seller due to noncompliance of Section 73AA of Bombay Land Revenue Code, 1879, which was further reported to be sold to one Mr. Arjun Solanki. Furthermore, it was also intimated that the Respondent filed an Application before this Hon'ble Tribunal with respect to the aforementioned issue so that the 2 Blocks mutated in favour of the Government of Gujrat could be retrieved and further a civil suit can be filed for Block No. 82. Thus, in view of the aforementioned circumstances, as contended by the Applicant, the Respondent informed the SCC members that Block No. 80,81, and 82 be deleted from the liquidation estate of the Corporate Debtor and in view of the same, the asset memorandum be amended. However, the Respondent was advised by the representatives of the Applicant to make adjustments of any pending liabilities in the reserve price at the time of the auction / private sale. Moreover, the SCC Members further advised the Respondent with respect to a second valuation report considering that 2 years had passed since the earlier valuation.

7. As submitted by the Applicant, the SCC Members expressed their discomfort for deletion of the said 3 Blocks from the Liquidation Estate as the Applicant had a valid mortgage charge on the same with a declaration of undertaking and a deed of indemnity for all losses. As contended, the Applicant expressed that it was not in favour of selling other Blocks of lands at this stage and had opined that the Liquidator shall take appropriate steps and hold the assets of



the Corporate Debtor till the outcome of the Application filed under section 66 by it as well as the criminal complaint filed by the Applicant since the same would be pivotal in restoring the status of the land blocks which would maximise the value of assets of the Corporate Debtor. However, despite the aforementioned, the Respondent refused to act in accordance with the directions of the SCC members and was proceeding to auction the said Blocks separately, making it prejudicial to the interest of the Applicant. The Applicant alleged that being the sole creditor of the Corporate Debtor, if the Respondent proceeds to delete the said blocks from the Asset memorandum, the same would be gravely prejudicial to the interest of the Applicant and the said action on part of the Respondent would only lead to minimizing the value of the assets of the Corporate Debtor, making this contradictory to the very object of the Code.

8. As contended, the Applicant filed Application No. 883 of 2022 before this Hon'ble Tribunal for restraining the Respondent from proceeding with the sale of assets of the Corporate Debtor until the outcome of the Applications preferred by her so as to maximise the value of the assets of the Corporate Debtor. On 05.04.2022, the said Application came to be listed for hearing before this Hon'ble Tribunal and this Hon'ble Tribunal was pleased to direct the Respondent not to take any action for auction of sale of assets of the Corporate Debtor till the next date of hearing. As submitted, it is trite law as laid down by the Hon'ble Supreme Court again and again that stay orders do not cease to be effective by efflux of time, but continue to operate till it is recalled, vacated or modified or specifically mentioned by the Court "not extended" and thus, the Liquidator could not have proceeded with the auction sale of assets



of the Corporate debtor. However, during the course of hearing, on 30.08.2023, it was orally submitted that the Liquidator has contravened the Order passed by this Hon'ble Tribunal and has proceeded with the auction of Land Block No. 77 and 79 on the basis of a purported Legal Opinion of Mis Shah & Furia, Advocates & Solicitor, Mumbai dated 26.07.2023.

9. Further, as submitted by the Applicant, during the pendency of the aforesaid proceeding, the 3rd SCC Meeting was held on 26.12.2022, wherein the Respondent admitted 3 Blocks (Block no. 80, 81, and 82) have been removed from the Liquidation estate and the Asset memorandum has been amended. The Respondent was informed that the Applicant has decided that the Blocks of Land (All 6) shall be sold in one lot and not in piecemeal. Further the Applicant submitted that having relinquished its security interest in the assets of the Corporate Debtor, the said assets are to necessarily form a part of the Liquidation estate, however, despite the same, the Respondent proceeded to delete 3 Blocks of Land from the said Liquidation estate, resulting into the Applicant being not only deprived of its security but also the said security which was relinquished by the Applicant being unilaterally deleted by the Liquidator.

10. As contended by the Applicant, the aforementioned actions of the Respondents of unilaterally deleting the assets of the Corporate Debtor from the Liquidation Estate which were duly mortgaged to the Applicant and for which the Applicant has relinquished its security interest coupled with the fact that the Applicant seeks to set aside the very transaction on the basis of which the debt has arisen in order to exclude the Applicant from the stakeholders of the Corporate Debtor shows the malafide intention and dereliction of duty on part of the Respondent. Further, as alleged, the Respondent



was requested several times to auction the 6 Blocks of Land in a lot and the Respondent had knowledge with respect to prospective buyers for all Blocks of Land, however, the same was ignored and proceeded to delete 3 Blocks of Land from the liquidation estate and sought to sell the remaining Blocks in piecemeal. The Respondent acted in stark violation of the Code and in order to liquidate the Corporate Debtor in a speedy manner, the Liquidator (Respondent) has caused prejudice to the interest of the Applicant.

11. Further, as submitted, in the 5th SCC Meeting held on 17.02.2024, the Applicant, considering the conduct of the Respondent, proposed for the replacement of the Liquidator and it was resolved that the Liquidator be replaced as the conduct of the Liquidator was contrary to the provisions of the Code and IBBI Regulations, 2016. The reasons recorded for the replacement of Liquidator, as in the 5th Meeting are as under-

- (i) *The Liquidator has acted contrary to the advice and resolution(s) of the SCC passed in its commercial wisdom.*
- (ii) *The Liquidator has filed IA No. 1305/2020 under Section 66 of the Code seeking reliefs against SASF, the majority stakeholder in the SCC, instead of the promoters of the Corporate Debtor. Additionally, the said application has not been pressed for any effective hearing in the past 4 years.*
- (iii) *The Liquidator has not been able to take effective steps for taking possession and control of the CD's property during CIRP/Liquidation process. The Liquidator's inaction has effectively allowed the promoters of the CD (through proxies) to construct a wall in front of the CD's unit located in Block No. 83 subsequent to commencement of CIRP.*
- (iv) *The Liquidator has also failed to bring to pursue proceedings against the promoters of the Corporate Debtor for non-cooperation and creating hindrances during the liquidation process.*
- (v) *The Liquidator has repeatedly and in disregard to the SCC's advice, attempted to sell the immovable properties of the CD (Block Nos. 77, 79, and 83) in a piecemeal manner instead of a consolidated sale.*



12. As stated, the Applicant proposes to replace the present liquidator with the proposed liquidator Shri. Chirag Rajendra Kumar Shah (IBBI/IP A- 001/IP-P01169/2-18-19/11837) who has already given written consent as per the regulation. Thus, in view of the abovestated, the Applicant prayed that appropriate Order may be passed to appoint new liquidator as per the resolution of the 5th SCC Meeting.

III. Case of the Respondent-

1. The Respondent is the Liquidator of the Corporate Debtor and submitted that the Applicant is trying to re-agitate the issues which have already been dealt with by this Hon'ble Tribunal in IA/883/2022. The Application is not maintainable in law and is barred by principle of res judicata. As stated, a bare perusal of the contents of the present IA and Order dismissing IA/883/2022 would show that the present Application is barred by res judicata and cannot be entertained.
2. The respondent, in regard to the contention of the Applicant that the Liquidator has acted contrary to the advise and resolution of the SCC passed in its commercial wisdom, stated that the concept of commercial wisdom is with respect to CIRP and not with reference to Liquidation where the SCC has only an advisory role and the decisions are the prerogative of the Liquidator. The same can be substantiated by the fact that under regulation 31A(1) of the IBBI (Liquidation Process) Regulations 2016 the Liquidation constitutes the consultation committee to advise him/her on matters specified therein. Regulation 31A(11) provided that the stakeholders consultation committee may, after recording reasons in writing, propose to change the Liquidator by preferring an application before



the Adjudicating Authority. Hence, unlike section 22 and 27 of IBC, 2016 where the CoC is empowered to change the IRP/RP, which is in view of commercial wisdom, the change of Liquidator is on a different footing where the right of SCC is limited to proposing a change which is to be adjudicated upon by this Hon'ble Tribunal.

