IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH (COURT-I)

KOLKATA

IA (IBC) (LIQ.)/5(KB) 2025

In

C.P. (IB)/197(KB) 2023

An application under Section 33 of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

SAMSKAR FINANCIAL SERVICES PRIVATE LIMITED

... Financial Creditor

Versus

RHYTHM INFRA PROPERTIES PRIVATE LIMITED

...Corporate Debtor

And

IN THE MATTER OF:

INTELLIGENT IP MANAGEMENT SOLUTIONS PRIVATE LIMITED

... Applicant/Resolution Professional

Date of pronouncement: 18.05.2026

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

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Appearance (via video conferencing/physically)

For the Resolution Professional:

Mr. Jay Narayan Gupta, Adv.

Dr. Vishal Gupta, Adv.

Mr. Debanjan Das, Adv.

Ms. Tamalika Das, Adv.

For the Suspended Board of Directors:

Ms. Aishwarya Chowdhury, Adv.

For the CoC:

Mr. Rabindra Mitra, Adv.

ORDER

Per: Siddharth Mishra, Member (Technical)

1. This Court convened via hybrid mode of conferencing.

2. The Learned Counsel for the parties were heard *in extenso*.

3. This application IA(IBC)(LIQ.)/5(KB)2025 has been preferred by Applicant/Resolution Professional to seek the following reliefs, inter alia**:**

   (a) *Allow the present application and pass an order for the initiating liquidation proceedings of the Rhythm Infra Pvt. Ltd (CD) under Section 33 of the Insolvency and Bankruptcy Code, 2016;*

   (b) *Pass such further or other orders as this Hon'ble Court may deem fit and proper;*

4. Pursuant to the order dated 3rd December, 2024 of this Tribunal, Corporate Insolvency Resolution Process (CIRP) was initiated upon the Corporate Debtor and vide the said order

dated 29th April, 2025, the Applicant was appointed as the Interim Resolution Professional (IRP).

5. In compliance with Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016, the applicant made Public Announcement in Form- A on 6th December, 2024 in Morning India (English) and Duranta Barta (Bengali), Kolkata newspapers. Copy of Form A is marked as **"Appendix- B" (pages 24-25).**

6. On 10th December, 2024, the IRP submitted the CIRP 1 on the IBBI portal. CIRP 1 is marked as **"Appendix- C" (pages 26-30)**.

7. On 17th December, 2024 which being the last date for submission of claim, the IRP received claims from the following creditors in compliance with Regulation 6 (2) (c) and 12 (1) of the CIRP Regulations:

   i. Financial Creditor: Samskar Financial Services Private Limited.

   ii. Operational Creditor: Directorate of Commercial Taxes.

8. On 19th December, 2024 and 20th December, 2024, the verification process for the claims was completed in accordance with Regulation 13 (1) of the CIRP Regulations. The verified claims are as follows:

Sl. No.	**Category**	**Claimant**	**Total Claim Received**	**Total Claim Admitted**	**Voting Percentage in CoC**
1.	Unsecured	Samskar Financial	84,47,873	84,47,873	100%

	Financial Creditors	Services Pvt. Ltd.			
2.	Gov. Dues	Commissioner of Commercial Taxes	615,813	598,509	0%
Total			9,073,055	9,046,382	100%

9. That on 26th December, 2024, the IRP formed the CoC based on the claims received and submitted the report certifying the constitution of the CoC before the Adjudicating Authority in the same date.

