NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1

C.P. (IB)/159(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **10.07.2026**

NAME OF THE PARTIES**:** **Adamji Investments Private Limited**

V/s

M Cons Media Marketing Private Limited

Under Section 7 of the IBC

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

//Sumant//

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/159/MB/2025

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

Adamji Investments Private Limited

[CIN No. U65990MH1983PTC029038]

91/C, Grand Paradi Apartments,

baddy Seth Hill Road, August Kranti Marg,

Mumbai - 400 036

…Financial Creditor

V/s

M Cons Media Marketing Private Limited

[CIN No. U22300MH2008PTC186218]

Plot No. 42, Cambatta Building,

East Wing, Jamshedji Tata Road,

Churchgate, Mumbai- 400 020

...Corporate Debtor

Pronounced: 10.07.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv Mr.Rohan Agarwal a/w Adv. Mr. Sankalp Anantwar and Adv. Mr. Ronak Mistry i/b SMA Law.

For Respondent: None Present

ORDER

[PER: CORAM]

1. BACKGROUND

1.1. C.P. (IB) No.159/MB/2025 (Application) was filed on 29.08.2024 by Adamji Investments Private Limited, the Financial Creditor (FC), having CIN No.: U65990MH1983PTC029038 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of M/s M Cons Media Marketing Private Limited, the Corporate Debtor having CIN No. U22300MH2008PTC186218

1.2. This Application has been affirmed by one Mr. Rajendra Bajrang Shinde, authorised representative of the Applicant vide resolution passed on Board Meeting dated 13.08.2024.

1.3. As per Part IV of the Application, the amount claimed to be in default is Rs.11,73,69,955/- (Rupees Eleven Crore Seventy-Three Lakhs Sixty-Nine Thousand Nine Hundred Fifty-Five Only).

1.4. The date of default is stated as 26.02.2020

1.5. The Applicant has proposed the name of Mr.Vimal Kumar Agarwal , an Insolvency Professional , having Registration No.IBBI/IPA-001/IP-P00741/2017-2018/11247, to act as the Interim Resolution Professional (IRP) (having valid Authorisation for Assignment up to 31.12.2026) (as per IBBI site), in case the Application is Admitted.

2. CONTENTIONS OF APPLICANT (FC)

2.1. It is stated that the Financial Creditor has a long-standing relationship with the Corporate Debtor and had various transactions after the incorporation of the Corporate Debtor.

2.2. Since the Financial Creditor had a good relationship with the Corporate Debtor, the Financial Creditor advanced monies to the Corporate Debtor from time to time as per the needs and requirements of the Corporate Debtor

2.3. The Corporate Debtor in and around February, 2014 approached the Financial Creditor for financial assistance

2.4. It is stated that the amount of Rs. 5,00,00,000/- (Rupees Five Crore Only) was requested by the Corporate Debtor for funding of various projects, which were ongoing at the time or undertaken by the Corporate Debtor. However, the Financial Creditor agreed to provide financial assistance to the extent of Rs. 3,00,00,000/- (Rupees Three Crores Only).

2.5. The Financial Creditor and the Corporate Debtor entered into a Memorandum of Understanding dated 27.02.2014 (referred as“said MoU”

)with a primary objective to provide financial assistance to the Corporate Debtor.

2.6. The Financial Creditor had earlier provided Financial Assistance to the Corporate Debtor from time to time at its request.

2.7. The Corporate Debtor promised to repay any amounts which the Financial Creditor had provided as financial assistance along with interest on the principal amount @24% p.a. with monthly rest from the dates on which the amounts were provided by the Financial Creditor to the Corporate Debtor as per the terms of the said MoU.

2.8. As per the understanding between the parties and as per the terms of the said MoU, it was agreed that the Corporate Debtor can request assistance to the extent of Rs. 3,00,00,000/- (Rupees Three Crores Only) and repay the amount provided by the Financial Creditor from time to time within a period of 6 Years from the date of the said MoU, i.e., till 26.02.2020.