3. The respondent, in regard to the contention of the Applicant that the Liquidator has filed IA No. 1305/2020 under Section 66 of the Code seeking reliefs against SASF, the majority stakeholder in the SCC, instead of the promoters of the Corporate Debtor, stated that the provisions of the Code have given the power to the RP/ Liquidator to form an opinion and then, if necessary, conduct an audit to determine the existence of avoidance/ fraudulent transaction and thereafter, file an application for avoidance/ fraudulent transactions and the Code does not stipulate that a permission of SCC/CoC is required for the same except requiring the RP/ Liquidator to give details of the avoidance transaction to the CoC/SCC and the manner in which the proceedings shall be pursued after closure of liquidation proceedings. As submitted, primary relief was sought against the Promoters/Directors of the Corporate Debtor, but in the course of determination, the conduct of Applicant came into light and whether any order has to be passed against the creditor or not is solely the prerogative of the Hon'ble Tribunal and the duty of the Liquidator is limited to pointing out the role of the Creditor in fraudulent or wrongful trading under section 66 of the Code. Further, as alleged, the Liquidator can make a member of the CoC/SCC a party in the event any transactions require their explanation.
4. The respondent, in regard to the contention of the Applicant that the Liquidator has not been able to take effective steps for taking possession and control of the Corporate Debtor's property during



CIRP/Liquidation process and this has resulted in the Promoters of the Corporate Debtor to construct a wall in front of the factory, stated that the Applicant (SASF) has completely failed to take a note that the illegally construction of wall took place after commencement of CIRP, not on the property of the CD but on the land of a third party which obstructed the access to block 83. The Respondent with the assistance of local police ensure the demolition of the wall to ensure that the plant and machinery sold by her could be transported by the auction purchaser. This too was also informed to CoC/SCC members. Further, as alleged, it is surprising that nothing has been done by the Applicant in 23 years to safeguard the assets by the liquidator. The Applicant was oblivious to the fact that two blocks out of six blocks were already vested with the Government of Gujarat and one block in the name of Arjun Singh Solanki. No action was initiated by the Applicant when the title search revealed this same in 2016.

5. The Respondent, in regard to the contention of the Applicant that the Liquidator has also failed to pursue proceedings against the promoters of the Corporate Debtor for non-cooperation and creating hindrances during the liquidation process, stated that the Liquidator had filed 19(2) applications during CIRP which was dismissed by Hon'ble NCLT. Liquidator has already filed an IA against promoters vide IA no. 971/2022 for initiating investigations which has been allowed by this Hon'ble Tribunal and filed IA 1305/ 2020 for appropriate orders for the avoidance transactions that have come to light. The process is conducted as per the Code and the regulations, fulfilled the duties of not only protecting the assets but also maximising the value from it. Further, it is the Applicant (SASF) who is not co-operating with liquidator by not handing over the



original documents since November 2020 despite many reminders and discussions at the SCC meetings.

6. The respondent, in regard to the contention of the Applicant that the Liquidator has repeatedly and in disregard to the SCC's advice attempted to sell the immovable property of the Corporate Debtor in piecemeal manner instead of consolidated sale, stated that it is the Liquidator's duty to ensure that the maximum value is achieved and the liquidator is permitted to do so under the powers vested as per section 35 of the Code, the same was done after discussion at the CoC/SCC and after obtaining proper legal opinion. The land is being sold piecemeal because access is blocked by the relatives of the promoters. Out of the 6 blocks 3 have been vested in third parties thus compromising the title to the land. In fact, SASF has failed in their due diligence after taking the handover from IDBI (original lender) as assignee. Liquidator explained on many occasions that once these two Adivasi blocks are removed, rest of the blocks does not remain Contiguous. In addition, block no 77 and 79 are agricultural land, are absolutely uneven and wet. As alleged, all issues were argued in detail while dealing with IA 883 of 2022 which was considered and the IA was dismissed by this Hon'ble Tribunal. Further block no. 83 has easement issue and an IA with respect to the same is pending before this Hon'ble tribunal. Moreover, this Hon'ble Tribunal has already allowed the Liquidator to sell the assets in piecemeal manner and after the issuance of the said Order, liquidator has successfully auction block no 77 and 79 for Rs.109 lakhs which is three and half time above the valuation.
7. Further, the Respondent placed reliance on the judgment of the Co-ordinate Bench in the matter of *State Bank of India Vs. Mr. Ramakant Gupta Liquidator of Sujyot Infrastructure Pvt.*



Ltd. [(2024) ibclaw.in 70 NCLT], wherein it was held that in Liquidation Process Regulation 31A(11), SCC has to give cognizant reasons for replacement of the Liquidator. As contended, in the instant case all the reasons given are frivolous or have been dealt with by this Hon'ble Tribunal in other IAs' and no merit was found in the allegations.

8. The Respondent also submitted that IBC is silent on conditions under which a liquidator can be replaced. Therefore, the NCLT in *IDBI Bank Ltd. Vs. Venkata Sivakumar* resorted to section 276 of the Companies Act, 2013. The tribunal outlines five conditions on which the liquidator can be replaced: “(a) misconduct; (b) fraud or misfeasance; (c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions; (d) inability to act as provisional liquidator or as the case may be, Company Liquidator; (e) conflict of interest or lack of independence during the term of his appointment that would justify removal”. As submitted, this determination would be made by the Adjudicating Authority and the CoC would have no locus standi to remove the Liquidator and the same was upheld by the Hon'ble NCLAT.
9. Furthermore, as submitted by the Respondent, the replacement of a liquidator cannot be treated similarly to the replacement of a resolution professional (RP) during CIRP as according to Section 27 of the Code, the CoC may propose to replace the RP with 66% majority, without giving nay reason for the same. But, in contrast, Regulation 31A (11) requires reasons to be recorded, indicating that the said decisions should not be arbitrary and subjected to scrutiny. As contended, the Liquidator has remained independent from the creditors of the Corporate Debtor and cannot be held accountable only at the whims of the majority of the stakeholders especially a



single stakeholder enjoying majority in the SCC. Moreover, as stated by the Respondent, the final decision of a liquidator is not subjected to the approval of the SCC and the IBC is a beneficial legislation and its goal, as explicitly enunciated in *Swiss Ribbon Pvt. Ltd. v. Union of India*, is to get the corporate debtor “back on its feet”. It is not merely a recovery mechanism for the creditors. It was also submitted that in view of the decision of the NCLAT in the appeal of IDBI Bank Ltd. v. V. Venkata Sivakumar, even if the SCC unanimously votes to replace the liquidator, the NCLT has to take an independent decision on whether to retain or replace the liquidator

10. In view of the abovestated, the Respondent submitted that the present Application deserves to be dismissed.

IV. Findings-

1. After appreciating the arguments advanced by the Ld. Counsels for both the parties and perusing the documents available on record, it is evident that the present Application has been preferred by the Applicant, Stressed Assets Stabilisation Fund (SASF), seeking replacement of the Respondent-Liquidator on grounds of alleged impropriety in deletion of three land blocks from the liquidation estate, proceeding with piecemeal sale of assets contrary to SCC's advice, failure to effectively protect the Corporate Debtor's assets, and alleged inaction against uncooperative promoters of the Corporate Debtor. Per contra, the Respondent-Liquidator has contended that all actions were taken within the statutory framework of the Code, with the SCC serving purely in an advisory capacity. The Respondent submits that the deletion of blocks was necessitated due to their pre-existing vesting with third parties, the piecemeal sale strategy was adopted to obtain



maximum value, and that several issues raised herein stand concluded by previous orders of this Tribunal, thus attracting the principle of res judicata.

