



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI, COURT-III**

**IA-3565/2022**

**In**

**IB-900/(ND)/2020**

*(Order under Regulation 35A of The IBBI (Resolution Process for Corporate Person) Regulations, 2016 r/w Rule 11 of NCLT Rules, 2016)*

**IN THE MATTER OF IB-900/(ND)/2020:**

**M/s. P.R. ROLLING MILLS PRIVATE LIMITED**

**..... PETITIONER**

**VERSUS**

**M/s. HEMA ENGINEERING INDUSTRIES LIMITED**

**..... RESPONDENT**

**AND IN THE MATTER OF IA-3565/2022:**

**Mr. CHANDRESH JAJOO**

*(Suspended Director of Hema Engineering Industries Limited)*

*Having Office at:*

68, Okhla Phase III, Okhla Industrial Area,

Delhi – 110020.

**.....APPLICANT**

**VERSUS**

**Mr. VIKAS GARG**

*[Resolution Professional (Now Liquidator) of Hema Engineering Industries Ltd]*

*Having Office at:*

809, 8th Floor, Arunachal Building,

19, Barakhamba Road, New Delhi- 110001.

**.... RESPONDENT**

**Order delivered on: 09.10.2025**



**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL),  
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

**For Applicant:** Mr. Vikas Dutta, Mr. Siddharth Silwal, Ms. Shivani Sharma, Advs.

**For Respondent/Liquidator:** Mr. Vishal Ganda, Mr. Anshit Aggarwal, Ms. Charmi Khurana, Advocates along with Mr. Vikas Garg (Liquidator)

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. The present Application is being filed by Mr. Chandresh Jajoo, the Suspended Director of Hema Engineering Industries Limited ("**HEIL**") under Regulation 35A of the IBBI (Resolution Process for Corporate Person) Regulations, 2016 ("**IBBI Regulations, 2016**"), read with Rule 11 of NCLT Rules, 2016 seeking the following reliefs: -

*"A. Allow the present application filed by the Applicant and dismiss the Applications being IA No. 296 of 2022, IA No. 322 of 2022, IA No. 588 of 2022, IA No. 990 of 2022, IA No. 1117 of 2022 and Additional Affidavit in IA No. 2111 of 2021 filed by the RP as the same are beyond the period as prescribed under the Regulation 35A of the IBBI (Resolution Process for Corporate Person) Regulations, 2016; and RP should be prevented from moving repeated applications asking similar or identical reliefs in future;*

*B. Pass any such other order(s) as this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case."*

**2. CASE OF THE APPLICANT:**

- i) The Corporate Debtor i.e., M/s Hema Engineering Industries Limited was admitted into insolvency by this Adjudicating Authority vide Order dated



05.04.2021 and Respondent No. 1 was appointed as the Interim Resolution Professional (“IRP”) of the Corporate Debtor. Thereafter, in terms of the relevant provisions of the Code and Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a public announcement was made in Form-A dated 09.04.2021 and published in the newspapers, whereby, the IRP invited claims from all the stakeholders of the Corporate Debtor. Thereafter, during the meeting of CoC held by the IRP, the CoC confirmed the appointment of the IRP as the Resolution Professional (“RP”), which was approved by this Adjudicating Authority vide its Order dated 19.07.2021.

- ii) However, as no resolution plan was approved by the CoC members, the application for liquidation of the Corporate Debtor was approved by this Adjudicating Authority in IA-1098/2022 vide order dated 17.05.2022, thereby appointing Mr. Vikas Garg, the Respondent herein as the Liquidator of the Corporate Debtor.
- iii) The Resolution Professional (Now Liquidator) filed an application bearing IA No, 4468/2021 seeking exclusion of 44 days from the CIRP process. This Adjudicating Authority vide its Order dated 15.11.2021 allowed the application of the Resolution Professional and was pleased to exclude the period from 19.04.2021 to 31.05.2021 from the CIRP.
- iv) Further, as per Section 12 of the IBC, 2016 the total time period of CIRP is of 270 days, which is inclusive of the 90 days extension which can be granted as per Section 12(2) of the IBC on the request of the Resolution Professional. In this regard, the Applicant submits that the Resolution Professional vide IA. No. 5166/2021 sought for the said extension of 90 days, which was allowed by this Adjudicating Authority vide its Order dated 15.11.2021. Therefore, taking into account all the extensions and exemptions granted to the RP, the CIRP was to expire on 13.02.2022.
- v) It is submitted that as per Regulation 35A of the IBBI (Resolution Process for Corporate Person) Regulations, 2016 (“IBBI Regulations, 2016”), the Resolution Professional ought to have: -



