

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (COURT NO.-II)
KOLKATA

I.A.(IBC) NO. 1808/KB/2025

In

C.P.(I.B) NO. 980/KB/2018

Section 60 (5) of the Insolvency and Bankruptcy Code,
2016 read with Rule 11 of the National Company Law
Tribunal Rules, 2016.

IN THE MATTER OF

Union Bank of India, a body
corporate constituted under the
provisions of Banking Companies
(Acquisition and Transfer of
Undertakings) Act, 1970 carrying
on business through its branch
office at Overseas Branch, 9 India
Exchange Place, Police Station,
Police Station Hare Street,
Kolkata-700001, West Bengal And
Assets Recovery Branch, 15, India
Exchange Place, Kolkata - 700001.

...Financial Creditor

VERSUS

P K S limited of 7, Camac street, Azimganj House, 4th floor, Kolkata - 700017

...Corporate Debtor

AND

IN THE MATTER OF:

SWAPAN KUMAR SAHA, Suspended Director, of 7, Camac Street, Azimgung House, 4u Floor Kolkata- 700 017

...Applicant

VERSUS

1. ASHOK KUMAR AGARWAL, liquidator of PKS Limited, Having his office at "Ashwini", B/4, Neelachal Abasan Housing Cooperative Society Limited, 98, Rajdanga Gold Park, Kasaba EKTP, Kolkata- 700107.

...Respondent 1

2. UNION BANK OF INDIA, a banking company for med and constituted under the Banking

Companies (Acquisition and Transfer of Undertakings) Act, 1971, having his office at 9, India Exchange Place, Kolkata-700001.

...Respondent 2

3. STATE BANK OF INDIA a body corporate formed and constituted under the State Bank of India Act, 1956 and inter alia, carrying on business from the Stressed Assets Management Branch, Jeevan Deep Building, 10% Floor, Middleton Street, Kolkata 700071.

...Respondent 3

4. PUNJAB NATIONAL BANK, a body corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its office at 18A, Brabourne Road, Mezanine Floor, Kolkata 700071.

...Respondent 4

5. STATE TRADING CORPORATION OF INDIA LIMITED, a company

incorporated under the provisions of the Companies Act, 1956 and an existing company within the meaning of the Companies Act, 2013, having its registered office at 8B, Middleton Street, Geetanjali Apartments, Flat no.9A, 9th Floor, Kolkata-700071.

...Respondent 5

6. THE COMMISSIONER OF CUSTOMS (EXPORTS), having his office at 4th Floor, Annexe Building. New Custom House , Ballard Estate, Mumbai - 400001

...Respondent 6

7. EMPLOYEES PROVIDENT FUND ORGANISATION, having its office at 44 Park Street, Kolkata - 700016;

...Respondent 7

8. COMMISSIONER OF COMMERCIAL TAXES, Government of West Bengal, having his office at 14, Beliaghata Road, Kolkata - 700015;

...Respondent 8

Order pronounced on:22.6.2026

CORAM

SHRI. LABH SINGH, HON'BLE MEMBER (JUDICIAL)
MS. REKHA KANTILAL SHAH, HON'BLE MEMBER (TECHNICAL)

Counsel appeared through physically and virtually:

Ms.Urmila Chakraborty,Adv.] For Liquidator

Ms.Shabana Khatun,Adv.]

Mr.Ashok Kr.Agarwal, Liquidator in person

Mr.Rishav Banerjee, Adv.] For the Applicant in IA 1808/2025

Mr.Moulinath Moitra, Adv.]

O R D E R

(Heard Through Hybrid Mode)

LABH SINGH, JUDICIAL MEMBER

1. The present application has been filed by Swapan Kumar Saha, Suspended Director of the PKS Limited (Hereinafter referred as corporate debtor) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (Herein after referred as IBC)

read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking the following reliefs:

- a) *The Resolution adopted in the SCC Meeting convened on August 19, 2025 to the extent that the Applicant has been removed from the SCC, be set aside;*
- b) *Injunction restraining the respondents from giving any effect or any further effect or acting in terms thereof or in furtherance to the resolution adopted in the SCC Meeting convened on August 19, 2025 to the extent that the Applicant has been removed from SCC.*
- c) *Ad interim orders in terms of prayers above;*
- d) *Such further and/or other orders or orders be passed, direction or directions be given as Your Lordships may deem fit and proper.*

2. The applicant was a shareholder and a director of the Corporate Debtor, which was admitted in CIRP process vide order dated 8th August, 2019. At the initial stage of CIRP, one Kanakabha Ray was appointed as the Resolution Professional; however, on account of his misdeeds and extreme affiliation towards the Respondent No. 2, he was removed pursuant to an order dated July 3, 2020 passed by this Tribunal. Mr. Shashi Agarwal was appointed as the Resolution Professional but could not continue and complete

the CIRP process, leading the Committee of Creditors (Hereinafter referred as CoC) to propose Jai Narayan Gupta to take charge.

