

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET OF THE HEARING ON 30th APRIL 2026

IA (IBC)/43/GB/2023
CP (IB)/23/GB/2019

Present: 1. Hon'ble Member (Judicial), Shri Rammurti Kushawaha
2. Hon'ble Member (Technical), Shri Yogendra Kumar Singh

In the Matter of	Punjab National Bank VS Shree Sai Smelters India Ltd.
Under Section	U/s 7 of IBC, 2016

Appearances (via video conferencing/physically)

IA (IBC)/43/GB/2023

For Petitioner (s) : None

For Respondent (s) : Mr. Mukesh Sharma, Adv. R-5

ORDER

Order pronounced in open court *vide* separate sheets.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

IA (IBC)/43/GB/2023

In

CP (IB)/23/GB/2019

An application filed under Section 68 read with section 60(5) of the Insolvency and Bankruptcy Code, 2016 and under Rule 11 of NCLT Rules 2016;

In the matter of CP (IB)/23/GB/2019:

Punjab National Bank

... Financial Creditor

-Versus-

Shree Sai Smelters India Limited

... Corporate Debtor

-And-

In the matter of IA (IBC)/43/GB/2023:

Sandeep Kaithan, Liquidator of Shree Sai Smelters India Limited, having Address at Singhi & Co. Sanmati Plaza, G.S. Road, Opp IDBI Bank, ABC Area, Guwahati, Kamrup, Assam- 781005;

...Applicant/Liquidator

-Versus-

Smt. Shalini Bhagat, W/o Late Shri. Sandeep Kumar Bhagat having address at ISPAT Complex, Flat No. 01 G.E. Fatashil, N.S. Road, P.O. Bharalumukh, Guwahati, Kamrup (M), Assam- 781009;

...Respondent No. 1(a)

-And-

Ms. Smriti Bhagat, D/o Late Shri. Sandeep Kumar Bhagat having address at ISPAT Complex, Flat No. 01 G.E. Fatashil, N.S. Road, P.O. Bharalumukh, Guwahati, Kamrup (M), Assam- 781009;

...Respondent No. 1(b)

-And-

Ms. Rashi Bhagat, D/o Late Shri. Sandeep Kumar Bhagat having address at ISPAT Complex, Flat No. 01 G.E. Fatashil, N.S. Road, P.O. Bharalumukh, Guwahati, Kamrup (M), Assam- 781009;

...Respondent No. 1(c)

-And-

Smt. Shalini Bhagat, Suspended Board of CD, having address at Flat No.1/GE Ispat Complex N S Road, Fatasil, Guwahati, , Kamrup (M), Assam- 781009;

...Respondent No. 2

-And-

Mr. Donborroy Thangkhiew, Suspended Board of CD having address at Mavlai Nongwar, Block-I, G.S. Road, East Khasi Hills, Shillong-793017;

...Respondent No. 3

-And-

Mr. Deepak Kumar Choudhary, S/o Dinesh Prasad Choudhary, having address: N.S. Road, Fatasil, Guwahati- 781009;

...Respondent No. 4

-And-

Mr. Anirudh Jalan, Partner of Jalan Sales Corp, S/o. Late Kailash Kumar Jalan having address at H.NO. 20, Near Baruah Market, M.G. Road, Guwahati-781001;

...Respondent No. 5

-And-

Mr. Chotu Khan (Alias Abdul Kalam Khan) having address at Nalapara, Sarusajai Sports Complex, Gate No.2, Guwahati-781034;

...Respondent No. 6

Coram:

Shri Rammurti Kushawaha : Member (Judicial)

Shri Yogendra Kumar Singh : Member (Technical)

Appearances (through video conferencing):

For Petitioner : Mr. A. Prasad

For Respondent : Mr. Nishant Das (Adv.) (R-1, 2 & 4), Mr. M
Sharma (Adv.) (R. 5)

