

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET OF THE HEARING ON 23rd APRIL 2026

IA(IBC)/74/GB/2025 In IA(IBC)/185/GB/2024
In CP(IB)/24/GB/2023

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

In the Matter of	North Eastern Development Finance Corporation Ltd. (NEDFi) Vs Ayursundra Hospital (Guwahati) Pvt. Ltd.
Under Section	U/s 7 of IBC, 2016

Appearances (via video conferencing/physically)

For Petitioner (s) : Mr. K. Kejriwal, Adv. for SRA
: Ms. A. Daga, Adv.

For Respondent (s) : None

ORDER

IA(IBC)/74/GB/2025 In IA(IBC)/185/GB/2024

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

I.A. (IBC)/74/GB/2025
In I.A. (IBC)/185/GB/2024
C.P. (IB)/24/GB/2023

Application under Rule 53 of the National Company Law Rules, 2016

In the matter of:

Peerless Hospitex Hospital and Research Center Limited, having its registered office at 360,
Panchasayar, Kolkata - 700094

...Petitioner

-Versus-

Abhijit Hazarika, House No.15, Santipur Main Road, Guwahati 781009;

...Respondent no. 1

-And-

Simanta Das, House No.15, Santipur Main Road, Guwahati 781009;

...Respondent no. 2

-And-

Gautam Sarma, Kanaklata Paath, BT College, East By Lane, Lachit Nagar, Guwahati
781003.

...Respondent no. 3

Coram:

Shri Rammurti Kushawaha : Member (Judicial)

Shri Yogendra Kumar Singh : Member (Technical)

Appearances (through video conferencing):

For Petitioner : Mr. K. Kejriwal (Adv.)

For Respondent : Mr. K. Talukdar; Mr. V. Kalra (Advocates)

Order pronounced on: 23.04.2026

ORDER

1. The instant application has been filed by Peerless Hospitex Hospital and Research Center Limited (“**Applicant/ Successful Resolution Applicant**”) under Rule 53 of the National Company Law Tribunal Rules, 2016 (“**NCLT Rules, 2016**”), seeking the following reliefs:

- a) *The Applicant herein be substituted in place and stead of Mr. Sandeep Khaitan, Resolution Professional of Ayursundra Hospital (Guwahati) Pvt Ltd, as the Applicant in I.A.(IBC). No.185/O8/2024;*
- b) *Leave be granted to the Applicant to make necessary amendments to the I.A.(IBC). No.185/GB/2024 and serve a copy of the amended application upon the Respondents herein;*
- c) *Ad-interim orders in terms of prayers above;*
- d) *Such further order and/or orders by passed and/or directions be given as this Hon'ble Tribunal may deem fit and proper.*

2. Submissions on behalf of the Applicant:

2.1. During the Corporate Insolvency Resolution Process (“**CIRP**”) of Ayursundra Hospital (Guwahati) Pvt Ltd. (CIN: U85110AS2007PTC008546) (“**Corporate Debtor**”), the Resolution Professional, Mr. Sandeep Khaitan, (“**Resolution Professional**”) filed the application being I.A.(IBC) No.185/GB/2024, against the Respondents, being the suspended Directors, under Sections 25(j), 43, 50 and 66 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) (“**PUFE Application**”).

2.2. The Application, *inter alia*, alleges preferential, extortionate and fraudulent transactions undertaken by the Respondents prior to commencement of CIRP, initiated by an order dated 12.03.2024 by this Tribunal, and seeking various reliefs. A copy of the PUFE Application is annexed hereto and marked as "C". A copy of order dated 12.03.2024 passed by this Tribunal initiating CIRP of the Corporate Debtor is annexed hereto and marked as B.

2.3. While the application was still pending adjudication, the Resolution Plan dated 05.10.2024 (amended on 28.10.2024) (hereinafter referred to as the "**Approved**

Resolution Plan"), proposed by the Applicant was approved unanimously by the Committee of Creditors ("CoC") and by this Tribunal *vide* order dated 20.12.2024. Hence, the Applicant is the Successful Resolution Applicant ("**SRA**"). A copy of the order dated 20.12.2024 is annexed hereto and marked as "A".

- 2.4. The Order dated 20.12.2024 recorded that the Approved Resolution Plan contained the manner in which proceedings in respect of the preferential, extortionate, avoidance transactions or fraudulent or wrongful trading will be pursued and the manner in which the proceeds shall be distributed, after the approval of the plan.
- 2.5. An Implementation & Monitoring Committee ("**IMC**") was setup in terms of Regulation 38(4) of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**"), for monitoring and supervising the implementation of the Approved Resolution Plan. In its 3rd meeting held on 24.04.2025, it was unanimously resolved, by the members thereof (Financial Creditors of Corporate Debtor viz. State Bank of India, North East Development Finance Corporation Limited, Punjab National Bank, and DLL Global Business Services Pvt Ltd.), including the erstwhile Resolution Professional, pursuant to Section 12.7 of the Approved Resolution Plan, that the Applicant shall be responsible to carry forward the prosecution of the PUFÉ Application at their own costs and efforts, and that any proceeds from the same would be retained by the resolved Corporate Debtor.
- 2.6. The Respondents have neither objected to nor challenged the plan provision allocating proceeds of the PUFÉ Application to the Corporate Debtor/Applicant. A true copy of the minutes of the 3rd Meeting of IMC held on 24.04.2025 is annexed hereto and marked as "E".
- 2.7. In terms of the provisions of the Code and in particular Regulation 38(2)(d) of the CIRP Regulations, the proceedings in respect of avoidance transactions under Chapter III or fraudulent or wrongful trading under Chapter IV of Part II of the Code, are required to be pursued in terms of and in the manner as provided in the resolution

plan. Therefore, the PUFÉ Application is required to be pursued by and in the name of the Applicant, as provided in the Approved Resolution Plan and also resolved at the meeting of IMC of the Corporate Debtor.