3. This proposal was followed by an application being I.A.(IB) No. 781 of 2021 for appointing Jai Narayan Gupta, which was opposed by suspended Members of the Board, inter alia, as he was closely connected to Kanakabha Ray and was a majority shareholder of Intelligent IP Management Solution Private Limited, which had been appointed to oversee the CIRP. Ultimately, Jai Narayan Gupta was not allowed to be appointed as the Resolution Professional because he was responsible for making derogatory remarks against the Advocates of the Suspended Board of Directors, and Mr. Subodh Agarwal was appointed as the Resolution Professional by an order dated 16th February 2022 after Mr. Shashi Agarwal demitted his office.
4. The CIRP of the Corporate Debtor remained unsuccessful, and accordingly, the Corporate Debtor went into liquidation pursuant vide order dated June 15, 2022. The respondent No. 1 was appointed as the Liquidator. During the liquidation process, the Stakeholders Consultation Committee (Hereinafter referred as SCC) was constituted on September 1, 2022, by the Liquidator.

5. The Liquidator, during the course of the liquidation process, received a claim from Respondent No. 7. Consequently, the composition formed on September 1, 2022, was revised. The revised composition of the members of the SCC, effective from October 31, 2022, is as follows: -

SI. No	NAME OF SHAREHOLDER	CLASS OF SHAREHOLDER	REMARKS
1.	Union Bank of India	Secured Financial Creditors	Representing claim of Rs. 405,27,17,162.08
2.	State bank Of India	Secured Financial Creditors	Representing Claim of Rs. 364,23,15,667.85
3.	Punjab National Bank	Secured Financial Creditors	Representing Claim of Rs. 249,98,37,857.66
4.	State Trading Corporation of India Ltd.	Secured Financial Creditors	Representing Claim of Rs. 146,07,33,903.00

5.	Commissioner of Customs (Exports)	Operational Creditor/ Government	Representing Claim of Rs. 1,35,30,438.00
6.	The Employees Provident Fund Organisation	Operational Creditor/ Government	Representing Claim of Rs. 4,352.00
7.	Commissioner, Commercial Taxes, Govt. of West Bengal, Kolkata	Operational Creditor/ Government	Representing Claim of Rs. 5,55,59,159.35
8.	Mr. Swapan Kumar Saha	Shareholder/ Member	Holding 78,35,406 Equity Shares of Rs. 10/- each fully paid-up (equivalent to 52.24% of the aggregate paid-up capital) of the CD.

6. During the SCC meeting convened on March 30, 2023, the Respondent No. 1 placed an email dated 1st March 2023

received from Dynamo Bartar Private Limited, which was ostensibly controlled by the daughters of Jai Narayan Gupta offering a sum of 10 Lakhs for the assignment of the outcome of pending applications under Section 66 of IBC and 5 Lakhs for taking over the Corporate Debtor as a going concern. In the same meeting, members further attempted to appoint Jai Narayan Gupta as the Practicing Chartered Accountant to continue with pending applications filed by Kanakabha Ray and Sashi Agarwal under Section 66 of IBC, despite his disqualification due to previous misdeeds, defamatory statements made, and various conflicts of interest.

7. It is further submitted that an application being I.A. No. 796 of 2023 was filed by a Member of the Suspended Board of Directors (Hereinafter referred as SBOD) praying that the decision recorded in the Minutes of the SCC Meeting dated March 30, 2023, be set aside, which was allowed pursuant to orders dated May 15, 2023, and January 14, 2025.
8. It is submitted that the applicant, as a Promoter and Director, was entitled to attend the meetings of the SCC in terms of IBBI Regulations, 2016 and participated through an authorized representative in meetings convened between November 29, 2022, and March 1, 2025, without any complaint

or objection being raised by the Liquidator. However, following an SCC meeting convened on August 19, 2025, the applicant learnt from the minutes that the SCC was reconstituted with effect from that date without the applicant, and he was removed from the list of stakeholders and participants.