2. On perusal of the documents available on record, it deserves to be appreciated that the reasons pertaining to the replacement of the Liquidator, as given by the SCC in the 5th Meeting held on 17.02.2024 are as under-

- i. *The Liquidator has acted contrary to the advice and resolution(s) of the SCC passed in its commercial wisdom.*
- ii. *The Liquidator has filed IA No. 1305/2020 under Section 66 of the Code seeking reliefs against SASF, the majority stakeholder in the SCC, instead of the promoters of the Corporate Debtor. Additionally, the said Application has not been pressed for any effective hearing in the past 4 years.*
- iii. *The Liquidator has not been able to take effective steps for taking possession and control of the CD's property during CIRP/Liquidation process. The Liquidator's inaction has effectively allowed the promoters of the CD (through proxies) to construct a wall in front of the Cd's unit located in Block No. 83 subsequent to the commencement of CIRP.*
- iv. *The Liquidator has also failed to bring to pursue proceedings against the promoters of the Corporate Debtor for non-cooperation and creating hindrances during the liquidation process.*
- v. *The Liquidator has repeatedly and in disregard to the SCC's advice, attempted to sell the immovable properties of the CD (Block Nos. 77,79, and 83) in piecemeal manner instead of a consolidated sale.*

3. At the threshold, after appreciating the reasons recorded for the replacement of the Liquidator, it is imperative to deal with each and every reason as



given by the Applicant for the replacement of the Liquidator. In order to adjudicate upon the Applicant's contention that the Liquidator has acted contrary to the advice of SCC, it is pertinent to examine the role of Stakeholder Consultation Committee (SCC) under the Code. Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016 explicitly establishes the SCC's role as advisory in nature. Furthermore, Regulation 31A (10) clearly states that ***"The advice of the consultation shall not be binding on the liquidator."*** The role of the SCC and how its advice is not binding on the Liquidator was further adjudicated upon by the Hon'ble Supreme Court in the case of ***M/S. R.K. INDUSTRIES (UNIT-II) LLP vs. M/S. H.R. COMMERCIALS PRIVATE LIMITED AND OTHER [CIVIL APPEAL NO. 7722 OF 2021]***, wherein the Hon'ble Apex Court was pleased to hold as under-

"39. On a conjoint reading of the aforesaid provisions of the IBC and the Liquidation Regulations, it is evident that the Liquidator is authorized to sell the immovable and movable property of the Corporate Debtor in liquidation through a public auction or a private contract, either collectively, or in a piecemeal manner. The underlying object of the Statute is to protect and preserve the assets of the Corporate Debtor in liquidation and proceed to sell them at the best possible price. Towards this object, the provisions of the IBC have empowered the Liquidator to go in for a public auction or a private contract as a mode of sale. Besides reporting the progress made, the Liquidator can also apply to the Adjudicating Authority (NCLT) for appropriate orders and directions considered necessary for liquidation of the Corporate Debtor. The Liquidator is permitted to consult the stakeholders who are entitled to distribution of the sale proceeds. However, the proviso to Section 35 (2) of the IBC



makes it clear that the opinion of the stakeholders would not be binding on the Liquidator. Regulation 8 of the Liquidation Regulations refers to the consultative process with the stakeholders, as specified in Section 35 (2) of the IBC and states that they shall extend all necessary assistance and cooperation to the Liquidator for completing the liquidation process. Regulation 31A has introduced a Stakeholders' Consultation Committee that may advise the Liquidator regarding sale of the assets of the Corporate Debtor and must be furnished all relevant information to provide such advice. Though the advice offered is not binding on the Liquidator, he must give reason in writing for acting against such advice."

In view of the abovementioned, it stands established that the advice offered by the SCC is not binding on the Liquidator and the role of SCC is merely advisory. Thus, this bench is of the judicious opinion that the Liquidator, in no way, acted in a manner which was contrary to the advice of the SCC as Liquidator's independence in decision-making with respect to the sale of assets of the Corporate Debtor during liquidation is statutorily protected, provided that the Liquidator must give reasons in writing for acting against the said advice of the SCC. It further deserves to be appreciated that the Respondent (Liquidator) through its reply has clearly stated that "*the Liquidator has duly recorded reasons for having different views and intimated to Board and to the Adjudicating Authority whenever it was required.*" Therefore, the present contention of the Applicant does not hold merit and the Respondent may have differed from SCC's advice, however, such divergence per se does not constitute ground for replacement of the Liquidator.



4. Further, in order to appreciate the contention of the Respondent with respect to IA/1305/2020, it is pertinent to note that IA/1305/2020 (pending for adjudication) was filed by the Liquidator (Respondent) primarily against the Promoters of the Corporate Debtor and the Applicant (SASF) was not the main party to the said Application. Further, on perusal of the case laid out in IA/1305/2020, this Bench is of the considered opinion that the Applicant (SASF) has failed to exercise the requisite due diligence with respect to its claim and the affairs of the Corporate Debtor and the conduct of the Applicant has not only been negligent but also unprofessional as it failed to retrieve the Original Title Deeds on the basis of which security was created, the Applicant is apparently satisfied on the strength of Deed of Indemnity knowing fully well that there is no land in the name of the Corporate Debtor except for 1 Block, i.e., Block 83, and the efforts of the Liquidator (Respondent) to get the title search done and convert the land of the Corporate Debtor to “Non-Agricultural” were shut down by the applicant (SASF) despite the fact that the same was done to protect its interest. Thus, in light of the fact that the primary relief was sought against the Promoters/Directors of the Corporate Debtor and not against the Applicant (SASF), this Bench is of the view that the Liquidator acted within her statutory mandate to bring potential irregularities to judicial notice, regardless of the party involved and the mere fact that such investigation encompasses a financial creditor does not vitiate the process. Therefore, this Bench finds no merit with respect to the contention of the Applicant that the Liquidator has filed IA No. 1305/2020 under Section 66 of the Code seeking reliefs against SASF, the majority stakeholder in the SCC, instead of the promoters of the Corporate Debtor.
5. In order to appreciate the contention of the Applicant that the Liquidator has not been able to take effective steps for taking possession and control