2.8. Regulation 38(2)(d) of the CIRP Regulations – *“The manner in which proceedings in respect of the 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 approval of the resolution plan and the manner in which the proceeds if any from such proceedings shall be distributed.”* – *“Section 12.4, Section 15.8”*

2.9. Regulation 38(2)(d) specifically mandates that a resolution plan provide for the manner in which avoidance proceedings shall be pursued post-approval and how any proceeds shall be distributed.

2.10. Further, Sections 26 and 36(3)(f) of the Code indicate that avoidance proceedings survive beyond the completion of CIRP, reinforcing that such applications continue post-resolution.

2.11. Clause 12.7 of the Approved Resolution Plan provides that all receivables arising out of any litigation in relation to the Corporate Debtor, before any court, tribunal or other forum shall solely accrue to the benefit of the Resolution Applicant, being the Applicant. The relevant contents of Section 12.7 of the Approved Resolution Plan is reproduced herein below for convenience –

"12.7 Treatment of Claims on Matters that are Sub Judice . . . The receivables including but not limited to those receivables arising out of any litigations in relation to the Corporate Debtor before any court, tribunal or other forum, after the approval of Resolution Plan by the adjudicating authority or at any time in future, shall solely accrue to the benefit of the Resolution Applicant."

2.12. It is stated and submitted that the Applicant has stepped into the shoes of the erstwhile Resolution Professional qua the PUFÉ Application. In other words, the Applicant herein has become the legal representative of the Corporate Debtor and the erstwhile Resolution Professional, who is presently the Applicant in IA(IBC)

No.185/GB/2024. The Applicant (or the resolved Corporate Debtor) has also become the beneficiary of the prayers contained in the said Application and is entitled to retain any proceeds from the same, by virtue of the Resolution Plan approved by this Tribunal under Section 31 of the Code.

2.13. In terms of Rule 53 of the NCLT Rules, 2016 the Applicant, being the legal representative and assignee of the erstwhile Resolution Professional in I.A.(IBC) No.185/GB/2023, is required to be substituted as the Applicant in such application.

2.14. The Respondents have contended that under Rule 53 of the NCLT Rules, 2016, there is no provision for SRA to be substituted in place of Resolution Professional. However, Respondents have ignored the language of Rule 53(1) which provides –

“53. Substitution of legal representatives– (1) Where a party to a proceeding pending before a Bench ... or, in the case of a company, being wound up, the proceeding shall not abate and may be continued by or against the ... other legal representative of the parties or by or against the assignee, receiver or liquidator, as the case may be.”

2.15. The Respondents are misreading the provision of Rule 53. SRA, being the legal representative and assignee of the CD, has stepped into the shoes of the RP.

2.16. The Hon’ble Supreme Court and the Hon’ble National Company Law Appellate Tribunal (“**Hon’ble NCLAT**”) have held in several decisions that the PUFEE Application can continue even after closure of CIRP proceedings and after approval of Resolution Plan. In *Piramal Capital and Housing Finance Ltd vs 63 Moons Technologies Ltd & Ors, 2025 SCC Online SC 690 at paras 70, 78, 79, 80, 85, 86-* Hon’ble Supreme Court has observed that proceedings under Sections 43, 45, 47, 49 and 50 of the Code shall not affect the proceedings of CIRP and that there are specific provisions for continuation of such proceedings after approval of Resolution Plan.

2.17. With the above observations, the Hon’ble Supreme Court, *inter alia*, approved the continuation of PUFEE Applications by the Resolution Applicant in terms of Clause 2.13.2 and 2.13.3 of the Resolution Plan in that case, even if such provision allows the benefit to accrue to the Resolution Applicant.

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- 2.18. In *Kapil Wadhawan vs Piramal Capital and Housing Finance Ltd., 2023 SCC Online NCLAT 228 at paras 15, 17, 18, 20, 21, 26, 27*, the Hon'ble NCLAT has held that conclusion of CIRP proceedings does not affect the PUFÉ Applications, which can be pursued by the Resolution Applicant and the recoveries from such application can be distributed as per the terms of the Resolution Plan.
- 2.19. In both decisions, the Hon'ble Courts have approved the continuation of PUFÉ Applications by the SRA. The above decisions are binding on this Tribunal. Therefore, the Respondents cannot now seek to argue contrary to the above decisions. Therefore, the objections of the Respondents are untenable and the present application deserves to be allowed by substituting the Applicant in place of the erstwhile Resolution Professional.
- 2.20. The Approved Resolution Plan of the Applicant herein has been successfully implemented and all the sums under the said plan have been disbursed in terms of the said plan. By an order dated 19.05.2025 this Tribunal has recorded the successful implementation of the Approved Resolution Plan and CIRP was closed. A copy of the order dated 19.05.2025 is annexed hereto and marked as "F".
- 2.21. In view of the above, the Applicant is required to be substituted in the place and stead of the Resolution Professional. Unless orders as prayed for are passed, the Applicant will suffer irreparable loss and injury and the same will be in violation of the provisions of the Code and of the Approved Resolution Plan. The balance of convenience is entirely in favour of orders as prayed for herein being passed. This application is bona fide and made for the ends of justice.