9. It is submitted that the Liquidator has consistently exhibited an acrimonious attitude and animus against the applicant, as the applicant was instrumental in the removal of the previous Resolution Professional and a Practicing Company Secretary.
10. It is submitted that the notice for the SCC meeting held on August 19, 2025, contained no agenda concerning the reconstitution of the SCC, and the decision to remove the applicant was taken clandestinely and behind the applicant's back so as to preclude intervention. While the authorized representative of the applicant duly attended the meeting via video conference, no discussion or deliberation regarding the reconstitution of the SCC took place in the presence of the representative.

11. It is submitted that the minutes at page 114 record an elaborate discussion that appears to have been secretly undertaken by the SCC members and the Liquidator. Subsequent to the meeting, the Liquidator declined to furnish the minutes until September 13, 2025. Following repeated communications from the applicant, the liquidator ultimately furnished the minutes of 12th SCC, and the same is annexed at page 107 of the application.

12. It is submitted that the applicant's removal from the SCC without giving him any opportunity to be heard amounts to a violation of the principles of natural justice, and the resolution adopted should be adjudged illegal, null, and void.

13. It is submitted that the grounds cited for removal, namely the amendment of Regulation 31A on September 16, 2022, and the lack of personal attendance are wholly illegal and contrary to the second proviso of Regulation 31A, of the IBBI (Liquidation Process) Regulations 2016 framed by the Insolvency and Bankruptcy Board of India.

14. It is submitted that the above proviso unequivocally recognizes the entitlement of promoter directors to attend meetings through an authorized representative.
15. It is further submitted that as an equity shareholder holding 52.24% shareholding, he falls within the statutory waterfall mechanism under Section 53(1)(h) of the Code, which underscores the necessary presence of such stakeholders within the SCC.
16. It is submitted that the SCC has committed an illegality by adopting a resolution wholly contrary to the Liquidation Process Regulations, and the Liquidator, as Chair of the SCC, has ratified this unlawful decision rather than fulfilling his duty to avoid such illegal steps. It appears the Liquidator may be harbouring animus against the Applicant and acting at the behest of the SCC in committing acts wholly contrary to Regulation 31A of the Liquidation Process Regulations, 2016, framed by the Insolvency and Bankruptcy Board of India.
17. It is submitted that the applicant is a “stakeholder” within the meaning of Regulation 2(1)(k) of the IBBI (Liquidation Process) Regulations, 2016, read along with Section 53 of

the Insolvency and Bankruptcy Code, 2016; and hence, in the backdrop of Regulation 31A and the scheme of distribution embodied in Section 53, the resolution adopted on 19th August 2025 is liable to be set aside in its entirety, together with all the decisions and consequential actions emanating therefrom.

18. It is submitted that the impugned decision, conceived in derogation of the IBC and the IBBI (Liquidation Process) Regulations, adopted without notice or deliberation in applicant's presence, cannot be countenanced by this adjudicating authority.
19. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned Counsels for the parties and after hearing the learned counsels for the parties, we shall now proceed to consider the applications on its merits, specifically within the ambit of points involved in the applications.
20. The Petitioner falls within the definition of a "stakeholder" under Regulation 2(1)(k) of the IBBI (Liquidation Process) Regulations, 2016, as he is a party

entitled to the distribution of proceeds under the statutory waterfall mechanism of Section 53 of the Insolvency and Bankruptcy Code, 2016. The relevant extract of the provision reproduced hereunder:

“stakeholders” means the stakeholders entitled to distribution of proceeds under section 53.”

21. The provision of Regulation 31A of IBBI (Liquidation Process) Regulation 2016 provides for constitution of Stakeholders Consultation Committee by the Liquidator and voting share of the members. It is pertinent to refer provision of Regulation 31A of IBBI (Liquidation Process) Regulation 2016 which read as under:

Stakeholders’ consultation committee.

“31A.(1) The liquidator shall constitute a consultation committee, comprising of all creditors of the corporate debtor, within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters relating to-

(a) remuneration of professionals appointed under regulation_7;

(b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process.;

(c) fees of the liquidator;

(d) valuation under sub- regulation (2) of regulation 35;

(e) the manner in which proceedings in respect of preferential transactions, undervalued transaction, extortionate credit transaction or fraudulent or wrongful trading, if any, shall be pursued after closure of liquidation proceedings and the manner in which the proceeds, if any, from these proceedings shall be distributed;

(g) continuation or institution of any suits or legal proceedings by or against the corporate debtor;

(h) extension of payment of balance sale consideration as provided in clause (12) of Para 1 of Schedule I, beyond ninety days, to be disclosed in the auction notice.