Order pronounced on: 30.04.2026

ORDER

1. The present Interlocutory Application is filed before this Tribunal under the provisions of Section 68 read with section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“**the Code**”) and under Rule 11 of NCLT Rules 2016 (“**NCLT Rules**”). The present application has been filed by the Resolution Professional of Shree Sai Smelters India Limited which was later substituted by Liquidator/Applicant, seeking for the following reliefs:-
 - a) *allow the present Application;*
 - b) *Pass necessary order(s) / direction(s) under section 68 of the Code against Respondents for removal of the part property of CD;*
 - c) *Pass any further order(s) / direction(s) as this Hon'ble Tribunal may deem fit and necessary in the facts and circumstances of the present case.*
2. Submissions by the Applicant:
 - 2.1. The Applicant submitted that the application for initiation of Corporate Insolvency Resolution Process under Section 7 of the code was filed by Punjab National Bank, was reinstated by the Hon’ble NCLT, Guwahati Bench *vide* order dated 30.09.2022 which was originally admitted on 23.08.2019 and the period from 23.08.2019 to 29.09.2022 was excluded.
 - 2.2. It was further submitted that the erstwhile Interim Resolution Professional, Mr. Anil Agarwal, was relieved from his duties and Mr. Amit Pareek, bearing IBBI Registration No. IBBI/IPA-002/IP-N00413/2017-2018/11205, was appointed as Interim Resolution Professional and subsequently confirmed as Resolution Professional by the Committee of Creditors in its 2nd meeting held on 07.11.2022 with 100% voting share. Copy of NCLT order dated 30.09.2022 & CoC Minutes dated 07.11.2022 are annexed as ‘Annexure-1’.
 - 2.3. The Applicant further submitted that upon receipt of the NCLT order dated 30.09.2022, the Resolution Professional undertook multiple visits to the registered office and plant of the Corporate Debtor situated at Rongsokona Village, Meghalaya, on 05.10.2022, 07.10.2022, 17.10.2022, 07.11.2022 and

many times for the purposes of physical verification, custody and security of assets and inspection of plant and machinery. During such visits, it was observed that Respondent No. 1 had removed substantial assets of the Corporate Debtor, including machinery, electric motors, vehicles, and investments in shares, having a consolidated value of more than Crores of rupees, details are as under:

Machineries & Electric motors:

Blower Tank Motor, D.C. Motor, Pusher Motor

Vehicle

a. 2 Nos. of Vehicles

Investment in Shares

a. Shree Sanyeeji Steels & Power Ltd.: Rs. 1,56,00,000/-.

b. Shree Sai Prakash Alloys Pvt Ltd.: Rs. 60,00,000/-.

c. Shristi Reverine Private Limited: Rs. 10,00,000/-.

- 2.4. Furthermore, the Applicant submitted that the CD was functioning and running its business till 13.08.2022, as evidenced from its provisional financial statements reflecting revenue from operations amounting to Rs. 1,74,09,986/- for the period April 2022 to September 2022. However, the operations ceased on account of disconnection of electricity supply by the Meghalaya Electricity Power Distribution Ltd. on 13.08.2022. It was contended that the removal of the aforesaid assets by Respondent No. 1 fraudulently, making CD incapable of continuing its operations. Copy of the provisional financial statements is annexed as 'Annexure 2'.
- 2.5. Furthermore, the Applicant submitted that during site inspection, it was also discovered that at the factory site few machinery, electric motors, motor vehicle, furniture equipment of the CD had been removed prior to the commencement of CIRP. Despite repeated communications and emails addressed to Respondent No. 1 seeking clarification and return of the assets, no satisfactory response was received. The Respondent, however, claimed that the machinery and equipment had been sent for repair and would be reinstalled and that share certificates would be handed over, but failed to substantiate the same with any credible evidence.
- 2.6. Furthermore, the Applicant submitted that as per the list of assets of the Corporate Debtor as on 24.03.2023 provided by respondent, based on that records and physical inspection, several assets were found missing and removed

-
- by the Respondent No. 1. Copy of the details of assets of CD is annexed as 'Annexure 3'.
- 2.7. Since, the assets were not restored back by the suspended BoD even after the repeated calls, personal requests, emails to the suspended Board of Directors, the RP left with no other option other than to file application under section 68 of IBC 2016. Hence, with the approval of CoC, the Resolution Professional filed Interlocutory Application IA (IBC)/43/GB/2023 under section 68 of IBC on 13.04.2023.
- 2.8. Further, the Applicant submitted that in IA (IBC)/43/GB/2023, only three Respondents were originally arrayed, namely Mr. Sandeep Bhagat, Mrs. Shalini Bhagat and Mr. Donborry Thangkhiew, being suspended Directors of the Corporate Debtor. However, upon further investigation after filing of the said Application, it was revealed that Mr. Deepak Kumar Choudhary, Mr. Anirudh Jalan and Mr. Chotu Khan were also involved in the removal of assets of the Corporate Debtor. Consequently, the Resolution Professional lodged an FIR dated 19.04.2023, before Byrnihat Police Station against Mr. Sandeep Kumar Bhagat, Mr. Deepak Kumar Choudhary, Mr. Anirudh Jalan and Mr. Chotu Khan, which is presently pending adjudication.
- 2.9. Thereafter, Mr. Sandip Kumar Bhagat, suspended Director, submitted a letter dated 17.06.2023 along with a Joint Venture Agreement dated 01.07.2019 executed between Jalan Sales Corp., represented by Mr. Anirudh Jalan and the Corporate Debtor to RP, alleging that Mr. Anirudh Jalan had been running the affairs of the Corporate Debtor since 2019 and had indulged in removal of its assets. Copy of FIR Dated 19.04.2023 is annexed as 'Annexure-4' and Copy of the letter dated 17.06.2023 is annexed as 'Annexure-5'.
- 2.10. Furthermore, it is submitted that that as per the information collected by the RP in addition to Mr. Anirudh Jalan, Mr. Deepak Kumar Choudhary and Mr. Chotu Khan Alias Abdul Kalam Khan were also involved in the illegal removal of the assets of the CD in the month of September 2022, hence the amendment in the Memo of Parties, cause title and other related amendments are required for proper and legal adjudication of the instant matter.
- 2.11. The applicant further submitted that as per Section 5(19) of the IBC, 2016, "**officer** for the purposes of Chapter VI and Chapter VII of this Part, means an

officer who is in default, as defined in clause (60) of section 2 of the Companies Act, 2013 or a designated partner as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, as the case may be”.