10. On 27th December, 2024, the IRP submitted Form INC-28 on the Ministry of Corporate Affairs (MCA) portal. Copy of all Form INC-28 is marked as **"Appendix- D" (pages 31-37).**

11. In the First CoC meeting held on 2nd January, 2025, the Financial Creditor decided that the IRP should continue to act as the Resolution Professional (RP) for the matter. Copy of the Minutes of the First CoC meeting dated 2nd January, 2025 is marked as **"Annexure- B" (page 51 onwards).** In the Second CoC meeting held on 7th February, 2025, the sole Financial Creditor, Samskar Financial Services Private Limited decided to proceed with the liquidation of the Corporate Debtor instead of publishing Form G for inviting resolution plans mainly, there was no ongoing business activity of the Corporate Debtor and there were no tangible assets of the Corporate Debtor making it least attractive to any prospective resolution applicants. Copy of the Minutes of the Second CoC meeting dated 7th February, 2025 is marked as **"Annexure C" (page 60 onwards).**

12. As per Section 33 of the Insolvency and Bankruptcy Code, 2016, since the sole Financial Creditor has opted for liquidation, it is in the interest of justice and the stakeholders to allow the present application for liquidation.

13. Upon confirmation of the initiation of the liquidation process, the Resolution Professional convened the Third CoC meeting on 19th February, 2025 to discuss the following agenda:

    i. Estimated liquidation cost under Regulation 39B of the CIRP Regulations.
    ii. Assessment of Compromise or Arrangement under Regulation 39BA (1) of the CIRP Regulations.
    iii. Evaluation of the sale of the Corporate Debtor as a going concern under Regulation 39C of the CIRP Regulations.
    iv. Determination of the Liquidator's fee under Regulation 39D of the CIRP Regulations.

    Copy of the Minutes of the Third CoC meeting dated 19th February, 2025 is marked as **"Annexure D" (page 68 onwards).**

14. As per Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Resolution Professional has attached Form H. Copy of Form His marked as **"Appendix E" (page 38 onwards).**

15. The Resolution Professional based on scrutiny of the available books of accounts and documents of the Corporate Debtor opined that there was apparently no existence of any transaction of avoidance nature. As determination of any avoidance transaction in accordance with Regulation 35A of the Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016, the Resolution Professional send an e-mail dated 5th March, 2025 to the CoC. Copy of the e-mail dated 5th March, 2025 is marked as **"Appendix F" (page 75)**.

16. By an order passed by this Tribunal dated 8th August, 2025, where the CoC is directed to file an affidavit to explain the deferred tax liability as shown at page 20 of the reply affidavit.

> *"4. The Deferred Tax Liability (Net) of Rs. 13,930/-, as disclosed on page 20 of the said Supplementary Affidavit, being the Audited Financial Statements for the year ended March 31, 2024, is made to comply with the Accounting Standards as applicable to the Corporate Debtor, more specifically, Accounting Standard (AS) 22. Deferred Tax Liability is made when there is difference between carrying amounts as per Companies Act, 2013 and Income tax Act, 1961. Such difference is termed as 'timing difference' as per the above mentioned Accounting Standard. Accordingly, depending upon the nature of difference, Deferred tax liability/assets is recorded in the books of account. Such Deferred tax liability or asset is recorded to keep the books of account consistent over the years and maintain the matching principle as given in fundamental accounting principles.*
>
> *5. In this instance, for FY 2023-24, depreciation as per the Companies Act, 2013 was Rs. 1,50,310 (mentioned in notes to accounts of FY 2023-24, point no. 10) whereas depreciation as per the Income-tax Act, 1961 as on was Rs. 2,03,873. This resulted in a timing difference of Rs. 53,563,49, creating a deferred tax*

liability of Rs. 13,926, which is rounded off to Rs. 13,930 after applying a 26% tax rate (inc. basic tax rate, surcharge and Cess). A clarification regarding deferred tax liabilities/assets as per ICAI is annexed hereto and marked "C".

6. Deferred tax liability is not an actual liability. It is a mere accounting/book entry. It does not create any actual tax liability payable to any statutory authority by the Corporate Debtor."

17. In the present case, the statutory period for the CIRP has been exhausted, and no resolution plan has been received, therefore, applicant after the approval of the COC member prefers to file an application under section 33(1)(a)as decided by the CoC, before this Tribunal seeking an order requiring the Corporate Debtor to be liquidated in the manner as laid in the Chapter III of IBC 2016.