2.9. Thereafter, it was agreed between the parties that the Corporate Debtor as per needs and requirements of its Business shall request and utilize the amount to the extent of Rs.3,00,00,000 / - (Rupees Three Crores Only) provided by the Financial Creditor from time to time.

2.10. By way of the said MoU, the Corporate Debtor also accepted and confirmed that the balance amount of Rs.23,00,000 /- (Rupees Twenty-Three Lakhs Only) which was due and payable by the Corporate Debtor to the,) Financial Creditor at the time of execution of the said MoU, shall also form part of Rs. 3 Crore as specified in the said MoU and interest applicable on the balance amount from date of disbursement shall be as per the terms of the said MoU and that the balance amount shall be repaid by the Corporate Debtor to the Financial Creditor as per the terms and conditions agreed between the parties in the said MoU.

2.11. Thereafter, the Corporate Debtor agreed and confirmed that failure to adhere to the timelines which were specified in the said MoU shall be construed as breach of contract.

2.12. Additionally, the Corporate Debtor agreed and confirmed that upon the expiry of the said MoU, the entire outstanding amounts shall become due along with interest as per the terms and conditions of the said MoU and the Corporate Debtor shall be liable to forthwith pay the entire outstanding amount along with the interest to the Financial Creditor as per the terms and conditions as more particularly agreed between the parties under the said MoU.

2.13. A total amount of Rs.2,33,49,942/- (Rupees Two Crore Thirty-Three Lakhs Forty-Nine Thousand Nine Hundred Forty-Two Only) was provided by the Financial Creditor to the Corporate Debtor under the said MoU which also included an amount of Rs.23,00,000 disbursed to the Corporate Debtor prior to the execution of the said MoU and as per the terms of the MoU forms part of the amount mentioned In the said MoU.

2.14. The Corporate Debtor from time to time assured the Financial Creditor that the amounts would be paid as per the terms of the said MoU. As per the said MoU, the Corporate Debtor agreed to pay interest@ 24% p.a. with monthly rest from the dates on which the amounts were provided by the Financial Creditor till payment and/or realization.

2.15. The Corporate Debtor in due admissions of its liability has from time to time signed and issued the balance confirmations dated 26.04.2015, 15.04.2016,20.05.2017, 02.06.2019, 12.05.2018, 11.06.2020, 05.06.2021,15.06.2022 and 11.07.2023.

2.16. The Corporate Debtor despite admitting its liability by issuing balance confirmation letters from time to time, failed to pay the outstanding amount due and payable to the Financial creditor.

2.17. Further the amount claimed to be in default is Rs. Rs.11,73,69,955/- (Rupees Eleven Crores Seventy-Three Lakhs Sixty-Nine Thousand Nine Hundred and Fifty-Five Only) which included principal outstanding amount of Rs.2,18,32,642/- (Rupees Two Crore Eighteen Lakh Thirty-Two Thousand Six Hundred Forty-Two Only) and interest amount of Rs. 9,55,37,313/- (Rupees Nine Crores Fifty-Five Lakhs Thirty-Seven Thousand Three Hundred and Thirteen Only) @ 24% p.a. with monthly rest as on 31st July, 2024.

2.18. The Applicant has attached the following documents along with the Application and /or additional affidavit.

a) Copy of the master data of the Corporate Debtor
b) Copy of the certificate of incorporation of the Financial Creditor
c) Copy of the table of the amounts disbursed to the Corporate Debtor from time to time along with the disbursement
d) Original written communication issued by the proposed Interim Resolution Professional

e) Copy of Form 1A and acknowledgement proving service of copy of the present application for initiation of CIRP to the IBBI

f) Copy of the interest calculation sheet

g) Copy of the Memorandum of Understanding (MoU) dated. 27th February, 2014

h) Copy of Record of Financial Information (Form C) and Record of Default (Form D) as made available by the Information Utility, NeSL.

i) Copy of the Ledger Statements of the Corporate Debtor maintained by the | Financial Creditor

j) Copy of the Bank Statements of the Financial Creditor reflecting the entries of the amounts provided to the Corporate Debtor

k) Copies of the Balance Confirmation letter dated 26.04.2015,15.04.2016,20.05.2017,12.05.2018,02.06.2019,11.06.2020,05.06.2021,15.06.2022,11.07.2023 issued by the Corporate Debtor

l) Copy of the Balance Sheets of the Financial Creditor for FY 2016-2017,2020-2021,2021-2022,2022-2023.