(a) formed an opinion whether the Corporate Debtor has been subjected to any transaction covered under Section 43, 45, 50 or 66 of the IBC within the 75<sup>th</sup> day of the insolvency commencement date;

(b) make determination on or before the 115<sup>th</sup> day of the insolvency commencement date; and

(c) apply to the Adjudicating Authority on or before 135<sup>th</sup> day of the insolvency commencement date.

vi) It is submitted that the 135<sup>th</sup> day of the Insolvency Commencement Date expired on or before 17.10.2021. The alleged applications having been filed belatedly cannot be considered. Even taking into account, the time period excluded under the Order dated 07.10.2021 granted by this Adjudicating Authority, even then the alleged avoidance applications are beyond the prescribed period provided under Section 35A of the Regulations 2016. The dates of filing of various applications are stated below for easy reference: -

| <b>PARTICULARS</b>  | <b>FILED ON<br/>OR BEFORE</b> |
|---|-------------------------------|
| I.A. No. 322 of 2022 titled Vikas Garg v. Hema Agarwal & Ors.                     | 11.01.2022                    |
| I.A. No. 296 of 2022 titled Vikas Garg v. Venkateshwar Auto Components Ltd & Ors. | 17.01.2022                    |
| I.A. No. 588 of 2022 titled Vikas Garg v. Satyam Autos Pvt Ltd & Ors.             | 18.01.2022                    |
| I.A. No. 1117 of 2022 titled Vikas Garg v. Eurothern Hema Radiators Ltd & Ors.    | 22.02.2022                    |
| I.A. No. 990 of 2022 titled Vikas Garg v. Satyam Autos Pvt Ltd & 14 Ors           | 25.02.2022                    |
| Additional Affidavit in I.A. No. 2111 of 2021                                     | 09.04.2022                    |



- vii) It is submitted that once a resolution plan is approved or an Order of Liquidation is passed, the mandate of the Resolution Professional comes to an end and he cannot continue to act as a “Former Resolution Professional” by pursuing avoidance applications, which is legally impermissible.
- viii) It is submitted that the Resolution Professional relied solely on the Transaction Audit Review Report dated 08.12.2021 without forming any independent opinion on avoidance transactions within the prescribed 75 days from the insolvency commencement date, thereby violating Regulation 35A of the IBBI Regulations, 2016.
- ix) It is submitted that as per Sections 25 and 39(2) of the Code and Regulations, the RP was required to identify and place all preferential, undervalued, and fraudulent transactions before the CoC along with the resolution plan during CIRP itself, and extending such inquiries beyond the 270-day resolution timeline or post-liquidation defeats the objective of the Code. Accordingly, any avoidance application filed thereafter is unsustainable in law.

### **3. SUBMISSIONS OF THE RESPONDENT/RESOLUTION PROFESSIONAL:**

The Respondent filed Reply Affidavit dated 18.03.2023 denying the averments made by the Applicant.

- i) It is submitted that the contention raised by the Applicant that the applications being IA-296/2022, IA-322/2022, IA- 588/2022, IA-990/2022, IA-1117/2022, and an Additional Affidavit in IA- 2111/2022 ("**Referred Applications**") were filed beyond the prescribed timeline under CIRP Regulations and the same should be dismissed is devoid of any merit as the timelines provided under Regulation 35A of the CIRP Regulations are not mandatory and are merely directory in nature. The Regulation 35A of the CIRP Regulations imposes a duty on the Resolution Professional to take measures within the timelines prescribed. In the event, it is held that any action taken by Resolution Professional beyond the time prescribed in Regulation 35A of the CIRP Regulations is prohibited, it shall cause serious inconvenience or injustice to the Corporate Debtor.