ANALYSIS AND FINDINGS

18. This Adjudicating Authority has heard the Learned Counsel appearing for the parties and has perused the material available on record, including the pleadings, documents, and minutes of the Committee of Creditors (CoC). Although the present application has been filed under Section 33 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of liquidation of the Corporate Debtor, this Tribunal finds it necessary to first examine ***"Whether the initiation of the Corporate Insolvency Resolution Process (CIRP) itself was in accordance with law"*.**

19. At the outset, it is observed that the CIRP was triggered on the premise that the Financial Creditor had extended a loan of Rs.

1,00,00,000/- to the Corporate Debtor carrying interest @ 10% and repayable within a period of two months. Based on the said assertion, the petition under Section 7 of the Code came to be admitted and the Interim Resolution Professional was appointed.

20. However, upon a careful scrutiny of the records of the CIRP, it is revealed that the Financial Creditor, at the stage of submission of claims before the Resolution Professional, lodged a claim of approximately Rs. 84,47,873/-, which was duly admitted. The said Financial Creditor constituted the sole member of the CoC with 100% voting share and proceeded to take all commercial decisions, including directing the Resolution Professional in the 3rd CoC meeting to initiate liquidation proceedings on the ground that the Corporate Debtor had no substantial assets and that no viable resolution plan was likely to be received.

21. The Resolution Professional, acting upon such decision, has filed the present application seeking liquidation of the Corporate Debtor.

22. At this juncture, this Tribunal is constrained to note that the admitted claim amount of the Financial Creditor is below the statutory threshold of Rs. 1,00,00,000/- as prescribed under Section 4 of the Insolvency and Bankruptcy Code, 2016 at the relevant time. The threshold requirement is a jurisdictional fact, the existence of which is a sine qua non for admission of an application under Section 7 of the Code. The Adjudicating Authority derives its jurisdiction only upon satisfaction that a default of the minimum prescribed amount has occurred.

23. In the present case, once it becomes evident from the CIRP records itself that the Financial Creditor's claim is only to the

extent of approximately Rs. 84 lakhs, the very foundation of the admission order stands vitiated. The admission of the CIRP, therefore, suffers from a patent lack of jurisdiction, having been initiated without meeting the mandatory statutory threshold.

24. It is well settled that jurisdictional defects go to the root of the matter and cannot be cured by subsequent conduct of the parties or by the commercial decisions taken during the CIRP. Consequently, the constitution of the CoC, the decisions taken therein, including the decision to liquidate the Corporate Debtor, and the present application under Section 33 are all rendered unsustainable in the eyes of law.

25. Another aspect which merits consideration is that, despite the apparent jurisdictional defect, no application has been filed by the Suspended Board of Directors seeking recall of the admission order. In the ordinary course, such an application ought to have been preferred by the aggrieved stakeholders. The absence of any such challenge, coupled with the conduct of the Financial Creditor in continuing the proceedings, raises serious doubts and indicates a possibility of collusion between the parties, thereby amounting to abuse of the process of law.

26. In such circumstances, this Tribunal cannot remain a mute spectator. Rule 11 of the National Company Law Tribunal Rules, 2016 preserves the inherent powers of this Tribunal to pass such orders as may be necessary to meet the ends of justice or to prevent abuse of the process of the Tribunal. The exercise of such inherent powers is warranted particularly in cases where an order has been passed without jurisdiction. Rule 11 of the NCLT Rules which is reproduced below:-

*11. **Inherent Powers.**- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.*

27. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in ***Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni and Anr.,*** (2024 SCC OnLine SC 122) wherein it has been held that the Adjudicating Authority is empowered to recall its own order in exercise of its inherent powers where such order has been passed without jurisdiction or where continuation of the proceedings would result in abuse of process. The relevant part of the judgement is reproduced below-

*"50. **In light of the discussion above, what emerges is, a court or a Tribunal, in absence of any provision to the contrary, has inherent power to recall an order to secure the ends of justice** and/or to prevent abuse of the process of the court. Neither the Insolvency and Bankruptcy Code nor the Regulations framed thereunder, in any way, prohibit, exercise of such inherent power. Rather, section 60(5)(c) of the Insolvency and Bankruptcy Code, which opens with a non obstante clause, empowers the National Company Law Tribunal (the Adjudicating Authority) to entertain or dispose of any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under the Insolvency and Bankruptcy Code. Further, rule 11 of the National Company Law Tribunal Rules, 2016 preserves the inherent*

power of the Tribunal. Therefore, even in absence of a specific provision empowering the Tribunal to recall its order, the Tribunal has power to recall its order."