3. Submissions on behalf of the Respondents:

- 3.1. The Respondent states, at the outset, that the present application filed by the Applicant, seeking, *inter alia*, its substitution in place and stead of the Resolution Professional in IA(IBC) No. 185/GB/2024, PUFÉ Application, under Rule 53 of the NCLT Rules, 2016, as framed and filed, is misconceived in law, untenable on

facts, and liable to be dismissed in limine, without prejudice to the Respondent's rights and contentions in the pending avoidance proceedings.

- 3.2. The Respondent denies each and every allegation averment and contention raised by the Applicant in the captioned Application and nothing stated therein shall be deemed to be admitted for want of specific traverse. The Respondent craves leave to refer to and rely on the pleadings already filed opposing the IA No. 185/GB/2025.
- 3.3. The present Application is not maintainable and cannot be pursued in terms of order dated 19.05.2025 passed by this Tribunal in the captioned Company Petition, CP(IB) No. 24/GB/2025. It is an admitted position that the Resolution Professional had filed I.A. (IBC) No. 40/GB/2025, *inter alia*, seeking closure of IMC, and that the PUFÉ Application was filed in the course of the said Company Petition.
- 3.4. By order dated 19.05.2025, this Tribunal recorded that the CIRP stood fully completed, the Resolution Plan had been implemented in entirety, and the report of the Resolution Professional was taken on record. The Tribunal further observed that nothing remained for adjudication and accordingly disposed of the Company Petition without granting any liberty to continue the PUFÉ Application.
- 3.5. In such circumstances, the Company Petition having attained finality, it cannot be indirectly revived by way of the present substitution application. It is well settled that an interlocutory application cannot survive the disposal of the main proceedings unless specifically preserved. The order dated 19.05.2025 categorically records that nothing survives for adjudication. Hence, the PUFÉ Application itself does not survive independently.
- 3.6. Without prejudice to the above, the application does not satisfy the requirements of Rule 53 of the NCLT Rules, 2016. For context, the CIRP of the Corporate Debtor commenced by order dated 12.03.2024, and the PUFÉ Application was filed by the Resolution Professional alleging transactions under Sections 43, 50, and 66 of the Code. Subsequently, the Resolution Plan of the Applicant was approved on

20.12.2024, and reliance is now placed on the said order, plan provisions, and IMC minutes dated 24.04.2025 to seek substitution in IA(IBC) No. 185/GB/2024.

- 3.7. Without prejudice to the aforesaid, the application does not satisfy the requirements of Rule 53 provides as follows:

53. Substitution of legal representatives.- (1) *Where a party to a proceeding pending before a Bench dies or is adjudged insolvent or, in the case of a company, being wound up, the proceeding shall not abate and may be continued by or against the executor, administrator or other legal representative of the parties or by or against the assignee, receiver or liquidator, as the case may be.*

(2) *In the case of death of a party during the pendency of the proceedings before the Tribunal, the legal representative of the deceased party may apply within ninety days of the date of such death for being brought on record.*

(3) *Where no petition or application is received from the legal representatives within the period specified in sub-rule (2), the proceedings shall abate:*

Provided that for good and sufficient reasons shown, the Tribunal may allow substitution of the legal representatives of the deceased at any time before disposing the petition on merits

- 3.8. Substitution in a proceeding under the Code can be done only in terms of Rule 53 of the NCLT Rules 2016. The stand of the Applicant that it has the right for substitution under Rule 53 of the Rules, is completely incorrect and does not flow from the Rule. The Rule only permits substitution in the cases of the contingencies mentioned therein and not otherwise, *i.e.* a party either dying or adjudged insolvent. In the present case neither of the requirements are met. Apart from Rule 53 there is no other provision for substitution in the Rules or in the Code. Therefore, the instant application is without any statutory backing.
- 3.9. The Hon'ble Delhi High Court in *TATA Steel BSL Ltd. v. Venus Recruiters Pvt. Ltd.* [reported in 2023/DHC/000257] has clearly held that it is the Resolution Professional who can continue with the proceedings. It is pertinent to note that this judgment was

passed after Regulation 38 was amended in the year 2022 which added Regulation 38(2)(d) and 38(2A) which read as under:-

Regulation 38: Mandatory contents of the resolution plan.

(1)....

(2)...

(d) provides 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 approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:

Provided that this clause shall not apply to any resolution plan that has been submitted to the Adjudicating Authority under sub-section (6) of section 30 on or before the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022.]

(2A) A resolution plan shall not provide for assignment of any avoidance transactions under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code that were not:

(a) disclosed in the information memorandum; and

(b) intimated to all prospective resolution applicants under sub-regulation (3A) of regulation 35A before the last date for submission of resolution plans:

Provided that this sub-regulation shall not apply to any resolution plan that has been submitted to the Adjudicating Authority under sub-section (6) of section 30 on or before the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2025.