- ii) It is submitted that Resolution Professional had to file an application bearing IA No. 2111 of 2021 u/s 19(2) of the Code, 2016 seeking directions against the Suspended Directors. The Suspended Directors provided access to ERP software/accounting data of the Corporate Debtor on 28<sup>th</sup> June 2021 i.e. after 84 days of commencement of CIRP.
- iii) It is submitted that the referred applications have been filed by the herein after forming an opinion and making a determination that preferential, undervalued and fraudulent transactions have been carried out by the suspended board of management of the Corporate Debtor and are filed for the benefit of the Corporate Debtor.
- iv) It is submitted that if the referred Applications are adjudicated upon then, it is the Corporate Debtor, who would benefit from the same and it would be against the interest of the Applicant if the Applicant is held responsible for the transactions referred therein. The Applicant, therefore in order to avoid such liability has, preferred the present Application with a mala fide intent. In such circumstances, the instant application, being devoid of any merit is liable to be rejected and dismissed in limine.

#### **4. ANALYSIS AND FINDINGS**

- i) We have heard the Ld. Counsel appearing for both the parties and have perused the records.
- ii) The Applicant in this application seeks dismissal of various applications bearing IA No.'s 322 of 2022, 296 of 2022, 588 of 2022, 1117 of 2022, 1126 of 2022, 990 of 2022 filed under Sections 43, 45, 49, 66, 67 of the Code, 2016 by the Respondent/Resolution Professional, now Liquidator, having been filed beyond the prescribed timelines as laid down under Regulation 35A of CIRP Regulations.
- iii) Before going into the merits of the case, it is important to refer to the Regulation 35A of CIRP Regulations which is reproduced below: -

#### ***“Regulation 35A: Preferential and other transactions***



35A. (1) *On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.*

(2) *Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date.*

(3) *Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirtieth day of the insolvency commencement date.*

(3A) *The resolution professional shall forward a copy of the application to the prospective resolution applicant to enable him to consider the same while submitting the resolution plan within the time initially stipulated.*

(4) *The creditors shall provide to the resolution professional, relevant extract from the audits of the corporate debtor, conducted by the creditors such as stock audit, transaction audit, forensic audit, etc."*

- iv) The Ld. Counsel for the Applicant submitted that the Resolution Professional has filed the applications related to PUFEE transactions beyond the period prescribed under Regulation 35A of CIRP Regulations and submitted that the Resolution Professional cannot claim extension as a matter of right solely on the ground that the timelines are directory in the nature and not mandatory. The Resolution Professional has to explain the reasons for filing such applications belatedly.
- v) Before analyzing the facts of the case, it would be pertinent to look at the various case laws on the issue involved: -



The Hon'ble NCLAT, Delhi Bench of **Aditya Kumar Tibrewal v. Omprakash Pandey & Ors., Company Appeal (AT) (Insolvency) No. 583 of 2021**, with respect to the Regulation 35A of CIRP Regulations observed that the timelines prescribed are not limitation rather outer time limit for filing the PUF E Applications and in the absence of any cogent reasoning for delay in filing, the timelines are not extendable. The relevant portion of the Order of the Hon'ble NCLAT is reproduced here under: -

*“11. Via. Regulation 35A of the CIRP Regulations imposes a duty on the Resolution Professional to take measure within the timeline as prescribed. In performance of such duty the public in general has no control including the Corporate Debtor. In event it is held that any action taken by Resolution Professional beyond the time prescribed in Regulation 35A of the CIRP Regulations is prohibited, it shall cause serious general inconvenience or injustice to the Corporate Debtor. One of the objectives of the Code is to maximise the assets of the Corporate Debtor. In event the actions taken by the Resolution Professional after the timeline prescribed in Regulation 35A of the CIRP Regulations are to be annulled, the undervalued and fraudulent transactions will go out of the reach of Resolution Process, reach of the Court and shall cause great inconvenience and injustice to Corporate Debtor.*

*Hence, we are of the view that timeline prescribed in Regulation 35A of the CIRP Regulations is only directory and any action taken by the Resolution Professional beyond the time prescribed under Regulation 35A of the CIRP Regulations cannot be held to be non-est or void only on the ground that it is beyond the period prescribed under Regulation 35A of the CIRP Regulations.*

*There may be genuine and valid reasons for Resolution Professional not to file application for avoiding the transactions within time prescribed which are question relating to each case and has to be examined basis and if there are reasons due to which Resolution Professional could not file the Application within time the same has to be examined on merit.”*