(Emphasis Added)

28. Applying the aforesaid principle to the facts of the present case, this Tribunal is of the considered opinion that the admission order initiating CIRP against the Corporate Debtor was passed without satisfying the mandatory jurisdictional requirement of minimum default and is therefore liable to be recalled.

29. This Tribunal also takes serious note of the fact that valuable judicial time has been consumed in conducting the CIRP, constitution of CoC, and in the present liquidation proceedings, all of which emanate from an application that was not maintainable at the threshold. In a scenario where numerous matters are pending adjudication, such conduct on the part of the Financial Creditor cannot be countenanced.

30. In light of the aforesaid discussion this Adjudicating Authority orders as follows:

a) In view of the reasons mentioned above, the **IA (IBC)(LIQ.)/5/KB/2025** stands dismissed and disposed of.

b) Having regard to the facts and circumstances of the case, we are constrained to recall and set aside the admission order dated **03.12.2024** secured by the Financial Creditor, Samskar Financial Services Pvt. Ltd. in **CP (IB) No. 197/KB/2023** in relation to the Corporate Debtor in exercise of powers conferred under Rule 11 of the NCLT Rules, 2016 to meet the ends of justice.

c) In view thereof, the order of admission dated 03.12.2024 and the CIRP initiated thereof in relation to the

Corporate Debtor, Rhythm Infra Properties Private Limited is cancelled and terminated. The moratorium as declared under Section 14 of IBC, 2016 also stands withdrawn. The appointment of the Resolution Professional and all the actions taken by the Resolution Professional consequent to his appointment are brought to nullity. The Resolution Professional is directed to hand over the management of the affairs of the Corporate Debtor to the Ex-management/suspended board of Directors of the Corporate Debtor.

d) The Financial Creditor, Samskar Financial Services Pvt. Ltd., is hereby directed to pay all CIRP costs, fees, and expenses of Resolution Professional within one week from the date of passing this order and Resolution Professional is directed to file a memo of compliance in this regard to this Adjudicating Authority within a week from such payment.

e) The Legislature has incorporated Section 65 of the Code, enabling the Adjudicating Authority to impose a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees on any person who initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be. We are of the view that the application under Section 7 is a gross abuse of the process of law. We, therefore, impose a penalty of **Rs. 5,00,000/-** (Rupees Five Lakh Only) to be deposited by the Financial Creditor, Samskar Financial Services Pvt. Ltd. in the **Prime Minister's National Relief Fund**

(PMNRF) within ten days from the date of passing of this order. Failing this, the amount shall be realized through the due process of law. The Financial Creditor is directed to file a memo of compliance in this regard to this Adjudicating Authority within a week of the payment.

f) The Registry is directed to send a copy of this order to the Prime Minister's National Relief Fund (PMNRF) and to the Insolvency and Bankruptcy Board of India (IBBI) for their record.

g) The Registry is further directed to send a copy of this order to the Regional Director, Eastern Region, Ministry of Corporate Affairs and Registrar of Companies of Kolkata, Ministry of Corporate Affairs for necessary action as these authorities may contemplate and deem fit and necessary.

31. Accordingly in terms of the aforesaid the **C.P (IB) 197/KB/2023** is hereby **rejected** and **disposed** off and all other **pending/ connected applications** are render **infructuous**.

32. The Certified copy of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties, subject to compliance with all requisite formalities.

Cmde Siddharth Mishra
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on the 18th day of May, 2026.

S.T (LRA)