of the CD's property during CIRP/Liquidation process, it is imperative to take notice of the documents available on record with respect to IA/2658/2021, as the same was filed by the Respondent (Liquidator) in the present case and the issue involved in the aforementioned Application has a direct nexus to the present contention put forward by the Applicant. It is pertinent to note that IA/2658/2021 was filed by the Liquidator seeking directions with respect to the right of way to New block No. 83 (Corporate Debtor's factory premise) and the same was done for maximizing the value of the Corporate Debtor's assets during the Liquidation process. Further, it deserves to be appreciated that, as stated by the Liquidator in IA/2658/2021, the Liquidator, after the lockdown, ensured the demolition of the wall constructed in front of the premise of the Corporate Debtor by coordinating with the local law enforcement authority. Thus, this proactive approach on part of the liquidator vitiates the Applicant's contention that the liquidator failed to take effective steps for taking possession and control of the CD's property during CIRP/Liquidation process. Moreover, as is evident from the documents available on record, 3 out of 6 Blocks of Land (used as Security) are not in the name of the Corporate Debtor and title of only one Block is clear, evidencing that security with respect to the Loan sanctioned by IDBI (Later assigned to SASF (Applicant) is defective. Further, the said issue was duly discussed in the 4th and 5th CoC Meetings and the Liquidator suggested that a fresh Title Report/Clearance Certificate should be obtained with respect to the said Block of land, however, the said suggestion was turned down by the Applicant (SASF) by stating that "*they would prefer to wait till the time any incident gets triggered*". This alone substantiates the negligence on the part of the Applicant as the Liquidator, time and again, brought the issue of obtaining title search reports and clearance certificates to the notice of the Applicant and the Applicant failed to act diligently in



order to safeguard the assets by the liquidator. Therefore, this Bench of the opinion that present contention of the Applicant also does not hold merit.

6. Furthermore, to deal with the contention of the Applicant that the Liquidator has failed to bring to pursue proceedings against the promoters of the Corporate Debtor for non-cooperation and creating hindrances during the liquidation process, it is pertinent to note that the Liquidator had already filed IA/971/2022 before this Hon'ble Tribunal seeking directions against the promoters of the Corporate Debtor under Section 73(b) of the Code and the same was allowed by this Hon'ble Tribunal vide Order dated 18.12.2023. Additionally, IA 1305/2020 addressing fraudulent transactions/wrongful trading has been duly pursued by the Liquidator against the promoters of the Corporate Debtor. Therefore, in view of the aforementioned, this Bench is of the considered opinion that the Liquidator (Respondent) has demonstrated consistent efforts to address the conduct of the promoters of the Corporate Debtor and the present contention put forward by the Applicant is devoid of merit.
7. To deal with the contention of the Applicant that the Liquidator has repeatedly and in disregard to the SCC's advice, attempted to sell the immovable properties of the CD (Block Nos. 77,79, and 83) in piecemeal manner instead of a consolidated sale, it deserves to be taken note of that the Supreme Court in the matter of *M/S. R.K. INDUSTRIES (UNIT-II) LLP vs. M/S. H.R. COMMERCIALS PRIVATE LIMITED AND OTHER [CIVIL APPEAL NO. 7722 OF 2021]*, clearly laid down the principle that a liquidator is armed with powers to determine the mode, method and manner of sale of assets in liquidation and is not bound by the advice of stakeholders. A similar view was adopted by the Hon'ble NCLT, Kolkata Bench in the matter of *Sauria Corporation vs. Kohinoor Pulp & Paper Private Limited [IA (IB) no. 892/KB/2022]* by relying on the



aforementioned judgment of R.K. Industries. The Hon'ble NCLT, Kolkata Bench, held as under-

“We are of the firm view that it is the Liquidator who has to take call on what mode of sale is in the best in the interest of maximization of the value of the assets. He may not be bound by the recommendations/ advice of Stakeholder’ Consultation Committee, however, in exercise of process of consultation if something better transpires, he can take the same into consideration.”

Therefore, in view of the aforementioned, this Bench is of the judicious opinion that the Liquidator (Respondent) is empowered to determine the manner of sale of assets of the Corporate Debtor in Liquidation process and has acted in a diligent manner ensuring maximization of the value of assets of the Corporate Debtor by selling the same in piecemeal manner. Thus, the instant contention of the Applicant does not hold merit.

8. Furthermore, the conduct of the Liquidator, in the present case, does not fall within the ambit of the conditions for replacement of the Liquidator as laid down by the Hon'ble NCLT in **IDBI Bank Ltd. Vs. Venkata Sivakumar** (Upheld by the Hon'ble NCLAT), in view of Section 276 of the Companies Act, 2013, which are as under-

(a) misconduct;

(b) fraud or misfeasance;

(c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;

(d) inability to act as provisional liquidator or as the case may be, Company Liquidator;



(e) conflict of interest or lack of independence during the term of his appointment that would justify removal”

9. Therefore, in light of the above-established facts and circumstances, this Hon’ble Tribunal finds insufficient cause to warrant the Respondent-Liquidator's replacement. Thus, keeping in view the aforementioned, **IA/971/2024 stands dismissed.**

Sd/-

MADHU SINHA
Member (Technical)

/Jhanvi/

Sd/-

REETA KOHLI
Member (Judicial)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

IA/2658/2021 IN C.P. (I.B) No. 2392/MB/2019

[Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of NCLT
Rules, 2016]

**Rekha Shah,
Liquidator of Adya Oils and Chemicals Ltd.**

201, Leela Apartment, J K Paradise And Rajanan
Complex, Off Eksar Road, Borivali (West),
Mumbai - 400092

...Applicant

Vs

1. The Talati, Manglej Village, Karjan

Manglej Dhanora Group

Manglej Gram Panchayat, Taluka Karjan, District –
Vadodara, Gujarat - 301402

... Respondent No. 1

2. The Mamlatdar, Karjan

Taluka Seva Sadan,

Karjan Cross Road, N.H. No. 8, Karjan, Vadodara,
Gujrat - 391240

... Respondent No. 2

3. The Collector, Karjan

Taluka Seva Sadan,

Karjan Cross Road, N.H. No. 8, Karjan, Vadodara,
Gujrat - 391240

... Respondent No. 3



4. The Chief Town Planner,

Town Planning and Valuation Department, C-
Block, Narmada Bhavan, Jail Road, Vadodara,
Gujrat - 390001

... Respondent No. 4

**5. ARC Research And Development Centre
Limited,**

Registered address as per ROC site – 703,
Diwani Mahal, Gulmohar Road, No.1 JPVD
Scheme Vile Parle (W), Nr. Millenium Club,
Mumbai - 400049

... Respondent No. 5

6. ARC Fintube Technologies Pvt. Ltd.

Registered address as per ROC site – 703,
Diwani Mahal, Gulmohar Road, No.1 JPVD
Scheme Vile Parle (W), Nr. Millenium Club,
Mumbai – 400049

Factory site address – R.S. No. 96, NH-8, Village
Mangkej, Taluka Karjan, Dist – Vadodara,
Gujarat - 391240

... Respondent No. 6

In the matter of

Stressed Assets Stabilisation fund

...Financial Creditor

Vs

Adya Oils and Chemicals Ltd.

...Corporate Debtor



Order Dated: 22.01.2025

Coram:

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)

Appearances:

For the Applicant: Adv. Devarajan Raman (VC)

For the R5 and R6: Adv. Darpan Bhatia a/w Adv. Siddhant Trivedi (R5 & R6) (PH)

.....