*“13. We thus answer Question Nos. I, II & III in following words:*



*Answer I The Application filed by the Resolution Professional relating to Sections 43 and 45 read with Sections 66 and 60(5) of the Code is not to be rejected filed beyond the period of 135<sup>th</sup> Day of Insolvency Commencement Date only on the ground of non-compliance of Regulation 35A of the CIRP Regulations, 2016, It shall depend on the facts of each case as to whether there are genuine reasons to consider the Application on merits even filed beyond 135<sup>th</sup> day.”*

- vi) Further, the Hon’ble NCLAT in the case of the Appellate Tribunal in “**Jagdish Kumar Parulkar v. Vinod Agarwal, (2024) 245 Comp Cas 806: 2023 SCC OnLine NCLAT 1196**”, observed that:

*“24. We are of the considered opinion that the CIRP Regulations 35A is not mandatory and the requirement for approaching the Adjudicating Authority for appropriate relief on or before 135<sup>th</sup> day of the insolvency commencement date is only directory. Moreover, since regulation 35A must be read along with the statutory construct of the Insolvency and Bankruptcy Code, 2016 which by itself does not prescribe any time period for determination of opinion. Hence merely on account of delay in determination of opinion cannot by itself become a ground for non-maintainability of the petition. Keeping in view the facts of this case and for reasons discussed above we hold that there were sufficient and genuine reasons for the delay justifying consideration of the application under sections 43 and 66 by the Adjudicating Authority even though it was filed beyond 135<sup>th</sup> day of the insolvency commencement date.”*

- vii) Thus, in the light of the law laid down in the above judgments of Hon’ble NCLAT, it is to be seen whether the Resolution Professional has provided any cogent reason for delay in filing the PUFÉ Applications in the present case.
- viii) In the instant case, as per Regulation 35A (1) of the CIRP Regulations, the Respondent was required to form an opinion within 75 (Seventy-Five) days from the date of the Admission Order dated 05.04.2021. In the present matter the 75 (Seventy-Five) days from the CIRP Order concluded on 19.06.2021. Further, as per Regulation 35A (2) of the CIRP Regulations, the



Respondent was to make determination of his opinion on or before 115 (One Hundred and Fifteen) days from the CIRP order i.e. 29.07.2021. Furthermore, as per Regulation 35A (3) the Respondent was required to file an application before 135 (One Hundred Thirty Five) days from the CIRP Order i.e., 18.08.2021.

- ix) The Ld. Counsel for the Resolution Professional (now Liquidator) submitted that the Respondent had circulated a notice dated June 13, 2021, for convening the 2nd CoC meeting on June 16, 2021, wherein the Respondent at Clause 9 of Agenda Item No.1 had mentioned regarding the opinion being formed in terms of Regulation 35A of CIRP Regulations that the Corporate Debtor is subject to preferential, undervalued, extortionate and fraudulent transactions under Section 43, 45, 50 or 66 of the Code. Therefore, the Respondent had formed an opinion well before the lapse of the 75 days (Seventy-Five) days and the same was even intimated and discussed with the CoC members in order to perform the duties in a timebound manner.
- x) It is further submitted that the Auditor was appointed on June 28, 2021, i.e. in 3rd CoC meeting, and submitted the Transaction Audit Report (“**TAR**”) on December 8, 2021, approximately 6 (Six) months later. The Auditor took a considerable duration of 6 (Six) months to file the TAR due to the voluminous transactions and the widespread business of the Corporate Debtor, and the non-corporation of the Applicant in providing the information/documents to the Respondent and the Auditor. Hence, the Respondent took appropriate steps to determine his opinion within the timelines as prescribed under Regulation 35A of the CIRP Regulations.
- xi) From the above averments, it is clear that the Resolution Professional took steps as per Regulation 35 only after submission of Transaction Audit Report (“**TAR**”) on 08.12.2021 by the Auditor. The Auditor took a period of 6 months for submitting the report. Therefore, the Resolution Professional could not take necessary action strictly according to the Regulation 35A of the CIRP Regulations. However, the Resolution Professional has taken necessary steps and filed the PUFÉ Applications after taking approval of CoC members.



Therefore, the delay occurred in filing the application for Avoidance and PUFÉ Applications cannot be attributable to the Resolution Professional alone. In our considered opinion, the Resolution Professional has given cogent reasons for delay in filing the PUFÉ Applications.