3.10. The manner as provided for under Regulation 38(2)(d) cannot be contrary to the order of the Hon'ble Delhi High Court which interprets the legal position after considering the amended position of Regulations. The said provision merely mandates that a resolution plan specify the manner in which avoidance proceedings are to be pursued and how any resultant proceeds are to be distributed. It cannot override binding judicial precedent or create a substantive right of substitution. Thus,

the only person who could continue the proceedings was the Resolution Professional. The Resolution Professional having submitted that there is no adjudication left in the Company Petition, nothing survives in the present Application.

- 3.11. A PUFÉ application, by its very nature, concerns allegations of avoidance, fraud, and wrongful conduct attributed to the erstwhile management. Such proceedings are founded upon the material, investigation, and satisfaction of the Resolution Professional during the CIRP. It is a settled principle that allegations of fraud must be pleaded and proved by the party asserting them. In the present case, the PUFÉ application was instituted by the Resolution Professional, and such allegations cannot now be prosecuted or substantiated by a third party who neither conducted the CIRP nor possesses first-hand knowledge of the underlying transactions. On this ground alone, the substitution application is liable to be rejected.
- 3.12. The Respondent further submits that it has already filed a comprehensive reply in IA(IBC) No. 185/GB/2024 raising, inter alia, objections on maintainability, jurisdictional defects, and absence of requisite particulars under the distinct provisions invoked. The avoidance proceedings are thus already contested and sub judice. The present attempt to substitute the statutorily appointed Resolution Professional with a commercially interested SRA fundamentally alters the character of the proceedings and cannot be countenanced, particularly when neutrality is an essential attribute of such prosecutorial action.
- 3.13. It is emphatically denied that the Applicant falls within the scope of “legal representative” or “assignee” as contemplated under Rule 53 of the NCLT Rules, 2016. The Applicant does not derive any statutory right of substitution by operation of law; rather, it relies upon the approved resolution plan and internal post-approval arrangements, neither of which satisfy the requirements of Rule 53. Accordingly, the application fails at the threshold of maintainability and is liable to be dismissed in limine.

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- 3.14. A proper construction of the approved resolution plan further demonstrates that it does not confer any right of substitution. At best, the plan provides that receivables, if any, arising from litigations shall accrue to the resolution applicant or the resolved corporate debtor. Such provisions merely effect an internal allocation of economic benefits inter se stakeholders and do not translate into a transfer of prosecutorial locus. The plan and/or IMC minutes cannot, in the absence of statutory sanction, vest the Applicant with the right to prosecute avoidance proceedings in substitution of the Resolution Professional.
- 3.15. The Respondent also submits that the Applicant, being a commercially interested party in control of the corporate debtor post-resolution, is inherently conflicted in assuming the role of a prosecuting party in avoidance proceedings. The Resolution Professional, by contrast, acts in a neutral and fiduciary capacity under Section 23 of the Code. The substitution sought would therefore compromise the integrity of the process and deviate from the estate-centric objectives underlying avoidance provisions of Chapter III and Section 66.
- 3.16. To permit wholesale substitution on the basis of internal plan arrangements would erode the Tribunal's control over avoidance proceedings and compromise fairness to respondents. If, arguendo, any role is to be carved out for the Applicant, it must be strictly confined and supervisory, and cannot extend to replacing the original applicant in a pending statutory proceeding.
- 3.17. The Respondent further submits that the continuation of the present substitution motion serves no identifiable insolvency objective on the Applicant's own showing. The materials relied upon by the Applicant and on record demonstrate that the resolution plan stands approved and implemented, and that creditors stand provided for in full. In such circumstances, prosecutorial control by the resolution applicant over pre-approval transactions ceases to have any nexus with value maximisation for the general body of creditors. An avoidance remedy is remedial and restorative, it is not a punitive or private right divorced from the estate-interest it was designed to

protect. The Applicant's reliance on the plan and the IMC minute to ground a personal entitlement to prosecute therefore underscores the absence of a statutory purpose for substitution. Approval of a Plan does not give automatic right to a SRA to prosecute a PUFEE application.

- 3.18. Lastly, and in any event, the Respondent submits that the relief is framed as overbroad and unsustainable even on a without-prejudice basis. The Applicant seeks blanket substitution over a composite IA without first severing the distinct causes, without impleading necessary parties, and without placing on record the authorisations and approvals said to empower it to prosecute.
- 3.19. The present PUFEE application is consolidated/ combined inasmuch as fraudulent as well as wrongful trade has been clubbed together. It was observed in *Parimal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd. and Ors reported in (2025) 10 SCC 452*] that the Tribunal is required to make a distinction between the alleged fraudulent and alleged wrongful trade and such distinction cannot be made without the assistance and participation of the Resolution Professional.
- 3.20. The Applicant must be put to strict proof of its specific board resolution/ authorisation, the precise plan clause said to confer locus (as opposed to allocating proceeds), and the IMC decision, none of which can elevate internal arrangements into statutory standing before this Tribunal. Absent those foundational prerequisites and absent cure of the pleading and party-array defects no order of substitution can be granted. If this Tribunal is nevertheless inclined to consider any limited relief, it should be strictly circumscribed in scope and preceded by directions to correct the procedural and substantive defects in the pending IA, with liberty reserved to the Respondent to raise all objections on maintainability and merits thereafter.
- 3.21. Without prejudice to the foregoing submissions on maintainability and the substantive infirmities of the present application, the Respondent maintains that the relief sought is barred by delay, laches, and want of statutory foundation.

