



**NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH COURT III**

**Item No. 117**

I.A. (I.B.C)/5681 (MB)2025

In

C.P. (IB)/1667(MB)2018

CORAM: MS. LAKSHMI GURUNG, MEMBER (J)  
SH. HARIHARAN NEELAKANTA IYER, MEMBER (T)

ORDER SHEET OF THE HEARING ON **10.12.2025**

HEARING THROUGH: (HYBRID) MODE

NAME OF THE PARTIES: Andhra Bank

VS

Provogue (India) Ltd.

**Appearance**

For Applicant : Adv. Amir Arsiwala a/w. Adv. Saurabh Bachhawat,  
Adv. Kaushik Puranik i/b Chandhiok & Mahajan

For intervenor : Adv. Nausher Kohli a/w. Adv. Chiraj Naik,  
Adv. Ashish Mishra i/b. MZM Legal LLP

SECTION 9 OF THE IBC

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**ORDER**

**I.A. (I.B.C)/5681 (MB)2025**

1. The present Application is filed by Mr. Amit Gupta, Insolvency Professional, having Registration, No. IBBI/IPA-001/IP-P00016/2016-2017/ 10040 ("Applicant"), who was the Liquidator of Provogue (India) Limited ("**Provogue**"/"**Corporate Debtor**") under Section 60(5) read with Section 233 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") seeking following reliefs:



- a. *Declare that all acts undertaken by the Applicant during the CIRP and Liquidation of Provogue (India) Limited, including acts forming the subject matter of Complaint CR No. 105/25 registered by Economic Offence Wing, Mumbai Police were performed in good faith and in due discharge of statutory functions under the Insolvency and Bankruptcy Code, 2016;*
  - b. *Declare that in the facts and circumstances of the case the Economic Offence Wing, Mumbai Police could not have registered Complaint CR No. 105/25 against the Applicant;*
  - c. *That pending final hearing of this Application, this Hon'ble Adjudicating Authority be pleased to direct that no coercive, penal or adverse action shall be initiated or continued against the Applicant in respect of any act, decision, or omission undertaken in the course of, or arising from, the CIRP or Liquidation of the Corporate Debtor in furtherance to the Complaint CR No. 105/25 registered by the Economic Offence Wing, Mumbai Police;*
  - d. *Pass such further orders, directions, or reliefs as this Hon'ble this Adjudicating Authority may deem fit, proper, and necessary in the interest of justice and equity.*
2. Based on a complaint filed by Mr. Nikhil Chaturvedi (former Managing Director of Corporate Debtor), Amboli Police Station registered FIR No. 1101 dated 18.11.2025. Accordingly, Economic Offence Wing, Mumbai Police (Respondent) registered a complaint No. EOW CR No. 105/25 (**EOW Complaint**) against (i) Amit Gupta (Applicant) (ii) Sameer Khandelwal (iii) Rakesh Rawat (iv) Arpit Khadelwal (v) Plutus Investment and Holding Pvt. Ltd. ("**Plutus**"), wherein inter alia the following allegations are levelled:
- (i) Export receivables worth INR 32.71 Crores, which arose from overseas transaction between 2018 to 2023, were not recovered.
  - (ii) The valuation of the subsidiary of the Corporate Debtor i.e. Elite Hong Kong (which as per the complainant was approximately INR 54.72 Crores) was knowingly suppressed in the liquidation valuation report. It is further alleged in the complaint that the



independent values were not provided complete balance sheets and other relevant documents for valuation.

(iii) Rakesh Rawat who was the sole director of Elite Hong Kong and one former employee of Corporate Debtor i.e. Mr. Sameer Khandelwal conspired with Plutus to undervalue the assets of the Corporate Debtor and its subsidiary during the liquidation process (allegedly delayed), which enabled Plutus to acquire the assets at a significantly depressed price.

3. It is submitted that the abovementioned allegations are ex facie baseless, misconceived, and arise entirely from the mala fide intention of the suspended Director and Promoter of the Corporate Debtor to stall/hinder and derail the liquidation process of the Corporate Debtor. The actions undertaken by the applicant were in discharge of statutory functions as an officer of the court being the Resolution Professional and subsequently the Liquidator of the Corporate Debtor.
4. It is further submitted that, as an afterthought, Mr. Nikhil Chaturvedi filed a fresh complaint before the Amboli Police Station based on which the Economic Offence Wing, Mumbai Police (Respondent) has registered a Complaint against multiple entities including the Applicant and these tactics by the erstwhile management of the corporate debtor are only with a purpose to create undue pressure on the Applicant and derail the whole liquidation process.
5. Ld. counsel for the applicant has argued that as per section 233 of the IBC provides immunity to the Insolvency Professional or the liquidator for his acts done in good faith. It is submitted that as per section 236 of the Code, the offences under the code can be tried only by the Special Court established under the Companies, 2013 on a complaint made by the Insolvency and Bankruptcy Board of India (Board) or by the Central Government or any person authorised by Central Government. Therefore, no cognizance could be taken on a private complaint filed by



a suspended director. For this purpose, he has relied upon various judgments. He has specifically referred to the judgement in the case of **Alchemist Asset Reconstruction Co. Ltd vs. M/s. Hotel Gaudavan Pvt. Ltd. CP 23/2017** order delivered on 22.09.2017 in which the Hon'ble NCLT Principal Bench has, *inter alia*, observed as follows:

*“The Insolvency Professional has to function in accordance with the scheme of the Code and perform his duties as such. If, there is any complaint against the Insolvency Professional then the Insolvency Bankruptcy Board of India (for brevity ‘IBBI’) is competent to constitute a disciplinary committee and have the same investigated from an Investigating Authority as per the provision of section 220 of the Code. If, **after investigation ‘IBBI’ finds that a criminal case has been made out against the Insolvency Resolution Professional then the ‘IBBI’ has to file a complaint in respect of the offences committed by him. It is with the aforesaid object that protection to action taken by the Insolvency Resolution Professional in good faith has been accorded by section 233 of the Code. There is also complete bar of trial of offences in the absence of filing of a complaint by the ‘IBBI’ as is evident from a perusal of section 236(1)(2) of the Code.** Therefore, a complaint by Harendra Singh Rathore, a former director with the SHO, Police Station would not be maintainable and competent as the compliant is not lodged by the ‘IBBI’. Moreover, the ex-management has already filed a complaint on 22.01.2017 before the ‘IBBI’ and the same is under investigation.*

.....

*In the meanwhile, proceeding in the case FIR No. 605/2017 P.S. Vaishali Nagar, Jaipur shall remain stayed as the Investigation Officer has exercised power without any jurisdiction. The jurisdiction would vest with Investigation Officer only when a complaint is filed by IBBI.”*

**(emphasis provided)**

6. Ld. Counsel for the intervener, who is not a party presently to this application, vehemently opposed granting any interim relief to the applicant and he relied on the order passed by the Disciplinary Committee on 26.11.2024 to contend that the process followed by the



liquidator is not in good faith. He also relied on the judgement passed by Hon'ble Supreme Court in the case of ***Institute of Chartered Accounts of India vs. Vimal Kumar Surana and another (2011) 1 Supreme Court cases 534: (2011) 1 Supreme Court Cases (Cri) 442: (2011) 161 Comp Cas 31: 2010 SCC OnLine SC 1369*** to contend that an offence committed under IPC 1860, can be taken cognizance even if the complaint is filed by a person other than the Board or Central Government.

7. He has also tendered across the bar order passed by Additional Session Judge, Mumbai dated 04.12.2025 in which the prayer for interim protection was rejected on the ground that “*it cannot be said that all the aforesaid acts were done in good faith.*”
8. We heard the Learned counsels for the applicant and the intervenor.
9. It is noted that the Insolvency and Bankruptcy Board of India (“**IBBI**”) has vide its Order dated 26 November 2024 has inter alia cancelled the registration of the Applicant as an Insolvency Professional. This fact has been brought to the knowledge of the SCC Members of the Corporate Debtor, however till date no steps have been taken to replace the Applicant as the Liquidator of the Corporate Debtor.
10. It is noted that the issues considered by IBBI in its order dated 26.11.2024 and the issues under the FIR quoted above are similar in nature. Both were relating to his functioning as an Insolvency Professional/Liquidator and alleged violations of the IBC by him.
11. In the present case, we note that despite same allegations on the applicant in the Disciplinary Committee Proceedings, IBBI has not initiated any criminal proceedings against the applicant. It is pertinent to refer to Section 233 and Section 236 of the IBC.

***Protection of action taken in good faith.***



### **Section 233**

*230. No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government, or the Chairperson, Member, officer or other employee of the Board or an insolvency professional or liquidator for anything which is done or intended to be done in good faith under this Code or the rules or regulations made thereunder.*

### ***Trial of offences by Special Court.***

### **Section 236**

*236. (1) Notwithstanding anything in the Code of Criminal Procedure, 1973 (2 of 1974) offences under of this Code shall be tried by the Special Court established under Chapter XXVII of the Companies Act, 2013 (18 of 2013).*

***(2) No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf”.....***

***(Emphasis applied)***

12. In light of the facts of the case that the matter is relating to the role of the applicant as an RP registered with IBBI and offence arising out of the acts done under the Code and the order of Honourable Principal Bench, NCLT, New Delhi, we are inclined to give interim relief to the Applicant.
13. Therefore, we direct the respondents that no coercive step for arrest of the applicant shall be taken till further orders.
14. It is clarified that the proceedings before the Session Court shall not be affected by this order. The applicant is also directed to cooperate with the Investigating agencies and attend the proceedings before the Sessions Court.



15. Registry is directed to send notice to Respondent/EOW and make available the copy of the notice, postal receipt and track report/ acknowledgement before the next date of hearing.
  
16. The Applicant is also directed to serve notice of the hearing along with the copy of the application to the EOW and to file affidavit of service along with copy of notice, postal receipt, track report, email etc. well in advance so that the same is reflected on DMS before the next date of hearing.
  
17. Reply be filed within **2 weeks**.
  
18. List this matter on **16.01.2026**.

Sd/-  
HARIHARAN NEELAKANTA IYER  
Member (Technical)  
---Rajeev---

Sd/-  
LAKSHMI GURUNG  
Member (Judicial)