- xii) The other contention raised by the Applicant is that the Resolution Professional's mandate expired on 13.02.2022 and with the expiry of the CIRP Period, the Resolution Professional had no locus to file or continue prosecuting the applications in guise of 'Former Resolution Professional'.
- xiii) The Ld. Counsel for the Respondent, in reply to this submission submitted that Section 35(1)(k) of the Code empowers the Liquidator to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the Corporate Debtor. Moreover, the application filed by the Resolution Professional is not in the personal capacity but on behalf of the Corporate Debtor for the benefit of the Corporate Debtor and its creditors. Therefore, the Liquidator has the power to pursue the Avoidance Applications filed by the Corporate Debtor through the Resolution Professional against the Suspended Management.

The relevant extracts of the Section 35(1)(k) of the Code are reproduced hereinbelow:

***“Section 35: Powers and duties of Liquidator:***

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

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

- xiv) Furthermore, the Liquidator is obligated under Regulation 44A of the IBBI (Liquidation Process) Regulations, 2016 to provide on the advice of the consultation committee in the application along with the final report under Regulation 45 of the Liquidation Regulations for the manner in which proceedings in respect of avoidance applications undergone.



The Regulation 44A of the (Liquidation Process) Regulations, 2016 is reproduced hereinbelow: -

*“44A. The liquidator shall, on the advice of the consultation committee, provide in the application along with the final report filed under regulation 45 for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the dissolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed.”*

- xv) The Ld. Counsel for the Respondent relied upon the order of Hon’ble NCLAT in the case of ***K.L. Jute Products Private Limited v. Tirupti Jute Industries Ltd., 2020 SCC OnLine NCLAT 426***, wherein it was held that Section 43 of the Code can be invoked during the pendency of Resolution Process or Liquidation proceedings, if there are genuine, reasonable grievances relating to preferential transactions at a relevant time and in fact a Liquidator by filing an Application can seek one or other order from the Adjudicating Authority as per tenor and spirit of Section 44 of the Code.

The relevant extract is reproduced hereinbelow:

*“67.....One cannot remain oblivious that a ‘Liquidator’ keeps the ‘Liquidation Assets’ in fiduciary capacity for the benefit of all creditors. Therefore, it can be safely and securely concluded that section 43 of the Code can be invoked during the pendency of ‘Resolution Process’ by a ‘Resolution Professional’ or ‘Liquidator’ for seeking necessary relief pertaining to a preferential transaction by filing an Application and that the Adjudicating Authority can pass orders under Section 44 of the Code. Further a Liquidator as per Section 35 of the I&B Code, a Liquidator has jurisdiction to investigate the financial affairs of the Corporate Debtor to determine undervalued or ‘preferential transactions’ subject to the supervisory jurisdiction of an Adjudicating Authority....”*



xvi) Further, reliance has been placed upon the Judgment of the Hon'ble High Court of Delhi in "**Tata Steel BSL Ltd. v. Venus Recruiter (P) Ltd., 2023 SCC OnLine Del 155: (2023) 172 CLA 239**", specifically observed that the avoidable transactions i.e. Sections 43-51 and 66 and 67 were made a part of the IBC so that they could be avoided by the RP (during the CIRP) or the liquidator thereafter to protect the interests of the creditors. The relevant extract is reproduced hereinbelow –

*"42. In furtherance of the larger object and purpose of the IBC discussed in the paragraphs above, provisions pertaining to various types of avoidable transactions i.e. Sections 43-51 and 66 and 67 were especially made a part of the IBC so that they could be avoided by the RP (during the CIRP) or the liquidator thereafter to protect the interests of the creditors."*

xvii) In light of the above judicial pronouncements, we are of the considered view that the Applications filed by the Resolution Professional during CIRP and may be pursued by the Liquidator during the Liquidation process and there is no bar on the Liquidator to step into the shoes of a Resolution Professional and the legislature itself empowers the Liquidator to perform such functions.

xviii) Therefore, in view of the above discussion, the present Interlocutory Application **IA-3565/2022** is accordingly **dismissed**.

xix) Consequently, the Applications bearing I.A. No. 322 of 2022, I.A. No. 296 of 2022, I.A. No. 588 of 2022, I.A. No. 1117 of 2022, I.A. No. 990 of 2022 be listed on 11.11.2025 for further consideration.

**-Sd-**

**(DR. SANJEEV RANJAN)**  
**MEMBER (TECHNICAL)**

**-Sd-**

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**