3. **ADDITIONAL AFFIDAVIT (FC) dated 06.06.2025**

3.1. At the hearing held on 09.05.2025, this Tribunal observed that there were common directors between the Applicant and Respondent till 2021 i.e. the period during which loans were contracted and disbursements were made.

3.2. Further the Applicant was directed to file disclosure of relationship of the Directors of the Applicant Company with the Respondents clearly stating whether they were ever Directors/shareholders of the Respondent Company and their relationship with present directors of the Respondent.

3.3. This Tribunal also directed the Applicant to explain why no interest was charged on the Transaction as payments received by Applicant were only appropriated toward principal as observed on perusal of the ledger account. Further it was directed to submit TDS certificate if any to substantiate Claim of interest.

3.4. This Tribunal also granted liberty to file income tax return and financial statement for the period of last 5 years through this additional Affidavit.

3.5. Additional Affidavit dated 06.06.2025 was filed by the Applicant through Mr Rajendra Bajrang Shinde , who is an authorized signatory of the Applicant.

3.6. It is stated that since the interest amount was neither received nor booked by the Applicant/Financial Creditor, there is no disclosure of the interest amount in income tax returns. Further, as per Clause 13 of the said MoU, the entire outstanding amount shall become due along with interest upon expiry of the said MoU. Therefore, no interest payment was done by the Corporate Debtor nor any TDS was deposited by them and hence no TDS certificate is available in this regard.

3.7. . If the interest was booked without receiving any amount towards interest from the Corporate Debtor, the Applicant/Financial Creditor would have been under an obligation to pay income tax on the amount not received towards interest. The Corporate Debtor also did not provide any TDS on the interest amount payable by them. However, the Corporate Debtor has from time to time confirmed the principal amount and the interest amount through various balance confirmation letters which are annexed to the above Petition. If the interest is not booked at the relevant time, it does not preclude the Applicant/Financial Creditor from charging interest and claiming interest, as per the terms and conditions of the said MoU.

3.8. In Fact, as per the terms and conditions of the said MoU, the entire outstanding along with interest is due upon expiry of the said MoU. There exists a clear and binding mutual understanding between the Applicant/Financial Creditor and the Corporate Debtor as per the said MoU, wherein the Corporate Debtor had agreed payment of the outstanding amount along with interest within a period of 6 years under the said MoU. Moreover, in accordance with the terms and conditions set out in the said MoU, the Corporate Debtor unequivocally acknowledged and agreed to pay interest on the outstanding amount at the rate of 24% per annum. This obligation was subsequently reaffirmed through various balance confirmation letters and correspondences issued by the Corporate Debtor over a period of time, wherein the Corporate Debtor explicitly confirmed both the principal outstanding and the agreed rate of interest. Hence, the liability of the Corporate Debtor towards the Applicant/Financial Creditor is not only contractual but also consistently acknowledged by the Corporate Debtor in writing. I say that in terms of the understanding between the parties under the said MoU, the Applicant/Financial Creditor has claimed interest @ 24% p.a. on the amount due and payable by the Corporate Debtor under the said MoU. Therefore, it is clear that the financial assistance provided by the Applicant/Financial Creditor was payable along with interest as per the terms and conditions of the said MoU and therefore, it cannot be said that no interest was payable on the amounts provided by the Applicant/Financial Creditor and is a financial debt as per provisions of the Insolvency and Bankruptcy Code, 2016