(1A) The committee of creditors under section 21 shall function as the consultation committee with same voting rights till constitution of the consultation committee under sub-regulation (1).

(2) The voting share of a member of the consultation committee shall be in proportion to his admitted claim in the total admitted claim:

Provided a secured creditor who has not relinquished his security interest under section 52 shall not be part of the consultation committee;

Provided that the promoters, directors, partners or their representatives may attend the meeting of the consultation committee but shall not have any right to vote.

Provided further that a financial creditor or his representative, if he is a related party of the corporate debtor, shall not have right to vote.

(3) The liquidator may facilitate the stakeholders of each class namely financial creditors in a class, workmen, employees, government departments, other operational creditors, shareholders, partners, to nominate their representative for participation in the consultation committee.

(4) If the stakeholders of any class fail to nominate their representatives, under sub-regulation (3), such representatives shall be selected by a majority of voting share of the class, present and voting.

(4A) the representative under sub-regulation (3) or (4) shall vote in proportion to the voting share of the stakeholders it represents.

(5) Subject to the provisions of the Code and these regulations, representatives in the consultation committee shall have access to all relevant records and information as may be required to provide advice to the liquidator under sub-regulation (1).

(6) The liquidator shall convene the first meeting of the consultation committee within seven days of the liquidation commencement date and may convene other meetings, if he considers necessary, on a request received from one or more members of the consultation committee;

Provided that when a request is received by the liquidator from members, individually or collectively, having at least thirty three percent of the total voting rights, the liquidator shall mandatorily convene the meeting.

Provided further that the liquidator shall convene subsequent meetings within thirty days of the previous meeting, unless the consultation committee has extended the period between such meetings.

Provided further that there shall be at least one meeting in each quarter.

(6A) In all cases where the liquidator proposes to continue or initiate any legal proceeding, he shall, after presenting the economic rationale for the proposal, seek the advice of the consultation committee.

(6B) In every meeting, the liquidator shall present to the consultation committee:

(a) the actual liquidation cost along with reasons for exceeding the estimated cost, if any;

(b) the consolidated status of all the legal proceedings; and

(c) the progress made in the process.

(7) The liquidator shall chair the meetings of consultation committee and record deliberations of the meeting.

(8) The liquidator shall place the recommendation of committee of creditors made under sub-regulation (1) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, before the consultation committee for its information.

(9) The consultation committee shall advise the liquidator, by a vote of not less than sixty-six

percent of the representatives of the consultation committee, ¹²[voting].

Explanation: For the purpose of this sub-regulation, the term “voting” shall mean voting cast by the representatives of the consultation committee.

(10) The advice of the consultation committee shall not be binding on the liquidator:

Provided that where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing and submit the records relating to the said decision, to the Adjudicating Authority and to the Board within five days of the said decision; and include it in the next progress report.

Explanation.- It is hereby clarified that the requirements of this regulation shall apply to the liquidation processes commencing on or after the date of the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019.

(11) The consultation committee, after recording the reasons, may by a majority vote of not less sixty-six per cent., propose to replace the liquidator and shall file an application, after obtaining the written consent of the proposed

liquidator in Form AA of the Schedule II, before the Adjudicating Authority for replacement of the liquidator:

Provided that where a liquidator is proposed to be replaced, he shall-

(a) continue to work till his replacement; and

(b) be suitably remunerated for work performed till his replacement.

Provided that where a consultation committee under regulation 31A has been constituted before the commencement of Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022, the liquidator within thirty days of the commencement of the said Regulations, shall reconstitute the consultation committee as required under the said Regulations and provisions provided under amended Regulation 31A shall come into effect only after such constitution.

22. Thus, as per second proviso to sub regulation (2) of Regulation 31A, the promoters, directors, partners or their representatives have been given a discretion to attend the meeting of the consultation committee, but they have no right to vote.

23. The second proviso to sub regulation (11) of Regulation 31A provides that where a consultation committee under regulation 31A has been constituted before the commencement of Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022, the liquidator within thirty days of the commencement of the said Regulations, shall reconstitute the consultation committee as required under the said Regulations and the proviso provided under amended Regulation 31A shall come into effect only after such constitution.
24. Learned Counsel for the applicant argued that sub regulation (2) of Regulation 31A of IBBI(Liquidation Process) Regulation 2016 was substituted by IBBI (Liquidation Process) (Second Amendment) Regulations, 2022 vide Notification No. IBBI/2022-23/GN/REG094 dated 16th September, 2022, w.e.f. 16.09.2022; however, the Stakeholders Consultation Committee(SCC) was constituted on September 1, 2022, by the Liquidator before amendment came into force on 16.09.2022.
25. The Liquidator has constituted a revised Stakeholders Consultation Committee in pursuance of Resolution adopted in the SCC Meeting convened on August 19, 2025 by which the

applicant has been removed from the Stakeholder Consultation Committee. Therefore, it is pertinent to refer relevant minutes of 12th meeting of SCC held on 19.08.2025 and the same is reproduced verbatim as under:

“(e) Re-Constitution of the Stakeholders Consultation Committee of Creditors under existing Section 31A of the IBBI(Liquidation Process), Regulation 2016 amended w.e.f 16.09.2022:

The SCC Members noted that the Stakeholders’ Consultation Committee of the Corporate Debtor(SCC) was initially formed on 01.09.2022 which inter-alia consists of 1(One) Member Shareholder(which was mandatorily required to be included as the Member of the SCC under the then provisions under Regulation 31A of the IBBI(Liquidation Process) Regulation 2016. The SCC was later amended due to inclusion of 1(one) new operational/government creditor/Commissioner, Commercial Tax, Government of West Bengal as its Member w.e.f 31.10.2022.

Meanwhile, the aforesaid Regulation was amended w.e.f 16.09.2022 by which only creditors were mandatorily required to be appointed as the Members of the SCC of the CD but the SCC was not reconstituted having only the Creditors of the CD as its Member and consequently, Mr. Swapan Kumar Saha, a Shareholder Member appointed as SCC Member as on 01.09.2022 continued as the Member of the SCC of the CD.

The SCC Members also noticed that Mr. Swapan Kumar Saha has never attended the Meetings of SCC personally due to some reasons and instead, always appointed his Advocate as his Authorized Representatives to attend and remain present at the Meetings of the CD.

Accordingly, the SCC Members, unanimously resolved to reconstitute the Stakeholders consultation Committee, with only the Creditors of the CD as its Members(as mandatorily required to be the Members in accordance with the existing Regulation 31A of the IBBI(Liquidation Process) Regulation 2016 which was amended on 16.09.2022) as follows with immediate effect:

PARTICULARS OF RE-CONSTITUTION OF THE STAKEHOLDERS CONSULTATION COMMITTEE OF P K S LIMITED-THE CORPORATE DEBTOR(CIN: U63090WB1982PLC035099), NOW UNDER LIQUIDATION, IN TERMS OF THE EXISTING REGULATION 31A OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA(LIQUIDATION PROCESS) REGULATION 2016 AS AMENDED AS ON 19.08.2025

SI NO	Name of Stakeholder	Class of Stakeholder	Remarks
1.	Union Bank of India	Secured Financial Creditor	Representing Admitted Claim of Rs. 405,27,17,162 .08

2.	State Bank of India	Secured Financial Creditor	Representing Admitted Claim of Rs. 364,23,15,667 .85
3.	Punjab National Bank	Secured Financial Creditor	Representing Admitted Claim of Rs. 249,98,37,857 .66
4.	State Trading Corporation of India Limited	Secured Financial Creditor	Representing Admitted Claim of Rs. 146,07,33,903 .00
5.	The Commissioner of Customs(Exports)	Operational Creditor/Government	Representing Admitted Claim of Rs. 1,35,30,438.00
6.	The Employees Provident Fund Organization	Operational Creditor/Government	Representing Admitted claim of Rs. 4,352.00
7.	Commissioner, Commercial Taxes, Government of West Bengal, Kolkata	Operational Creditor/Government	Representing Admitted Claim of Rs. 5,55,59,159.35

26. The second proviso to sub regulation(11) of Regulation 31A of IBBI(Liquidation Process) Regulation 2016 as discussed above mandate the Liquidator to reconstitute the Consultation Committee within thirty days from the date of coming into force of Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022. This amendment had already come into force on 16.09.2022. The reconstitution took place in the year 2025 with delay. The plea of the applicant that the SCC was already constituted on September 1, 2022 and the subsequent amendment cannot be applied retrospectively to disturb the Petitioner's existing membership is devoid of merits.
27. The resolution adopted during the 12th Meeting of the Stakeholders Consultation Committee (SCC) held on August 19, 2025 whereby the Petitioner is removed from the SCC is as per law.
28. In terms of the above, this I.A.(I.B.C)No.1808/KB/2025 in C.P.(I.B) No. 980/KB/2018 is **dismissed**.

29. 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. File be consigned to records.

Rekha Kantilal Shah
Member (Technical)

Labh Singh
Member (Judicial)

SRIDHAR R(LRA)