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- 3.22. The approved resolution plan contains a general clause regarding accrual of "receivables." A proper construction of Section 12.7 discloses, at best, an internal allocation of economic benefits, *i.e.* that any amounts receivable, if and when realised pursuant to litigations relating to the Corporate Debtor after approval, shall accrue to the Resolution Applicant. It does not confer, create, or transfer prosecutorial locus in a pending statutory avoidance proceeding, nor does it operate as a statutory assignment of the right to sue.
- 3.23. Section 31 of the Code gives binding effect to an approved plan but does not authorise enlargement of standing before this Tribunal beyond what the Code and the NCLT Rules, 2016 permit, in particular, Rule 53 is not satisfied merely because a plan allocates proceeds. The distinction between (i) who may receive the fruits of a litigation (an internal commercial arrangement) and (ii) who may be the proper applicant to prosecute a composite avoidance IA invoking Sections 43, 50 and 66 (a statutory question of locus, neutrality, party-array and compliance with Regulation 35A) cannot be elided by plan wording.
- 3.24. Even otherwise, the clause relied upon is generic, does not identify IA(IBC) No. 185/GB/2024, does not address severance of distinct causes, and cannot cure the non-joinder of necessary parties or the pleading deficits already pointed out. The Respondent, therefore, denies that Section 12.7 entitles the Applicant to substitution; at most, it contemplates entitlement to receivables, subject always to orders of this Tribunal on locus, procedure, and control of avoidance litigation.
- 3.25. The Applicant is put to strict proof of the convening, quorum, authority, accuracy and authorisation underlying the minutes purporting to record a meeting of IMC on 24.04.2025 as well as the resolution relied upon. In any event, IMC minutes are internal post-approval implementation documents and cannot confer or enlarge prosecutorial locus in a pending statutory proceeding, nor can they override the scheme of the Code or the NCLT Rules, 2016.

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- 3.26. A direction that the Applicant "*shall be responsible to carry forward the prosecution*" at its own cost is, at best, an internal allocation of responsibilities and expenses *inter se* plan stakeholders, it neither effects a statutory substitution under Rule 53 nor cures jurisdictional and procedural defects in IA(IBC) No. 185/GB/2024, including its composite framing under Sections 43, 50 and 66, non-joinder of necessary transferees/beneficiaries and want of transaction-wise particulars in terms of Regulation 35A. Likewise, any note that the resolved Corporate Debtor shall receive and retain proceeds is merely an economic allocation and does not translate into standing before this Tribunal.
- 3.27. The Respondent further denies that the implementation of the plan or closure of the CIRP confers any statutory locus upon the Applicant. The Applicant is put to strict proof that all sums under the plan have been duly disbursed in accordance with its terms and timelines. In any event, such implementation does not cure the defects of maintainability in the underlying avoidance application, nor does it expand the scope of Rule 53.
- 3.28. On the contrary, the Applicant's reliance on full implementation underscores the absence of any surviving insolvency objective. Avoidance proceedings are remedial and estate-centric, not a private right to be pursued by a commercially interested resolution applicant post-resolution. Any internal allocation of proceeds cannot be transmuted into a statutory right of substitution.
- 3.29. Regulation 38(2)(d) of the CIRP Regulations merely requires a resolution plan to specify the manner of dealing with avoidance proceedings and distribution of any proceeds, it does not confer locus upon a resolution applicant or mandate substitution in a pending proceeding. The question of who may prosecute IA(IBC) No. 185/GB/2024 is governed by the Code and Rule 53 of the NCLT Rules, which cannot be overridden by plan text or IMC minutes. The underlying defects of composite framing, non-joinder and want of particulars also remain uncured, and the Applicant's reliance on Regulation 38(2)(d) is wholly misconceived.

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- 3.30. There is no statutory provision by which a SRA "steps into the shoes" of the Resolution Professional in a pending avoidance application. Any such substitution must be justified strictly under Rule 53 of the NCLT Rules and cannot be presumed from plan wording or IMC minutes. The approved plan, at best, allocates economic receivables and internal responsibilities *inter se* stakeholders, it does not effect a transfer of prosecutorial locus or convert the Applicant into the original applicant in IA(IBC) No. 185/GB/2024.
- 3.31. The Resolution Professional's mandate under Section 23 is time-bound and institutionally neutral, and the composite IA continues to suffer from defects of framing, non-joinder and want of particulars that cannot be cured by asserting that the Applicant has "stepped into the shoes" of the Resolution Professional.
- 3.32. The Applicant discloses no prima facie right to statutory substitution under the Code or Rule 53 of the NCLT Rules, 2016, mere plan wording or IMC minutes cannot found such locus. No irreparable injury arises because any alleged prejudice is, at best, pecuniary and the plan already records implementation and closure of CIRP. Pursuit, if any, of IA(IBC) No. 185/GB/2024 can, where permissible in law, be undertaken through neutral means without displacing parties or compromising Respondent's defences.
- 3.33. On the contrary, granting substitution in a procedurally defective composite IA without curing non-joinder and want of particulars would visit undue prejudice upon the respondents and undermine the statutory scheme. There is, thus, no violation of the Code, no equity in favour of the Applicant, and the balance of convenience lies against the grant of the reliefs sought.
- 3.34. In light of the foregoing, the Respondent most respectfully submits that the reliefs prayed for by the Applicant are wholly misconceived, devoid of statutory foundation, and liable to be rejected. It is, therefore, most humbly prayed that this Tribunal may be pleased to dismiss the substitution application with costs, while reserving to the Respondents all rights and defences in IA(IBC) No. 185/GB/2024

and in any connected proceedings and pass further orders which this Tribunal deems fit and proper in the interest of justice.