ORDER

Per: Reeta Kohli, Member (Judicial)

I. The above **Interlocutory Application No. 2658 OF 2021** is filed by **Ms. Rekha Shah, Liquidator of Adya Oils and Chemicals Ltd.** (hereinafter referred as the “**Applicant**”) seeking directions against **The Talati, Manglej Village, Karjan & Ors.** (hereinafter referred as the “**Respondent/Respondents**”) under **Section 60(5)** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”), praying for following reliefs:

- a) *Grant injunction against the construction undertaken in new block nos 90 & 92 by Respondents 5 & 6, blocking the right of way of the CD to new block no 83.*
- b) *The status qua to be maintained in the construction by Respondent no 5 & 6 in new block no 90 & 92, pending the removal of obstruction and defining the existing path by Respondent nos 1, 2, 3 & 4.*
- c) *Direct the Respondent nos 1 to 4 to demolish the construction activity that has been undertaken to block the right of way to the CD to new block no 83 through new block nos 88,89,90 & 92.*
- d) *Order Respondent nos 1 to 4 to ensure that the right of way provided by NA order No. N.A.S.R./2/99/99-2000/Land Vashi/1466/99 dated*



04.11.1999 is wide enough for the passage of trucks, trailers and dumpers through new block nos 90 & 92.

- e) Declare that the CD, being the dominant heritage owner has right to prevent the servient heritage owner from creating any obstruction in the right of way at any time in the future.*
- f) Direct the local authorities at Karjan Manglej Village, including the Police station at Manglej Village, Karjan to provide the necessary security and support for demolition of the obstructions in the right of way and to take cognizance of any complaint of further obstructions at any point of time in the future;*
- g) Direct Respondent no 4 to ensure that the right of way to new block no 83 is permanently incorporated in the land records of the Government of Gujarat.*
- h) Grant any other reliefs as the Hon'ble Tribunal may deem fit and proper.*

II. Facts and submissions of the Applicant

1. The Applicant, Ms. Rekha Shah, is the Liquidator of the Corporate Debtor and the case of the Applicant is that the Corporate Debtor was admitted to CIRP vide Order dated 16.09.2019. The Liquidation processed of the Corporate Debtor commenced vide Order dated 04.03.2020.
2. As submitted by the Applicant, the Corporate Debtor, M/s Adya Oils and Chemicals, owns the New Block No. 83 (Old Block No. 87) in village – Manglej, Taluka – Karjan, District – Vadodara. The said Block is a Non-Agricultural land which was bought for the purpose of constructing a unit for Castor oil manufacturing. The Right of way with respect to the said Block was through New Block No. 90 and 92 and, as contended, no unit for industrial activity can be permitted without the Right of way.

However, after the commencement of CIRP, the Applicant visited the said property and discovered that the access to the unit was blocked by the construction of a wall along the border of New Block No. 90 and 92, allegedly, by Respondent No. 5 and 6.

3. As contended by the Applicant, the NA Order (with respect to New Block No. 83) dated 04.11.1999 was granted by Taluka Panchayat Kacheri after completion of all formalities and the said Order clearly states that the road for getting entry into the land is from the National Highway from Old Block No. 94 and 96 (New Block No. 90 and 92) as per the undertaking given for entry in the Agreement dated 20.09.1999. Thus, in view of the same, the right acquired by the Corporate Debtor is a prescription right which has been given to the Corporate Debtor based on the provisions of the law by way of a NA Order of New Block No. 83. Further, as submitted by the Applicant, right of way is a prerequisite to access the industrial unit Block (NA Block) and in absence of a right of access / right of way, it will be not possible to run the said industrial unit.
4. The Applicant stated that after the commencement of CIRP, during the COVID-19 Lockdown, Respondent No. 5 and 6 blocked the gate of the Corporate Debtor by constructing the wall. After filing a police complaint against the said construction, the wall was demolished. However, as stated, just to harass the Applicant and to cause obstruction, Respondent No. 5 and 6 filled up the area leading to the gate of the unit with mud in such a manner that the portion outside the gate of the unit was raised, leading to difficulties in entering and exiting the gate of the property. Subsequently, the issue of non-availability of access was brought to the notice of Chief Mamlatdar, Karjan, the Collector, Karjan and the Chief Town Planner, Vadodra vide Applicant's letter dated 09.03.2021, requesting to provide the access road to the Corporate

Debtor. However, no response was received despite the reminder dated 09.09.2021.

5. As stated, the Applicant also visited the Collector's office (Prant Officer) on 08.09.2021 and requested the right to access the New Block No. 83 which is encroached by Respondent No. 5 and 6. The Collector, after inspecting the requisite documents, informed the Applicant that there shall be an approachable road and was further advised to meet Mr. Vivek Patel, the Talati of Manglej Village (Respondent No. 1). As contended, the Applicant, on 08.09.2021 itself, visited the office of Respondent No. 1 and submitted all relevant documents in presence of Mr. Dharmendra Singha (de facto Sarpanch). During the said meeting, as alleged, it was clearly mentioned that the said issue falls under the jurisdiction of Respondent No. 1 and after reviewing the relevant documents, it was categorically mentioned that within two days a notice will be issued to the accused and access to New Block No. 83 will be provided.
6. However, vide letter dated 30.09.2021, Talati informed the Applicant that they do not have the jurisdiction and no notice has been issued to the Respondents. The Applicant sent a letter dated 11.10.2021 to the Collector (Respondent No. 3), setting out the developments after Applicant's visit to the Collector's office on 08.09.2021. As further alleged by the Applicant, after the Applicant's visit on 08.09.2021, Respondent No. 5 and 6 hastened the construction activity to ensure that the right of way is completely blocked so that none other than the nominee of the promoters of the Corporate Debtor can buy New Block No. 83, as and when it is auctioned and the same is malafide, mischievous, and motivated
7. As submitted by the Applicant, in view of the aforesaid background, the Applicant had no option but to approach this Hon'ble Tribunal to protect

the right of way to Block No. 83 so that there is no serious value erosion and the avowed objective of value maximization as envisaged in the Code is not defeated. The road from NH 8 through New Block 90 and 92 owned by Respondent No. 5 and 6 is the usual customary and constant approach to entry and exit the New Block No. 83 owned by the Corporate Debtor and the functioning of the same entirely depends upon the existence of such right of use. Further, as alleged, as the entry and exit to the said unit was blocked, the Applicant had to access the same from other Blocks for inspection, valuation, etc. However, when the plants and machinery were sold by the Liquidator, the buyer was blocked from using the defined path and hurdles were created, and in view of the same, a complaint was lodged at the Karjan Police Station and the buyer was permitted to remove the assets.

8. The Applicant stated that the right of way was enjoyed by the Corporate Debtor since 1999 as an easement right by prescription, that too, without interruption. The Applicant further relied on the relevant provisions of the Indian Easement Act, 1882 to support the case. The Applicant also placed reliance on the judgment of the Hon'ble Gujarat High Court in the matter of *Gopalbhai Jikabhai Suvagiya Vs. Vinubhai Nathabhai Hirani (CIVIL APPLICATION NO.1 of 2017)*, wherein the seven ingredients of an easement right have been laid down. As alleged by the Applicant, the Corporate Debtor has fulfilled all the said essential ingredients in the instant case and thus, the Applicant is entitled for the right of way as an easement. Further, as stated by the Applicant, Section 15 of the Easement Act, 1882 states that once a person enjoys a right of way by way of easement for a period of 20 years then the right cannot be restricted and should be available permanently.