As per Section 2(60) of the Companies Act, 2013,

“Officer who is in default”, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely: -

- i. whole-time director;*
- ii. key managerial personnel;*
- iii. where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;*
- iv. any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;*
- v. any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;*
- vi. every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;*
- vii. in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.*

As Per Section 2(59) of the Companies Act, 2013:

"officer" includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.

- 2.12. It is further submitted that that as per the Joint Venture Agreement dated 01.07.2019 executed between M/s Jalan Sales Corporation represented by Mr. Anirudh Jalan & CD, it is mentioned therein that due to paucity of funds of the

CD, it is not able to run its Rolling Mill properly accordingly approached M/s Jalan Sales Corporation who are its existing supplier to support the OTS proposal and also to run the plant on job work basis. Copy of Joint Venture Agreement Dated 01.07.2019 is annexed as 'Annexure-6'.

- 2.13. Furthermore, as per the audited financial statement of the CD, the major sale and purchase transactions of the CD was with Jalan Sales Corporation represented by its Partners. Copy of the Ledger Account for the year 2020-21 and 2021-22 are annexed as 'Annexure-7'. The brief details as under: -

Yr	Total Sales in Rs	Sales to Jalan Sales Corporation in Rs	%	Total Purchases in Rs	Purchases by Jalan Sales Corporation in Rs	%
20-21	3,83,45,875	77,98,182	20	3,64,38,681	6,99,681	2
21-22	8,74,54,738	4,10,34,726	47	6,38,01,501	3,95,72,874	62

In addition, thereof few vehicles registered in the name of Jalan Sales Corporation were used for the transportation of the dismantled/removed plants and machineries of the CD. Therefore Mr. Anirudh Jalan is an "officer" of the CD.

- 2.14. It is further submitted that as per the Reply dated 01.08.2023, submitted by Deepak Kumar Choudhary, he has been working with the CD since 2006 and have been drawing salary of Rs. 35,000/-Per Month and was also acting as In-charge of production for ingot and TMT Bar. Mr. Deepak Kumar Choudhary is also the relative of R-1 & R-2. Therefore Mr. Deepak Kr. Choudhary is an "officer" of the CD and in collusion with other parties of the instant matter involved in removing and dismantling the machineries.
- 2.15. Furthermore, it is submitted that as per the information collected by the RP, Mr. Chotu Khan Alias Abdul Kalam Khan was engaged by the CD for handling and maintenance of the plant and machineries of the CD and he has helped the other Respondents in removal of the assets of the CD.

-
- 2.16. It is further submitted that there are number of witnesses to testify that the above-mentioned parties were involved in the illegal removal of the assets of the CD.
3. Submission by Respondent No. 1 and 2 *vide* Reply affidavit dated 12.08.2023:
- 3.1 The Respondent No. 1 submitted that Respondent No. 1 had in the year 2018 entrusted the management and day to day affairs of the Corporate Debtor to one Sh. Anirudh Jalan, S/o Late Kailash Kumar Jalan, R/o 01, M.G. Road, Fancy Bazar, Guwahati -781001 (Assam), who was part of the Corporate Debtor being one of the traders of TMT Bars/Rods. Hence in view of the above, the Applicant is not entitled for any relief whatsoever.
- 3.2 Further, it is submitted that without the machinery mentioned in Para 3 of the Application under reply, the Corporate Debtor cannot operate does not demonstrate that the Respondent No. 1 in any manner with any fraudulent intentions have removed the said machineries under the provisions of Section 68 of the Code.
- 3.3 That under Section 5(11) of the Insolvency and Bankruptcy Code 2016, the 'initiation date' means the date on which financial creditor makes an application to the Adjudicating Authority for initiation of Corporate Insolvency Resolution Process. It is submitted that before the initiation of the CIRP, Mr. Anirudh Jalan was managing the affairs of the Corporate Debtor and during the same period the Respondent No. 1 was informed that the plants and machineries of the Corporate Debtor require repairing. It is further submitted that the Respondents in the utmost good faith permitted Mr. Anirudh Jalan to get the machineries for repair in order to avoid any loss to the Corporate Debtor due to defective plants and machineries.
- 3.4 Further, the Respondent No. 1 submitted that the brief facts essential for adjudication of the Application:
- a. The Respondents are the suspended directors of Shree Sai Smeltors (India) Ltd. (Corporate Debtor), which is presently undergoing CIRP pursuant to an Application filed by Punjab National Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016.
 - b. Further submitted that owing to severe health issues in the year 2018, Respondent No. 1 along with Respondent No. 2 entrusted the day-to-day

affairs of the Corporate Debtor to Mr. Anirudh Jalan, son of Late Kailash Kumar Jalan, resident of 01, M.G. Road, Fancy Bazar, Guwahati, Assam.