3.9. Further it is stated that the directors of the Applicant/Financial Creditor, i.e., Durriya Zuzar Kathawala was a Director of the Corporate Debtor from 27.12.2010 till 13.08.2021. Further, Zuzar Ahmedally Kathawala, husband of Durriya Zuzar Kathawala was also a director of the Corporate Debtor from 27.08.2008 till 13.08.2021. Both of them resigned from directorship of the Corporate Debtor as there were differences between them and the promoter/Managing Director of the Corporate Debtor and therefore, decided to part ways and resigned from the directorship of the Corporate Debtor. Thereafter, there has been no contact either with the promoter/Managing Director of the Corporate Debtor or the Corporate Debtor. Further, apart from being the ex-director and minority shareholder of the Corporate Debtor, Durriya Zuzar Kathawala and Zuzar Ahmedally Kathawala are in no manner related to the Director/ promoters of the Corporate Debtor. Copies of the Form No. DIR-11 (Notice of resignation of a director to the Registrar) filed by Durriya Zuzar Kathawala and Zuzar Ahmedally Kathawala along with their respective resignation letters and resignation emails are attached as Annexure 3 and 4 to the Additional Affidavit.

3.10. Further it is stated that Durriya Zuzar Kathawala is still a minority shareholder of the Corporate Debtor and holds 11% shareholding, i.e., 1100 shares in the Corporate Debtor Company. Further, Zuzar Ahmedally Kathawala, husband of Durriya Zuzar Kathawala is also a minority shareholder of the Corporate Debtor and holds 10% shareholding, i.e., 1000 shares in the Corporate Debtor Company. The same is clear from the shareholding in the Balance Sheet of the Corporate Debtor produced by the Applicant/Financial Creditor at Pago.195 of the Petition. Copy of the shareholding pattern provided in the Memorandum of Association of the Corporate Debtor is hereto annexed and marked as **Annexure: 5**

3.11. The Applicant/Financial Creditor or its directors have no connection with the Corporate Debtor or its Promoter/Managing Director or its other shareholders. The Corporate Debtor has not been doing business for a long time and after resignation of the directors of the Applicant/Financial Creditor from the Corporate Debtor Company on 13.08.2021, there has been no contact or relationship with Corporate Debtor in any manner except the fact that the Applicant/Financial Creditor had to recover huge amounts from the Corporate Debtor under the said MoU.

3.12. Further the Applicant states that it had already placed on record the Audited Balance Sheets for the financial years 2020-21, 2021-22, 2022-23 (Exhibits: U, V and W to the Company Petition) duly signed by the Auditor of the Applicant/Financial Creditor.

3.13. Further the Applicant/Financial Creditor has placed on record the Audited Balance Sheets for the financial years 2019-20 and 2023-24. Copies of Audited Balance sheet for the FY 2019-20 and 2023-24 duly signed by the

Auditor of the Applicant/Financial Creditor are annexed and marked as **Annexures: "1" and "2"** respectively .

4. **ADDITIONAL AFFIDAVIT (FC) dated 22.09.2025**

4.1. At the hearing held on 01.09.2025, the Applicant undertook to submit Form STK5/STK 7.This Tribunal also directed the Applicant to satisfy this tribunal regarding Applicability of interest on these loans and sought clarification on the balance sheet as on 31.03.2024 of the Applicant filed along with the Additional Affidavit qua the disclosure of the debt granted to the Corporate Debtor.

4.2. The Applicant/Financial Creditor vide this Additional Affidavit has placed on record the Form STK - 5, being a public notice dated 20th December, 2021 issued by the RoC proposing striking off certain companies. The Corporate Debtor, "M'cons Media Marketing Private Limited", appears at Serial No. 3671 in the Table enclosed with Form STK - 5 Notice. Copy of the Form STK - 5 along with the relevant page of the table where the name of the Corporate Debtor is reflected downloaded from the official website of MCA is annexed and marked as **Annexure: "1"** to the Additional Affidavit**.**

4.3. Further the Applicant has produced Form STK - 7, being a public notice dated 7th April, 2022 published in the Official Gazette by the RoC, evidencing the striking off of the Corporate Debtor under the Companies Act, 2013. It is stated that the Corporate Debtor Company, "M'cons Media Marketing Private Limited", appears at Serial No. 1954 in Annexure - "A" of the Form STK - 7 and was struck off by the RoC on 31st March, 2022. Copy of the Form STK -7 along with the relevant page of the annexure downloaded from the official website of MCA is annexed and marked as **Annexure: "2"** to the Additional Affidavit.