9. As stated by the Applicant, the aforementioned judgment has explained the interpretation of the word “disturbance” in relation to easement law which means that any such act that lessens the practical utility of the enjoyment of the easement can be termed as “disturbance”.
10. The Applicant further submitted that the entire action of constructing a wall outside the gate of the unit to deny access, blocking of the access from New Block No. 90 and 92 by building walls along the periphery, rapid pace of construction in the New Block 90 and 92 are actions being conducted with an ulterior motive of denying access to the New Block No. 83 belonging to the Corporate Debtor as the same would result in serious erosion in value when the Applicant issues auction notice for the sale of New Block No. 83. Furthermore, the Applicant managed to get the wall demolished, however, the right of way could not be secured as the Respondent No. 1 to 4 did not extend cooperation. Thus, as alleged, the entire blocks belonging to the Corporate Debtor is blocked by construction activity in New Block No. 88, 89, 90, and 92 by Respondent No. 5 and 6.
11. As contended by the Applicant, the entry to Block No. 83 owned by the Corporate Debtor is through New Block No. 90 and 92 which are owned by Respondent No. 5 and 6. As stated by the Applicant, the Director / Shareholders of the Respondent No. 5 and 6 are close relatives of the promoters of the Corporate Debtor and are deliberately creating obstructions so that value erosion takes place and the Applicant does not remain in a position to sell the unit for a good value. As contended, it appears that there is an ulterior motive behind such an act so as to ensure that the unit of the Corporate Debtor is eventually bought by the Promoters/Directors or through their nominees.



12. Further as submitted by the Applicant, New Block No. 80, 81, and 82 were owned by the Corporate Debtor but were mutated subsequently in favour of the Government of Gujarat and Mr. Arjun Solanki, thus, this further erodes the value of Corporate Debtor's land considerably. Furthermore, in case of reversal of this mutation, the access to the said Block will not be available unless the right of way to new Block 83 is restored. As stated, the Directors of the Corporate Debtor were not cooperating since the beginning of CIRP and in view of the same, the Applicant also filed a non-cooperation Application.
13. As submitted, it is imperative that the right of way, derived by prescription, is restored, especially considering that the said Land is an industrial unit and right of way is essential for easy vehicular movement. Therefore, in light of the above stated submissions, the Applicant preferred the present Application before this Hon'ble Tribunal.

III. Facts and submissions of Respondent No. 5 and 6-

1. At the outset, Respondent No. 5 and 6 denied each and every contention put forward by the Applicant. As contended by the Respondents, the present Application is not maintainable under Section 60(5)(c) of the Code. As submitted, Section 60(5)(c) of the IBC only prescribes that the Applications which are relating to or arising out of insolvency or liquidation can be instituted before this Hon'ble Tribunal. To support the said contention, reliance was placed on the judgment of the Hon'ble Supreme Court in the matter of *Gujarat Urja Nigam Limited v. Mr. Amit Gupta & Ors [(2021) 7 SCC 209]*, wherein while discussing the meaning and interpretation of the words relating to or arising out of insolvency or liquidation appearing in Section 60(5)(c) of IBC, has held that "...for adjudication of disputes that arise de hors the insolvency of the corporate debtor, the RP must approach the relevant competent authority." As



stated by the Respondents, it becomes clear from the aforementioned Judgment that only those questions or issues in dispute that have arisen as a reason of insolvency (for instance, wherein ground for termination of an agreement was commencement of insolvency against the corporate debtor) are the "... *question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor...*" as contemplated under Section 60(5)(c) of IBC, which can be entertained by this Hon'ble Tribunal.

2. Further, the Respondents also contended that the cause of the present Application (that is, alleged blocking of easement rights) has no nexus to the commencement of insolvency proceedings of Corporate Debtor. As submitted, the present Application has failed to demonstrate that the construction of the wall was an event consequent to or has any relation to the commencement of CIRP against the Corporate Debtor. The Applicant (Liquidator) has made a bald statement that the alleged construction of the wall was "*somewhere during the pandemic lockdown*" that the access was allegedly blocked. However, the Applicant Liquidator has completely failed to show or even plead any knowledge that the said access was not blocked prior to commencement of the CIRP of the Corporate Debtor. It was never the case of the Applicant that the alleged construction of wall or alleged blocking of the access has a nexus to or is a result of initiation of CIRP of the Corporate Debtor. The alleged blocking of easement rights could have occurred even without initiation of CIRP against the Corporate Debtor. Therefore, the cause of the present Application, as alleged, cannot be said to have any nexus to or being a result of initiation of CIRP of the Corporate Debtor and not maintainable under Section 60(5)(c) of IBC.



- 3.** The Respondents further submitted that Section 63 of IBC is not applicable to the present case as Section 63 of IBC excludes the jurisdiction of other Civil courts for matter on which this Hon'ble Tribunal or the Hon'ble Appellate Tribunal has jurisdiction. As contended by the Respondents in the aforesaid paragraphs the question or issue with respect to the dispute in the present matter do not arise out of or relate to the insolvency of the Corporate Debtor and therefore cannot be maintained under Section 60(5)(c) of IBC. Therefore, this Hon'ble Tribunal does not have jurisdiction for the present dispute.
- 4.** The Respondents also submitted that the Applicant has a remedy under Section 35(1)(k) of IBC as Section 35(1)(k) of IBC prescribes that it is the duty of the Liquidator to institute suit and legal proceedings on behalf of the Corporate Debtor. Since the legislature cast a duty upon liquidator to initiate suit, it cannot be argued that residuary power under Section 60(5)(c) of IBC would cover every possible proceeding in its sweep. The liquidator has a remedy available under Section 35(1)(k) of IBC.
- 5.** As submitted, this Hon'ble Tribunal cannot exercise its inherent powers in the present Application. It is contended that the in view of the alternate efficacious remedy available to the Applicant Liquidator under Section 35(1)(k) of the IBC, it is not available to the Applicant Liquidator to invoke inherent power of this Hon'ble Tribunal.
- 6.** The Respondents also contended that the claim made in the present Application cannot be adjudicated in a summary manner as the present Application is an attempt on part of the Applicant to bypass and short circuit the processes of proving its claim in a civil suit. This, as alleged, amounts to abuse of the process under Section 60(5) of IBC. The intention is to obtain a similar relief in a summary manner from this Hon'ble Court. The proceedings in the present Application are in the nature of summary

proceedings wherein no evidence is taken by the Hon'ble Tribunal. Whereas, claims for easement rights is required to be proved with evidence. Reliance was placed on the Judgment of the Hon'ble Supreme Court in the matter of *Embassy Property Development Pvt. Ltd. v. State of Karnataka & Ors [Civil Appeal No. 9170 of 2019]*, wherein it was observed that " *...wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5)* "

7. As submitted by the Respondents, according to Section 15 of the Indian Easements Act, 1882, to claim an acquisition by prescription a right to way should have existed uninterrupted for twenty years and the present Application fails to demonstrate anything to show that the Corporate Debtor had peaceable, open and uninterrupted access for twenty years. As alleged by the Respondents, this has been specifically denied by Respondent No. 5 in its Affidavit-in-Reply dated 26.04.2023. Reliance was placed on the relevant extract from the said Reply which is as under-

"The Respondent herein, who has been the owner for over fifteen (15) years and who had never granted any such right of way to the Applicant or any other owner(s) of the neighbouring plots and in fact, challenged the existence of such purported right of way in the aforementioned litigations."

As alleged, the right of way to the Applicant's plot was not uninterrupted for a continuous period of 20 years, as the Respondent has been making sincere efforts to develop the Respondent's plot, since it bought the said Plot in the year 2007. However, the construction could not be completed within the stipulated time owing to the pendency of litigations. Moreover,

as alleged, despite being fully aware of the fact that the Respondent had restricted access to the Respondent's plot by installing gates on its premises, the Corporate Debtor did not raise any objection and had impliedly acquiesced to the actions of the Respondent by utilizing the alternative route to access the Applicant's Plot. Therefore, as stated, it cannot be concluded that there was uninterrupted access to Applicant's enjoyment of land. Furthermore, as contended by the Respondents, a police complaint was filed by the Applicant Liquidator, wherein the investigating officer, subsequent to investigation, found no easement rights exist in favor of the Corporate Debtor. Thus, in view of the above stated, the Respondents alleged that it is all the more necessary that evidence be led by the parties to prove their respective claims. Therefore, it is necessary that a competent civil court must adjudicate the contesting assertions.