4. Analysis and Findings

- 4.1. The present application raises the issue whether the SRA, Peerless Hospitex Hospital and Research Center Limited, can be substituted in place of the Resolution Professional in I.A. (IBC) No. 185/GB/2024, an application concerning avoidance transactions under Sections 43, 50 and 66 of the Code.
- 4.2. The primary objection of the Respondents is that upon disposal of the main Company Petition on 19.05.2025, wherein this Tribunal recorded that “*nothing remains for adjudication*”, the present avoidance application (I.A. (IBC) No. 185/GB/2024) must also stand extinguished. This contention is found to be untenable in law.
- 4.3. It is a settled position under Code that proceedings relating to avoidance transactions are independent statutory remedies. Section 26 of the Code explicitly clarifies that the filing of an avoidance application shall not affect the CIRP, thereby recognising the distinct and separable nature of such proceedings. Further, Section 36(3)(f) of the Code contemplates recoveries from avoidance transactions as forming part of the liquidation estate, reinforcing their independent character.
- 4.4. The Hon’ble Supreme Court in *Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd. & Ors.* has authoritatively held that proceedings under Sections 43, 45, 47, 49 and 50 of the Code are not subsumed within the CIRP and may validly continue even after approval of the resolution plan. The relevant part is reproduced below:

“79. ...In our opinion, when Section 26 specifically states that the filing of an Avoidance Application under Section 25(2)(j) by the Resolution Professional shall not affect the proceedings of CIRP...”

4.5. Similarly, the Hon'ble NCLAT in *Kapil Wadhawan v. Piramal Capital and Housing Finance Ltd.* has affirmed that the conclusion of CIRP does not result in abatement of avoidance applications, and that recoveries therefrom are to be dealt with in terms of the resolution plan.

“15. The first submission raised by the learned Counsel for the Appellant is that after completion of the CIRP, avoidance applications, which are not decided by that time, becomes infructuous and cannot be proceeded any further. The above submission of the learned Counsel for the Appellant is not acceptable on account of the statutory scheme delineated by the Code and the Regulations. As noted above, Section 26 itself gives clear legislative intent that avoidance applications are different stream than the stream of insolvency resolution process.

*17. Regulation 38(2)(d) has been inserted by Notification dated 14.06.2022. The insertion of Regulation 38(2)(d) by the above amendment clearly makes the legislative intent clear that Resolution Plan shall provide manner in which proceedings in respect of avoidance transactions will be pursued after approval of Resolution Plan. We may also refer to the recent judgment of the Delhi High Court in **TATA Steel BSL Ltd. vs. Venus Recruiter Pvt. Ltd. & Ors. 2023/DHC/000257** decided on 13.01.2023 where it has been held that avoidance application can be heard after conclusion of CIRP. The learned single Judge in *Venus Recruiter Pvt. Ltd. vs. Union of India*, against which Appeal was filed before the Division Bench had taken a view that avoidance application cannot be allowed to continue after approval of Resolution Plan in event no provision is made to that effect in the Resolution Plan. The view taken by the learned single Judge has been disapproved by the Division Bench.*

22...When Resolution Plan specifically empowers the Successful Resolution Applicant to pursue the avoidance applications, the said provisions of the Plan shall bind everyone including the erstwhile Administrator. The submission of the learned Counsel for the Appellant cannot be accepted that it is the erstwhile Administrator/ RP, who could alone, if at all, pursue the avoidance application. This argument has to be rejected in

view of the specific clause, permitting the Successful Resolution Applicant to pursue the application.

27. We, thus, are of the view that the impugned order has rightly permitted the Piramal – Successful Resolution Applicant to pursue the avoidance applications, which were filed by the erstwhile Administrator and were pending before the Adjudicating Authority. We do not find any error in the impugned orders passed by the Adjudicating Authority permitting the Piramal to pursue the applications and rejecting the applications filed by the Appellant and other Applicants to reject such applications. We do not find any good ground in these Appeals to interfere with the impugned orders passed by the Adjudicating Authority. There are no merits in any of the Appeals. All the Appeals are dismissed.”

- 4.6. The Respondents' reliance on the doctrine that avoidance applications abate upon the approval of a Resolution Plan is misplaced in light of the Division Bench judgment of the Hon'ble Delhi High Court in *Tata Steel BSL Limited vs. Venus Recruiters Private Limited & Ors. (2023/DHC/000257)*. The Hon'ble High Court has categorically held that avoidance proceedings are independent of the resolution process and that the Adjudicating Authority retains jurisdiction to decide them post-CIRP.