- c. It is further submitted that Mr. Anirudh Jalan was also associated with the Corporate Debtor as one of the traders of TMT Bars under the name and style of M/s Jalan Sales Corporation and in January 2019, M/s Jalan Sales Corporation on behalf of the Corporate Debtor made payments to Punjab National Bank to the tune of Rs. 42,50,000/-.
- d. It is further submitted that due to paucity of funds, the Respondents executed an agreement dated 01.07.2019 with M/s Jalan Sales Corporation represented by Mr. Anirudh Jalan for supplying the OTS proposal offered to the Financial Creditor and also to run the plant and machineries of the Corporate Debtor on job work basis. Since then, Mr. Anirudh Jalan was handling the day-to-day affairs of the Corporate Debtor and the Respondents were not involved in any of the actions. Copy of the agreement dated 01.07.2019 is annexed as '*Annexure B*'.
- e. It is further submitted that in first week of September 2022, Mr. Anirudh Jalan informed that certain plant and machineries required repairs, whereupon upon instructions of the Respondents, he took the machineries for repairing and assured that the same would be ready for use on or before March 2023.
- f. It is further submitted that by the end of March 2023, Mr. Anirudh Jalan stopped responding to calls and also stopped visiting the factory and office of the Corporate Debtor. Thereafter, on 06.06.2023, unknown 4-5 miscreants threatened Respondent No. 1 not to contact Mr. Anirudh Jalan, following which a written complaint dated 07.06.2023 was lodged before Fatasil Ambari Police Station, Guwahati. Copy of the FIR is annexed as '*Annexure C*'.
- g. It is further submitted that the Applicant also filed a complaint before Byrnihat Police alleging removal of machineries by Respondent No. 1 in collusion with other namely Mr. Deepak Kumar Choudhary, Mr. Anirudh Jalan and Mr. Chotu Khan, pursuant to which Nongpoh Police Station registered a case having Case No. 44(4)/2023 under Sections 120(B)/419/420/406 of Indian Penal Code, 1860.

- h. It is further submitted that the Respondents have extended all possible cooperation to the Applicant within their limitations and Respondent No. 1 also addressed letter dated 17.06.2023 requesting the Applicant to implead Mr. Anirudh Jalan in the proceedings.
 - i. It is further submitted that the present Application nowhere discloses any fraudulent intention on the part of the Respondents. It is submitted that on 07.09.2022 and 08.09.2022, some labourers on the instructions of Mr. Anirudh Jalan dismantled machineries from the mills of the Corporate Debtor and since he had been handling the regular affairs of the Corporate Debtor for the past three years, no worker or official questioned his authority.
 - j. It is further submitted that one Chotu Khan, a mechanic known to Mr. Anirudh Jalan, was also called for dismantling and removal of motors and machineries, which were thereafter taken to Jaintia Weigh Bridge at Tamulkuchi, 13 Miles, Byrnihat, Meghalay– 793101 for weighing and kept at Jaintia Ferro Alloys situated at the same address.
 - k. It is further submitted that there are several witnesses to testify that the removal of machineries was carried out at the behest of Mr. Anirudh Jalan alone, including Mr. Madan Kanti (one of the transporter), Robert Mushahari (Security), Arvind Rai (Production Contractor), Satyendra Kushwaha (Loading Contractor) and Vicky Sangma (Loading Contractor).
 - l. It is further submitted that Respondent No. 2 was never an active director of the Corporate Debtor and only used to attend board meetings.
- 3.5 Further, the Respondent No. 1 submitted that Respondent No. 1 from first day of initiation of CIRP has been extending his full support to the informant. Moreover, if the Respondent No. 1 was not co-operating or assisting the Resolution Professional i.e., the Applicant, they under Section 19 of the Insolvency and Bankruptcy Code, 2016 may have make an application before the adjudicating authority for necessary direction.
- 3.6 Hence the Respondent No.1 submitted that the prayers in the Application are wrong, fallacious and denied. Further submitted that all averments therein are specifically denied. It is further submitted that the present Application is an abuse of process of law and deserves dismissal with exemplary costs and such further orders as this Hon'ble Tribunal may deem fit.