8. The Respondents submitted that prior repeated actions to establish a right of way have been unsuccessful. Occupiers of the adjoining lands have initiated similar claims against the Respondent No. 5 to establish a right of way, but these claims have also failed. In Regular Civil Suit No. 15/2018, filed before the Court of the Principal Senior Civil Judge at Karjan, for the declaration of easement rights and permanent injunction, one of the issues framed was whether the plaintiffs had rights of easement over the suit property for passage from the northern side of the defendant's Revenue Survey No. 99. After hearing the parties, the Court observed that the plaintiff failed to provide sufficient documentary evidence proving continuous, uninterrupted, and peaceful enjoyment of easement rights over the defendant's land (Survey No. 99) for more than 20 years. Furthermore, another suit filed before the Principal Civil Court at Karjan



to claim easement rights was dismissed for non-prosecution by the plaintiff.

9. As stated, The Applicant Liquidator filed a complaint before the police authorities alleging illegal interruption/ obstruction on the way of passing to the plot of the Corporate Debtor by the Respondent No. 5. The concerned investigating officer after conducting due investigation found that there are no written documents or any financial transaction to prove the claim of the Applicant Liquidator. The concerned investigating officer also found that there is an alternate route available to the Applicant Liquidator to access the plot of the Corporate Debtor. In view of these observations, the concerned investigating officer opined that the complaint filed by the Applicant Liquidator be closed. Therefore, having failed to obtain a favourable result, the Applicant Liquidator has initiated parallel proceedings before this Hon'ble Tribunal.
10. Furthermore, Since the operations of the Corporate Debtor are presently not in a suspended state, the plot of the Corporate Debtor is left unused causing infestation of pigs and possibility of untoward incidents, like robbery. It was owing to such safety reasons that the wall was constructed by Respondent No. 5. In any event, the Liquidator has caused the structure and wall to be demolished in or around February 2024, as mentioned during the hearing of the captioned Interlocutory Application.

IV. Rejoinder by the Applicant-

1. As submitted by the Applicant, the easement right claimed is based on uninterrupted right enjoyed from 1998/1999 till 2019/2020 when a wall was erected by Respondent No. 5 in front of the gate of the unit situated in Block 83 thereby completely blocking the right of way granted vide the NA order dated 04.11.1999. As contended, the factory was in operation till 2007 when the right was enjoyed without any interruption.

Thereafter, the officials of the Corporate Debtor have been using the easement rights through Block 90 & 92 of the Respondent No. 5 and 6 for inspection and for other reasons required to access Block 83. Later the Applicant has visited the blocks on a number of occasions using the same easement right till a wall was constructed to block the access to the gate of the unit in block 83, which was later broken down with in the presence of police to remove the Plant & Machinery sold by the Applicant. This clearly demonstrates that the obstruction was deliberately created by the Respondent No. 5 in collusion with Respondent No. 6. The photographs annexed to the application clearly demonstrates that the development of building a wall and later blocking the entry by building a huge wall and construction activity completely sealing the access to the highway for functioning of the Corporate Debtor is a deliberate attempt to block the easement rights so that the Respondents no 5& 6 are in a position to buy the blocks that will be auctioned through their proxies at a distress value. The nexus is thus evident as the promoters and Respondent no. 5 is related parties.

2. With respect to the Taluka Panchayat Kacheri, it is submitted that based on the NA order issued by Taluka Panchayat Kacheri it is clear that the access to the block no 83 from the highway was given through block no 90 &92 thus establishing the uninterrupted right.
3. The right of the CD to use the said path perennially. Such rights are given for specifically for the purpose of promoting industrial activity when a NA land is used for industrial purposes. With respect to the construction of the wall it was erected after the commencement of the CIRP and the photographs attached to the application is evidence of this fact. These photographs will be relied upon to establish that the easement rights of the CD were uninterrupted for years and that the



contention of the Respondent no. 5 that the applicant has acquiesced the action by using alternate route is motivated, false and is stated with a view to deny access to the CD to block 83 through which the CD had access to other block nos 80, 81 & 82 and also to 77 & 79. Thus, the access to 83 is crucial for the development of other blocks owned by the CD and this is clearly established by the NA that has been issued by the Collector to the CD. The CD is not aware of the alternative access to it's plots. Presuming, but without admitting, that such a route exists the CD is not permitted to use the said route as the NA has clearly defined the access to the road and thereby the highway which is through the block 90 & 92 of Respondent no 5. With respect to the allegation that construction have started in the year 2007, it is submitted that there is nothing on record to suggest that the Respondent no 5 has objected to the use of their blocks by the CD for accessing block no 83 during construction initially in 1997/1998 and later when the factory was in operation. With respect to the NA letter issued by the Taluka Panchayat Kacheri, it is submitted that the said NA Letter is enough evidence of the fact that the Applicant enjoyed easement rights. Further, the fact that the construction of the factory and the operations that were carried on and the officials of the CD/IRP/RP /Liquidator were regularly visiting the factory is enough evidence that the easement right existed.

4. The Respondent no 5 having realized in 2020 that the Applicant has enjoyed easement right more than 20 years suddenly decided to erect a wall to obstruct the right of way and later on expedited the construction in their block and also erected a huge wall to prevent access to the CD to the road connecting the highway. This conduct on part of the Respondent no 5 with the dominant heritage did not recognise the rights of the Applicant with the subservient heritage as per the provisions of

the Indian Easement Act 1882. The undertaking referred to by the Respondent no 5 should be in the records of the collector as the collector has issued the NA and would not have issued the same without the consent and the normal process followed under the rules and regulations governing such easement rights being given to buyers of land for the purpose of setting up industries. The Respondent themselves would have received such NA as they are carrying out construction for pursuing the industrial activity, the document giving the NA permission with the easement right is proof enough to establish the right and the undertaking is not relevant when there is a document issued by the collector recording the easement right. With respect the contention of the Respondent that the undertaking was issued by the earlier owner of the blocks and that the answering respondent has been the owner for 15 years and had not granted any right of way to the applicant or any other owners. It is pertinent to point out that the Applicant had bought the blocks much before the 15 years as claimed by the respondent nos. 5 and 6, in the year 1998/1999 and the NA permission given by the Taluka Panchayat Kacheri carried the easement right. Thus, it is evident that the Respondent no 5 bought the blocks owned by him along with the easement right acquired or granted by the earlier owner. Any land that is sold is with the existing easement rights attached to it and cannot be divorced of such grant of easement by the earlier owner just because the Respondent no 5 has not granted any specific easement right to the Applicant. This is the basis on which the Easement rights are acquired or granted and the rights are available irrespective of the change of ownership. Thus, it is evident that there is no need for the Respondent no 5 to given the undertaking of the earlier owner of the block.