4.4. It is stated that for confirmation of amounts disbursed to the Corporate Debtor and amounts received from the Corporate Debtor, the Applicant has placed on record a Certificate issued by the Chartered Accountant certifying the amounts disbursed to the Corporate Debtor and amounts received from the Corporate Debtor. Copy of the Certificate dated 19.09.2025 issued by the Chartered Accountant certifying the disbursements made to the Corporate Debtor and amounts received from the Corporate Debtor is annexed and marked as **Annexure: "5"**

4.5. Further the Applicant has produced Bank Statement of Punjab National Bank for the period from 14th May, 2010 to 20th November, 2020 and Summary in the form of a table of the Disbursed amounts , which contains the dates, amounts and page numbers of the Company Petition and the present Additional Affidavit. The Same are **Annexed as Annexure 3 and Annexure 4** of the Additional Affidavit.

5. **ADDITIONAL AFFIDAVIT (FC) dated 12.02.2026**

5.1. This Tribunal vide order dated 01.09.2025 sought clarification on the balance sheet as on 31.03.2024 of the Applicant filed along with the Additional Affidavit qua the disclosure of the debt granted to the Corporate Debtor. Again on 03.02.2026 the Tribunal sough clarification on the same issue.

5.2. the Applicant states that Certificate issued by the Chartered Accountant certifying the amount due and payable by the Corporate Debtor, was issued after examination of the books of account, and records of the Applicant/Financial Creditor for the Financial Year 2023-2024. A copy of Certificate dated 11.02.2026 issued by the Chartered Accountant certifying the amount due and payable by the Corporate Debtor as on 31st March, 2024 against the loan granted to the Corporate Debtor is annexed and marked as **Annexure 1.**

5.3. Further, it stated that the Certificate certifies that the Loans and Advances granted by the Applicant are duly reflected in the Balance Sheet as on 31st March, 2024 under the sub-group “Short-Term Loans and Advances to Body Corporates” appearing at Note 12 (Page No. 42 of the Additional Affidavit dated 6th June, 2025), and that the aggregate amount disclosed thereunder is Rs.8,06,20,514.60/- (Rupees Eight Crore Six Lakhs Twenty Thousand Five Hundred Fourteen and Sixty Paise Only). The amount disclosed against “Short-Term Loans and Advances to Body Corporates" in Note 12 of the Balance Sheet as on 31st March, 2024 represents loans and advances extended by the Applicant/Financial Creditor to various entities including the Corporate Debtor

5.4. It is stated that the said Certificate also certifies that an amount of Rs.2,18,32,642/- (Rupees Two Crore Eighteen Lakh Thirty-Two Thousand Six Hundred and Forty-Two Only) due and payable by the Corporate Debtor to the Applicant/Financial Creditor forms part of the total amount disclosed under “Loans and Advances to Body Corporates” in Note 12 of the Balance Sheet as on 31st March, 2024.

6. REPLY BY CORPORATE DEBTOR

6.1. Notice was issued to the Corporate Debtor by this Tribunal vide order dated 10.02.2025.The same was not served to the Corporate Debtor. However, the Ld. Counsel for the Applicant sought one more opportunity to serve the Notice and Hard Copy of the Application to the Corporate Debtor. Hence a fresh notice was issued vide order dated 07.03.2025

6.2. The Applicant vide Affidavit of Service stated that they have served the Petition to the Respondent and its Directors through speed post as well as through email. Further it is observed that the notice was sent on 13.03.2025 and was delivered to the Director on 15.03.2025 and to the Respondent on 17.03.2025. Further the email service was made on 13.03.2025.