4. Submission by Respondent No. 4 *vide* Reply affidavit dated 01.11.2023:
- 4.1 Respondent No. 4 submitted that Respondent No. 4 was not involved in removal of assets and machinery of the CD and Respondent No. 4 was working as employee since inception.
- 4.2 Further, the Respondent No. 4 submitted that the brief facts essential for adjudication of the Application:
- a. The Respondent Nos. 1, 2 and 3 in the original application are the suspended directors of the Corporate Debtor which is presently under Corporate Insolvency Resolution Process pursuant to the application filed by Punjab National Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016.
 - b. It is submitted that the Respondent has been working with the Corporate Debtor since 2006 and had been drawing salary of Rs. 35,000/- per month.
 - c. Since year 2018, Sh. Sandeep Kr. Bhagat started having health problems because of which he was unable to come to the mill on regular basis.
 - d. Anirudh Jalan, through his Company M/s Jalan Sales Corporation, was one of the existing suppliers of TMT Bars for the Corporate Debtor. In the year 2019, he offered financial help and also to run the factory on job work basis by supplying raw materials and converting the same into finished products. In pursuance thereof, M/s Jalan Sales Corporation in January 2019 made certain payments to Punjab National Bank as well.
 - e. Due to paucity of funds, Sandeep Kr. Bhagat, being one of the directors of the Corporate Debtor and other companies namely (i) Shree Sai Rolling Mills India Limited and (ii) Shree Sai Prakash Alloys Pvt. Ltd., executed agreements dated 01.07.2019 with M/s Jalan Sales Corporation to finance the OTS proposal offered to the Financial Creditor and also to run the plant and machineries of the Corporate Debtor on day to day basis on job work basis.
 - f. It is pertinent to note that the Respondent was acting as in-charge of production for INGOT and TMT Bars and along with other employees was directed by Sandeep Kr. Bhagat, that Anirudh Jalan through his company would be handling the day to day affairs of the Corporate Debtor and the suspended directors would no longer be involved in day to day actions.

- g. On 07.09.2022 and 08.09.2022, the Respondent No. 4 saw that labourers, at the instruction of Anirudh Jalan, were dismantling the machineries from the mills. Upon enquiry, the Respondent No. 4 was informed by Anirudh Jalan that the plant and machineries required major repairing. The Respondent No. 4 discussed the situation with Sandeep Kr. Bhagat, who affirmed that he had been informed by Anirudh Jalan that the machineries needed to be dismantled for repairing.
- h. As Anirudh Jalan had been handling the regular affairs of the Corporate Debtor under the agreement dated 01.07.2019 for the past three years, the Respondent No. 4 never questioned his authority for dismantling the machineries.
- i. The dismantling was completed in two days. Along with labourers, one Chotu Khan, mechanic, was also called by Anirudh Jalan and at his instructions dismantled/removed the motors and machineries. After removal, the plant and machineries were taken to Jaintia Weigh Bridge at Tamulkuchi, 13 Miles, Byrnihat, Meghalaya– 793101 for weighing and thereafter kept at Jaintia Ferro Alloys situated at the same address.
- j. One Mr. Madan Kanti, responsible for arranging vehicles for transportation, shared copies of the Kanta Slip (Weighment Certificate) with the Respondent No. 4 on WhatsApp. The Respondent No. 4 submitted that he has no information as to where Anirudh Jalan transported the said machineries from the warehouse of Jaintia Ferro Alloys.
- k. There are several witnesses to testify that the removal of the machineries was carried out at the behest of Anirudh Jalan only, including Sh. Madan Kanti, Robert Mushahari, Arvind Rai, Satyendra Maurya @ Satyendra Kushwaha and Vicky Sangma.
- l. The Respondent No. 4 submitted that he neither had the authority to carry out such acts nor the power to stop Anirudh Jalan, who was taking care of the day-to-day business of the Corporate Debtor and had represented that the machineries required repairing. Subsequently, when Sandeep Kr. Bhagat enquired regarding the status of repairs, Anirudh Jalan informed that substantial issues existed and additional parts were required, which would take around four to five months. Anirudh Jalan assured that the machineries

would be ready for use on or before March 2023, however, from the last week of March 2023 he started ignoring calls of Sandeep Kr. Bhagat and stopped visiting the factory and office of the Corporate Debtor.