“89. *Conclusion*

a) The phrase “arising out of” or “in relation to” as situated under Section 60(5)(c) of the IBC is of a wide import and it is only appropriate that such applications are heard and adjudicated by the Adjudicating Authority, i.e., the NCLT or the NCLAT, as the case maybe, notwithstanding that the CIRP has concluded and the resolution applicant has stepped into the shoes of the promoter of the erstwhile corporate debtor.

b) CIRP and avoidance applications, are, by their very nature, a separate set of proceedings wherein, the former, being objective in nature, is time bound whereas the latter requires a proper discovery of suspect transactions that are to be avoided by the Adjudicating Authority. The scheme of the IBC reinforces this difference. Accordingly,

adjudication of an avoidance application is independent of the resolution of the corporate debtor and can survive CIRP.

c) The endeavour of the IBC and its rules and regulations is to ensure that all processes within the insolvency framework are time efficient. While the law mandates a resolution plan to necessarily provide for the treatment of avoidance applications if the same are pending at the time of submission of resolution plans, it cannot be accepted that avoidance applications will be rendered infructuous in situations wherein the resolution plan could not have accounted for avoidance applications due to exigencies that delayed initiation of action in respect of avoidable transactions beyond the submission of a resolution plan before the adjudicating authority. This is because such an interpretation will render the provisions pertaining to suspect transactions otiose and let the beneficiaries of such transactions walk away, scot-free. Money borrowed from creditors is essentially public money and the same cannot be appropriated by private parties by way of suspect arrangements. Therefore, in cases such as the present one, wherein such transactions could not be accounted, the Adjudicating Authority will continue to hear the application. Such benefit cannot be given in cases where the RP had already applied for prosecution of avoidance applications and the applicant ought to have been cognizant of pending avoidance applications but did not account for the same in its resolution plan.

d) It follows that the RP will not be functus officio with respect to adjudication of avoidance applications in a situation, as described hereinabove. There being a clear demarcation between the scope and nature of the CIRP and avoidance application within the scheme of the IBC, the RP can continue to pursue such applications. The method and manner of the RP's remuneration ought to be decided by the Adjudicating Authority itself. The provisions pertaining to suspect transactions exist specifically to benefit the creditors of the corporate debtor by enhancing the asset pool available for resolution of the corporate debtor. The IBC also envisages increasing credit availability in the country as one of its primary objectives. It is apposite that any kind of benefit acquired from the adjudication of avoidance applications, in cases where treatment of such applications

could not be accounted in the plan, must be given to the creditors of the erstwhile corporate debtor, considering especially, that in the present case, the creditors took a massive haircut towards resolution of the corporate debtor. Giving such benefit to the creditors is in consonance with the scheme of the IBC.

f. The amount that is made available after transactions are avoided cannot go to the kitty of the resolution applicant. The benefit arising out of the adjudication of the avoidance application is not for the corporate debtor in its new avatar since it does not continue as a debtor and has gone through the process of resolution. This amount should be made available to the creditors who are primarily financial institutions and have taken a haircut in agreeing to accept a lesser amount than what was due and payable to them”

- 4.7. Accordingly, the closure of the Company Petition on 19.05.2025 only records the completion of the CIRP and implementation of the resolution plan, it does not extinguish pending avoidance proceedings. I.A. (IBC) No. 185/GB/2024, therefore, survives for adjudication.
- 4.8. The central issue, therefore, is whether the Applicant, as the SRA, may be permitted to step into the proceedings initiated by the Resolution Professional.
- 4.9. The Respondents contend that the Resolution Professional alone, having initiated the proceedings and being privy to the underlying material, must continue the same, and the Applicant, being a commercially interested party, lacks the neutrality.
- 4.10. Avoidance applications are initiated by the Resolution Professional in discharge of statutory duties based on material gathered during the CIRP. The Resolution Professional, therefore, constitutes a material witness of fact, having formed the requisite opinion and determination.
- 4.11. However, it is equally settled that upon approval of the Resolution Plan, the Resolution Professional becomes *functus officio* insofar as the management and affairs of the Corporate Debtor are concerned. The legal position, particularly, after *Piramal Capital and Housing Finance Ltd vs 63 Moons Technologies Ltd & Ors, 2025 SCC Online*

SC 690 does not support a rigid or inflexible approach confining such proceedings exclusively to the Resolution Professional. The Hon'ble Supreme Court has recognised that avoidance proceedings may continue beyond the CIRP, and their continuation may be structured in terms of the Resolution Plan.

- 4.12. The Resolution Plan, read with Regulation 38(2)(d), provides the commercial and structural framework for continuation of avoidance proceedings and may indicate the entity intended to pursue such proceedings. However, the conferment of locus and substitution of parties remains subject to the provisions of the Code and the NCLT Rules, 2016, particularly Rule 53, and must be effected by an order of this Tribunal. The Resolution Plan cannot, by itself, confer prosecutorial locus. However, it constitutes a relevant and persuasive basis for permitting substitution.
- 4.13. Rule 53 of the NCLT Rules, 2016 specifically provides for substitution of “legal representatives” or “assignees” to ensure that proceedings do not abate upon a change in the status of a party. The provision is procedural in nature and is intended to preserve continuity of adjudication.
- 4.14. While the Rule expressly contemplates contingencies such as death, insolvency, or winding up, its underlying object is to prevent abatement and to enable continuation of proceedings by a person in whom the relevant rights or interests vest. Though the Rule does not expressly contemplate substitution in favour of an SRA, its purposive interpretation, read with the binding effect of an approved Resolution Plan under Section 31 and the mandate of Regulation 38(2)(d), permits this Tribunal to consider substitution in appropriate cases.
- 4.15. Rule 53, therefore, cannot be construed in an unduly restrictive manner so as to defeat substantive rights flowing from a court-approved Resolution Plan. At the same time, it does not automatically confer “assignee” status. The question of substitution must be assessed in the facts of each case.
- 4.16. It is not in dispute that the Resolution Plan submitted by the Applicant was approved by this Tribunal on 20.12.2024 and has since been implemented. Regulation 38(2)(d)

of the CIRP Regulations mandates that a Resolution Plan provide for the manner in which proceeds shall be distributed. This provision constitutes the substantive framework for continuation of such proceedings.