5. With respect to the contention of the safety issues, it is submitted that the bogey of safety is being raised to justify the construction of easement. The Respondent No 5 has stated explicitly that the easement was obstructed for safety reason thus recognizing the fact that the CD had easement rights. If the issue was infestation of pigs a solution could have been found without obstructing the easement right. The infestation of pigs is a lame excuse. During the many visits of the Applicant and the photographs that have been taken no pigs were even found before the huge compound wall that was constructed blocking access. This the averment of the respondent no 5 is false and misleading. With respect to the filing of police complaint and escalating the matter. There is no communication either from the Police station Karjan or the Superintendent of Police or the Police commissioner that the complaint has been closed. In fact, the communication of the applicant to these police authorities remains unanswered till date. The documents submitted by the Respondent no 5 is seen for the first time by the Applicant and the records pertaining to block 83 (Old no 87) was hand written and hard copies were not available and the mamlatdar was directed to meet the Talati in this regard. It is further submitted that neither the Talati nor the Mamlatdar or the police officer of Karjan has bothered to appear before this Hon'ble Tribunal despite notice and have shared all the details of the investigation with Respondent No 5 and not with the Applicant who has made the complaint.
6. With reference to the contention that the wall was broken causing loss to the Respondent no 5, it was done after a complaint by the auction purchaser with the full knowledge of Respondent no 5 who did everything to obstruct the demolition which was finally achieved in Police presence after they were convinced that there is no other way



available to remove the plant and machinery by the auction purchaser. The Respondent has not placed anything to prove that the Applicant has used the alternate right of way but has assumed that since the legal right of way was obstructed the Applicant has used the alternate available way. The fact is that the Applicant is not aware of the availability of the alternate route and has to seek police help to remove the plant and machinery using the legal right of way granted to the CD, it is also pertinent to point out that the alternate way that is being suggested by the Respondent no 5 passes through other plots not owned by the CD or the Respondent no 5 and there is no easement right available for the CD in through those plots. Thus, the use of the alternative route shall expose the Applicant and the CD to action for trespass. The fact is that the route from the highway to the blocks of respondent no. 5 and from their blocks to the Applicant's block no. 83 is obstructed by the respondent no.5 and 6 by constructing walls at both the places thereby cutting off the right of way of the Applicant completely, thereby leaving no option to the Applicant except using the purported alternate way which would amount to trespass. Presuming but without admitting that such a way exists, the suitability of the said path for the operation of the CD is in doubt.

7. In view of the foregoing, it is clear that the respondent no 5 has failed to establish that there is no right of way through their blocks whereas the Applicant has clearly established that there is a right of way from the blocks 90 & 92 (old block nos. 94 & 96) owned by the respondent no 5. Hence the IA deserves to be admitted.

V. Findings-

1. In view of the submissions made by the Learned Counsel of both the parties and on the strength of documents and pleadings placed on record, it is evident



that the Applicant, being the Liquidator of Adya Oils and Chemicals Ltd., is seeking directions against the Respondents concerning the right of way to New Block No. 83, which is essential for maximizing the value of the Corporate Debtor's assets during the liquidation process. However, the case of the Respondent is that the instant Application, filed by the Applicant, is not maintainable under Section 60(5)(c) of IBC as the cause of the present Application does not have any nexus to the CIRP of the Corporate Debtor. Furthermore, it is pertinent to note that this Hon'ble Tribunal, vide Order dated 13.02.2024, proceeded ex-parte against Respondent No. 1,2,3, and 4 and forfeited their right to file a reply to the present Application.

2. On perusal of the reply submitted by Respondent No. 5 and 6 and also in view of the arguments advanced, it is evident that the Corporate Debtor has enjoyed uninterrupted access through New Block No. 90 and 92 since 1998/1999, as established by the NA Order dated 04.11.1999 issued by Taluka Panchayat Kacheri. The said NA Order explicitly recognizes and grants the right of way through these blocks for accessing New Block No. 83. Although, an attempt has been made on the part of the Respondents 5 to justify the obstruction of the right of way by clearly stating that *“the grant of such right of way to the Corporate Debtor will result in huge infestation of pigs daily on the Respondent’s Plot and will also lead to increased chances of robbery in the Respondent herein. To avoid any such untoward instances, a wall was built on the periphery of the Respondent’s Plot”*. However, the same appears to be an afterthought, considering that the said issues could have been addressed without completely blocking access.
3. Further, we must appreciate the following-
 - a. The NA order clearly defined the access to the road and highway through Block Nos. 90 and 92 of Respondent No. 5, establishing an uninterrupted right of way.



- b. The Corporate Debtor's factory operations and regular visits by officials of the Corporate Debtor, IRP, Liquidator, etc. demonstrate continuous use of this access until the recent obstruction. Evidencing that the easement right existed.
 - c. The factory premises of the Corporate Debtor were utilized for industrial purposes, and such industrial use inherently involves the existence of easement rights.
 - d. The wall construction occurred after the commencement of CIRP, substantiating a deliberate attempt to impair the value of the Corporate Debtor's assets.
 - e. Prior attempts by the Respondents to establish alternative rights of way have been unsuccessful, indicating that the prescribed route through Blocks 90 and 92 is the recognized access.
4. Thus, given the above-stated facts, the easement rights of the Corporate Debtor stand established under Section 15 of the Indian Easements Act, 1882, having been enjoyed uninterruptedly for over 20 years until the recent obstruction.
 5. Furthermore, this Bench finds merit in the Applicant's contention that any land that is sold is with the existing easement rights attached to it cannot be divorced of such grant of easement by the earlier owner just because the Respondent No. 5 has not granted any specific easement right to the Applicant. Thus, it is established that Respondent No. 5 stepped into the shoes of the earlier owner, and the Easement right in favour of the Corporate Debtor extend to Respondent No. 5.
 6. Moreover, the nexus between the Respondents and the Corporate Debtor's promoters as related parties raises serious concerns about the intention behind the said obstruction. The timing of the wall construction and subsequent



attempts to block access suggest a calculated effort to devalue the Corporate Debtor's assets.

7. While the Respondents have raised jurisdictional objections, this Tribunal finds that the matter falls squarely within its jurisdiction under Section 60(5)(c) of the Code. The obstruction directly impacts the liquidation process by:

a) Impeding the Liquidator's ability to maximize asset value

b) Interfering with the sale process

c) Creating artificial barriers to potential buyers

8. Keeping in view the totality of the circumstances of the present case and in view of the fact that there is an established right of way through New Block No. 90 and 92, and the fact that the obstruction appears to be a deliberate attempt to devalue the Corporate Debtor's assets, with the Respondents being close relatives of the Corporate Debtor's promoters, it is a fit case for intervention. Furthermore, this matter falls squarely within the jurisdiction of this Tribunal under Section 60(5)(c) of IBC as it directly impacts the value maximization of the Corporate Debtor's assets and is intrinsically linked to the liquidation process, also keeping in mind that the alternative route suggested by the Respondents would expose the Applicant to trespass claims and is not recognized in the original NA Order.

9. In view of the settled law laid down in *Swiss Ribbons (P) Ltd. v. Union of India [(2019) 4 SCC 17]*, wherein the Hon'ble Supreme Court has emphasized the importance of value maximization during liquidation proceedings, and considering that the obstruction of right of way significantly impairs the Liquidator's ability to effectively manage and sell the Corporate Debtor's assets, this Tribunal is of the judicious opinion that the present



Interlocutory Application deserves to be **allowed**. Thus, prayers (b) to (h) in IA/2658/2021 are hereby **allowed**, as prayer (a) has become infructuous, considering the said wall has already been demolished during the pendency of the present IA.

Sd/-
MADHU SINHA
Member (Technical)
/Jhanvi/

Sd/-
REETA KOHLI
Member (Judicial)