- m. The Respondent No. 4 submitted that during the Resolution Professional's visit to the factory of the Corporate Debtor, the reason for the missing machineries was duly informed.
- 4.3 Furthermore, it is submitted that FIR dated 19.04.2023 lodged against Respondent No. 4 as the Respondent No. 4 had neither had the authority to carry out such illegal affairs nor had the power to stop Anirudh Jalan.
- 4.4 The Respondent No. 4 further submitted that subject matter of the application is nothing but a brazen abuse of process of law and the application was liable to be dismissed with exemplary costs.
5. Submission by Respondent No. 5 *vide* Reply affidavit dated 02.11.2023:
- 5.1 Respondent No. 5 submitted that Respondent No. 5 is not an officer of the CD and such petition is not maintainable and liable to be dismissed.
- 5.2 Further, it is submitted that this petition under Rule 11 of NCLT Rules 2016 filed by the Resolution Professional does not have any sanction of the CoC and as such it is liable to be dismissed.
- 5.3 It is submitted that the present application has been filed with ulterior motive, false surmises, conjectures and wrong interpretation of law and as such the same is liable to be dismissed. That there is no cause of action for filing of the instant Application and as such the same is liable to be dismissed.
- 5.4 Furthermore, it is submitted that the subject matter of this application does not fall under the jurisdiction of this Tribunal and this application is not maintainable
- 5.5 Further submitted that the job work of Respondent No. 5 had come to an end by August, 2020 and therefore it is denied that any portion of the revenue generated from operations during the period April, 2022 to September, 2022 had any share of Respondent No. 5. It is further submitted that the revenue of Rs. 1,74,09,986/- pertains entirely to the Corporate Debtor represented by its Suspended Board, which itself establishes that Respondent No. 5 had no role in generation of such revenue and was not acting as an officer of the Corporate Debtor. It is further submitted that the Resolution Professional has failed to disclose even a single transaction of revenue or expenditure that has been out of the effort of the

Respondent No.5 so as to establish that the affairs of the Corporate Debtor were conducted by Respondent No. 5 in the capacity of an officer of the Corporate Debtor.

- 5.6 It is submitted that the alleged missing machineries and assets at the factory site/registered office are in any manner attributable to Respondent No. 5 or that Respondent No. 5 had no any role therein. Further submitted that the Suspended Board of Directors has itself admitted that certain machineries and assets were removed for repair purposes and therefore the responsibility, if any, lies upon the Suspended Board of Directors to restore the same. It is further submitted that Respondent No. 5 is neither a member, shareholder, director, promoter, employee nor officer of the Corporate Debtor and hence no liability can be fastened upon him. Accordingly, the present Application, being misconceived and unsupported by any proof, deserves to be dismissed with heavy costs.
- 5.7 Furthermore, it is submitted that the Respondent No. 5 had not any involvement in removal of the assets of the Corporate Debtor. Mr. Sandeep Kumar Bhagat along with others in connivance with the Resolution Professional had made a deliberate attempt to defame the reputation of the Respondent No. 5, as the Resolution Professional/Applicant had failed to make out a single transaction or any act or deal by which it can transpire that the Respondent No. 5 had any involvement in any removal of the assets of the Corporate Debtor.
- 5.8 It is further submitted that the case of the Resolution Professional based on the Joint Venture Agreement dated 01.07.2019 executed between Jalan Sales Corporation represented by its partner Mr. Anirudh Jalan and the Corporate Debtor is the basis of the RP to establishes the allegation of Mr. Sandeep Kumar Bhagat that Mr. Anirudh Jalan was running the affairs of the CD's since 2019 and indulge in removal of the assets of the CD, from the bare reading of the agreement it can be ascertained that the duty of the Respondent No. 5 was only confined to providing raw materials and taking back the finished goods at the agreed rate and manner as mentioned therein and the agreement does not state anything about running of the business of the Corporate Debtor by the Respondent No. 5.
- 5.9 It is further submitted that the filing of the instant Application under Rule 11 of the NCLT Rules, 2016 was only on the basis of letter dated 17.06.2023 of

suspended director Mr. Sandeep Kumar Bhagat, whereas the Resolution Professional had already pre-determined his mind and filed an FIR on 19.04.2023, even after a specific submission of the suspended Board of Director of the CD, that the machinery were sent for repairs, hence it is a clear case of connivance between the RP and suspended Board of director.

- 5.10 It is further submitted that firstly, Mr. Sandeep Kumar Bhagat had submitted that the machinery and assets were removed for repair purpose with assurance to restore the same at the factory site. Secondly, the RP filed FIR dated 19.04.2023 against four persons inclusive of Respondent No. 5 though till such date RP had no information of Respondent No. 5. Lastly, by letter dated 17.06.2023 the suspended director disclosed the Joint Venture Agreement dated 01.07.2019 and alleged on its basis that Respondent No. 5 was running the affairs of the Corporate Debtor and indulged in removal of the assets of the Corporate Debtor.
- 5.11 It is further submitted that all the statements made in the Application are self-contradictory having no iota of single proof and as such the Respondent No. 5 cannot be impleaded in I.A. (IBC)/43/GB/2023 as he is not the officer of the Corporate Debtor nor part and parcel of the alleged removal of the assets of the Corporate Debtor and as such the petition is liable to be dismissed.
6. Heard the submissions made by the Learned Counsel for the parties and perused the records.
7. Upon perusal of the records, it is observed that the present application was initially filed by the Resolution Professional appointed by this Tribunal *vide* order dated 30.09.2022. Thereafter, this Tribunal *vide* order dated 25.01.2024 passed in IA (IBC)/LIQ/2/GB/2024 liquidation ordered and issued certain directions for amendment of the cause title and names of parties, hence the liquidator was substituted. Subsequently, through a separate Interlocutory Application, the legal heirs of Sandeep Bhagat were substituted and this Tribunal allowed the amended memo of parties, accordingly Respondent No. 1(a) to Respondent No. 1(c) were added as parties. Furthermore, Respondent No. 3 and Respondent No. 6 were set *ex parte vide* order dated 26.04.2024.
8. The present Application has been filed under Section 68 read with Section 60(5) of the Code alleging fraudulent removal of plant, machinery, vehicles and other assets of the Corporate Debtor by the Respondents and seeking directions against them.