4.17. The Applicant SRA has placed reliance on Clause 12.7 of the Approved Resolution Plan, which provides that receivables arising out of litigations relating to the Corporate Debtor shall accrue to the benefit of the Resolution Applicant.

"12.7 Treatment of Claims on Matters that are Sub Judice . . . The receivables including but not limited to those receivables arising out of any litigations in relation to the Corporate Debtor before any court, tribunal or other forum, after the approval of Resolution Plan by the adjudicating authority or at any time in future, shall solely accrue to the benefit of the Resolution Applicant."

4.18. Further, SRA has also relied on the minutes of IMC dated 24.04.2025, which records, *"the members resolved that responsibility for the PUFEE Application shall henceforth vest with M/s Peerless Hospitex Hospital and Research Center Ltd. as the Successful Resolution Applicant. All costs toward carry forward of the application to be borne by the SRA at their discretion. It was further agreed that any proceeds realized from the PUFEE Application shall be received and retained by the company Ayursundra Hospital (Guwahati) Private Limited (CIN: U851 IOAS2007PTC008546), in strict compliance with the decision taken during this meeting."*

4.19. A proper construction of these provisions indicates that the Resolution Plan clearly contemplates continuation of avoidance proceedings post-approval, and the economic benefit arising from such proceedings is intended to accrue to the Applicant / resolved Corporate Debtor. However, allocation of economic benefit does not, by itself, automatically translate into conferment of prosecutorial locus. The distinction between entitlement to proceeds and entitlement to prosecute must be maintained. The question of substitution must therefore be tested within the framework of the Code and the NCLT Rules.

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- 4.20. In the present case, the CIRP stands concluded, the Resolution Plan has been implemented, and the Plan expressly envisages continuation of such proceedings. In these circumstances, insisting that only the Resolution Professional can prosecute the application would create a procedural vacuum and render the continuation of such proceedings impracticable.
- 4.21. The objection regarding lack of neutrality is also untenable. Upon approval of the Resolution Plan, the SRA assumes control of the Corporate Debtor and becomes the primary stakeholder in value maximisation. The Code does not mandate continued neutrality of the prosecuting party beyond the CIRP, particularly where the Resolution Plan itself envisages such prosecution.
- 4.22. In view of the above, this Tribunal is of the considered view that the ends of justice would be served by permitting the Applicant to prosecute the avoidance application, subject to appropriate safeguards.
- 4.23. Accordingly, the Applicant is permitted to be brought on record in I.A. (IBC) No. 185/GB/2024, in substitution of the Resolution Professional, for the limited purpose of prosecuting the said application.
- 4.24. It is clarified that such substitution is not to be treated as a general principle under Rule 53, but is granted in the peculiar facts of the case, having regard to the terms of the approved Resolution Plan and the settled legal position..
- 4.25. At the same time, the RP's role does not stand effaced. In exercise of powers under Rule 11 of the NCLT Rules, 2016, the erstwhile Resolution Professional shall extend full cooperation, provide all records, reports, and material relied upon, and remain available for clarification, if required.
- 4.26. The Respondents shall be at liberty to raise all objections on maintainability and merits during the proceedings.

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NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

I.A. (IBC)/74/GB/2025
In I.A. (IBC)/185/GB/2024
C.P. (IB)/24/GB/2023

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- 4.27. Objections regarding composite nature of the application, non-joinder of parties, and lack of particulars pertain to the merits of the avoidance application and do not preclude substitution at this stage.
- 4.28. This Tribunal, therefore, holds that the avoidance application survives the conclusion of the CIRP, the Resolution Plan contemplates its continuation, and Rule 53, read purposively, permits substitution in appropriate cases.
- 4.29. Denial of substitution in such circumstances would render the mechanism under Regulation 38(2)(d) nugatory and frustrate the continuation of avoidance proceedings recognised in law.
- 4.30. The balance of convenience lies in favour of permitting substitution, as denial would render the proceedings ineffective, whereas allowing substitution causes no prejudice to the Respondents.
- 4.31. Accordingly, the present application for substitution is **allowed** in the above terms.
- 4.32. The Applicant is directed to amend the cause title and substitute the name of the Applicant/ Successful Resolution Applicant, *i.e.* "**Peerless Hospitex Hospital and Research Center Limited** having its registered office at 360, Panchasayar, Kolkata - 700094" in place of the Resolution Professional, Mr. Sandeep Khaitan before the Registry, NCLT, Guwahati Bench during the Registry hours.
5. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
6. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

Signed this on 23rd day of April, 2026

Madhurita Tiwari (L.R.A.)