9. The principal question which arises for consideration is whether this Tribunal, while exercising jurisdiction under the Code is empowered to adjudicate the allegations raised in the present Application and grant relief under Section 68 of the Code.
10. At the outset, it is necessary to examine the scope and ambit of the jurisdiction of this Tribunal under Section 68 of the Insolvency and Bankruptcy Code, 2016. In this regard, it would be apposite to reproduce the provisions of Section 68 of the Code, which read as follows:

Section 68: Punishment for concealment of property.

68. Where any officer of the corporate debtor has,—

(i) within the twelve months immediately preceding the insolvency commencement date,—

(a) wilfully concealed any property or part of such property of the corporate debtor or concealed any debt due to, or from, the corporate debtor, of the value of ten thousand rupees or more; or

(b) fraudulently removed any part of the property of the corporate debtor of the value of ten thousand rupees or more; or

(c) wilfully concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the property of the corporate debtor or its affairs,

(d) wilfully made any false entry in any book or paper affecting or relating to the property of the corporate debtor or its affairs; or

(e) fraudulently parted with, altered or made any omission in any document affecting or relating to the property of the corporate debtor or its affairs; or

(f) wilfully created any security interest over, transferred or disposed of any property of the corporate debtor which has been obtained on credit and has not been paid for unless such creation, transfer or disposal was in the ordinary course of the business of the corporate debtor; or

(g) wilfully concealed the knowledge of the doing by others of any of the acts mentioned in clauses (c), (d) or clause (e); or

(ii) at any time after the insolvency commencement date, committed any of the acts mentioned in sub-clause (a) to (f) of clause (i) or has the knowledge of the doing by others of any of the things mentioned in sub-clauses (c) to (e) of clause (i); or

(iii) at any time after the insolvency commencement date, taken in pawn or pledge, or otherwise received the property knowing it to be so secured, transferred or disposed,

such officer shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both:

Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to defraud or to conceal the state of affairs of the corporate debtor.

11. It is also relevant to consider the provisions of Section 235A of the code. Accordingly, Section 235A of the Code is extracted hereinbelow:

Section 235A: Punishment where no specific penalty or punishment is provided.

235A. If any person contravenes any of the provisions of this Code or the rules or regulations made thereunder for which no penalty or punishment is provided in this Code, such person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to two crore rupees.

12. It is also relevant to consider the provisions of Section 236 of the code. Accordingly, Section 235 of the Code is extracted hereinbelow:

Section 236: Trial of offences by Special Court.

236. (1) Notwithstanding anything in the Code of Criminal Procedure, 1973, offences under this Code shall be tried by the Special CourtJI established under Chapter XXVIII of the Companies Act, 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.

(3) The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in case of a complaint under sub-section (2), the presence of the person authorised by the Central Government or the Board before the Court trying the offences shall not be necessary unless the Court requires his personal attendance at the trial.

13. Section 68 of the Code is a penal provision. It deals with punishment in cases where an officer of the Corporate Debtor has wilfully concealed, removed, transferred or otherwise dealt with the property of the Corporate Debtor with intent to defraud creditors during the relevant period contemplated therein. Likewise, Section 235A of the Code also provides for punishment where no specific penalty or punishment is elsewhere provided.

14. From a plain reading of the aforesaid provisions, it is evident that they are punitive in nature. Before any liability can be fastened thereunder, the adjudicating forum must determine foundational facts such as involvement of the person concerned, nature of the act complained of, wilfulness, fraudulent intent, knowledge and culpability.
15. Such determination necessarily requires appreciation of evidence, examination of witnesses, opportunity of defence and adherence to the procedure prescribed for trial of offences. These issues cannot ordinarily be conclusively determined in summary proceedings conducted under the insolvency framework.
16. This Tribunal derives jurisdiction under Section 60(5) of the Code to decide questions arising out of or in relation to CIRP or liquidation proceedings. However, the said jurisdiction cannot be stretched to assume the role of a criminal court or Special Court for trial of offences under the Code.
17. This Tribunal places reliance upon the judgment of the Hon'ble National Company Law Appellate Tribunal, New Delhi in *Writer Business Services Pvt. Ltd. & Anr. v. Mr. Ashutosh Agrawala, Resolution Professional for Cox & Kings Ltd.*, Company Appeal (AT) (Insolvency) No. 956 of 2021, wherein the Hon'ble Appellate Tribunal examined the scope of Section 235A of the Insolvency and Bankruptcy Code, 2016 and has categorically held an act which is termed as offence within specific provisions of Chapter VII of Part II IBC could not be dealt with even indirectly by the Adjudicating Authority by imposing a fine. The Relevant Para are herinbelow:

“23. The Code has used both the expressions punishment and fine. The use of expressions ‘punishment’ and ‘fine’ has been in reference to the provisions which provision in Chapter VII of Part-II and Chapter VII of Part-III in reference to offence which are enumerated in Code. A question will be asked as to why Section 235A has not been inserted in Chapter VII of Part-II or Chapter VII of Part-III. The answer is obvious i.e. since Section 235A encompasses contravention of any of the provisions of the Code, Rules and Regulations, it was placed in Part-V i.e. Miscellaneous. Placing of Section 235A in Part-II & III while dealing with specific offences in Chapter VII would not have been appropriate. The use of expression ‘punishable with fine’ in Section 235A makes it is nearer to the nature of acts defined in Chapter VII Part II and Chapter VII Part-III, Section 235A is not a provision which empowers the Adjudicating Authority to impose penalty. Applying the definition of offences as contained in Section 3(38) of the General Clauses Act, 1897 in Section 235A, the

contravention of any provisions of the Code, Rules and Regulations is an offence which has been made punishable by the Code.”

“24. After we have come to the conclusion that Section 235A is a provision for awarding a punishment of fine and the provision is for punishment of an offence. The trial of such offence has to be as per Section 236 on taking cognizance by Special Court by complaint made by the Board or Central Government for punishment of a person. For any offence law prescribe a procedure which broadly requires framing of charges and opportunity to answer the same. In event, it is accepted that power under Section 235A can be exercised by the Adjudicating Authority while passing orders on an I.A filed for different reliefs pertaining to CIRP, the person punished with fine may be deprived of his right to answer charge of an offence. The present case is an example which fully supports the interpretation which we have put on Section 235A.”

18. This Tribunal also take place reliance upon the judgment of Hon’ble National Company Law Appellate Tribunal, New Delhi in ***Ajay Vij and Anr. v. Mr. Abhishek Dutta***, Company Appeal (AT) (Insolvency) No. 726 & 728 of 2021 with Company Appeal (AT) (Insolvency) No. 818-819 of 2021, wherein it was held that:

*“15. Further we are also of the view **Ld. NCLT has no jurisdiction to convict a person for an offence under Section 68 under Chapter VII of Part II IBC** in view of the express provision contained in S. 236(1) IBC to the following effect:*

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

Further S. 236(2) read:

“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 authorized by the Central Government in this behalf.”

19. This Tribunal also placed reliance upon the judgment of the Hon’ble High Court of Madhya Pradesh in ***Vinay Bhadauria v. Insolvency and Bankruptcy Board of India***, Misc. Criminal Case No. 32697 of 2022, wherein it was reiterated that offences under the Insolvency and Bankruptcy Code are to be prosecuted upon special court/forum designated under law. The Relevant Para are given below:

15. In view of the aforesaid statutory provisions, this Court finds that the jurisdiction to try offences under the IBC is specifically conferred upon the Special Court linked to the place

where the registered office of the company is situated. The said provision overrides the general provisions of the Cr.P.C. relating to territorial jurisdiction

20. In view of the law laid down in the aforesaid judgments, it is clear that offences under Sections 68 and 235A of the Code are required to be prosecuted before the competent Special Court in the manner prescribed under Section 236 of the Code and this Tribunal, while exercising summary jurisdiction under Section 60(5) of the Code, cannot undertake trial of such offences or impose penal consequences.
21. This Tribunal, in exercise of its insolvency jurisdiction is not the proper forum to conduct such trial or to record findings of criminal culpability under Sections 68 or 235A of the Code.
22. In view of the settled legal position emanating from the aforesaid judgments, the issue of maintainability of the present Application stands concluded at the threshold itself.
23. Since the relief sought by the Applicant pertains to penal consequences under Section 68 of the Code, which are beyond the adjudicatory competence of this Tribunal, no detailed examination of disputed facts is warranted in the present proceedings.
24. Accordingly, IA (IBC)/43/GB/2023 is **dismissed as not maintainable**, in view of the law laid down in the judgments referred to hereinabove.
25. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsels.
26. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
27. File be consigned to records

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

Signed this on 30th day of April, 2026.

Aditya P. (LRA)