6.3. On repeated calls the Corporate Debtor never appeared and hence the Respondent was set ex parte vide order dated 21.04.2025

6.4. Further on hearing held on 14.07.2025 one Mrs Ameya Wadkar appeared before this Tribunal. The Ld. Counsel for the Respondent handed over the Vakalatnama signed by one Mr. Manoj Vasudev Pardasany and Mrs. Deepa Manoj Pardasanay.

6.5. The Ld. Counsel for the Respondent submits copy of Master data of the Corporate Debtor and states that name of CD was struck off by the ROC. However, he was not able to provide the exact date on which the CD was struck off by the ROC.

6.6. Thereafter the Ld. Counsel for the Respondent never Appeared before this Tribunal and did not contest the order dated 21.04.2025 wherein the Respondent was set Ex-parte.

6.7. Hence the Respondent was set Ex Parte.

7. **WRITTEN SUBMISSIONS BY APPLICANT**

7.1. The Applicant has relied on the Following judgement.

a. Hemang Phophalia Vs. The Greater Bombay Co-operative Bank Ltd. and Anr. [2019 SCC OnLine NCLAT 1220]
b. Elektrans Shipping Pte. Ltd. Vs. Pierre D'Silva & Anr. [2019 SCC OnLine NCLAT 1169]
c. Deepika Surana Vs. V.K. Aggarwal & Company Pvt. Ltd. [2022 SCC OnLine NCLT 195]
d. A.B. Creations & Anr. v. Bhan Textiles Pvt. Ltd. (2024 SCC Online Del 6981)
e. Ravinder Kumar Aggarwal v.Income tax Officer (2023 451 ITR 100)
f. Commissioner of Income-Tax Vs. Gopal Shri Scrips Pvt. Ltd. (2020 7 SCC 654)

7.2. Further at the hearing dated 18.03.2026 this Tribunal directed applicant to go through the judgement of Hon'ble Supreme Court in Pr. Commissioner of Income Tax vs Maruti Suzuki India Limited civil Appeal no. 5409 of 2019 which was decided on 25.07.2019 . The Applicant made the following submission as regards the said judgement

a. Amalgamation and Strike off are different concept. After amalgamation company ceases to exists however after strike off the company continue to exist for the purpose of realization of amount dues / discharging its liabilities as per section 250 of the companies act.

b. Section 248(8) gives power to the Tribunal to proceed a struck off company for its winding up. As per Section 2(94-A) of companies Act 2013 defines winding up to include liquidation under IBC.

c. In the Maruti Suzuki judgement the notice was issued to a non-existing entity hence the entire proceedings were held invalid. However, under Section 7 of the IBC, the Financial Creditor files an application before the NCLT. The NCLT's jurisdiction is not triggered by any notice issued to the Corporate Debtor. The Jurisdiction is triggered by the filing of the application before the Adjudicating Authority. It is not dependent on issuance of notice to the Corporate Debtor. Therefore, the ratio of "notice to a non-existent entity" is inapplicable to the present case.

d. In the Maruti Suzuki Judgment, SPIL was completely absorbed into MSIL. It had no officers, no board, and no capacity to perform any act in law. However, in the present case, the Director/Share Holders of the Corporate Debtor appeared through its advocates on 14th July, 2025 and 7th August, 2025, filed a Vakalatnama, and made submissions. A company or its shareholders that appear, instruct counsel and makes submissions before the Court cannot be treated as non-existent, more so, when the existence of a struck off company is preserved by operation of law though for limited purposes.

8. ANALYSIS AND FINDINGS

8.1. We have carefully perused the documents placed on record and have heard the learned counsel appearing for the Applicant.

8.2. On bare perusal of Section 6 of the Insolvency and Bankruptcy Code, 2016 it is observed that a Corporate Insolvency Resolution Process can only be initiated against a Corporate Debtor on an Application filed by a FC, OC or by the CD itself. Further the term "corporate debtor" is defined under section 3(8) of the IBC as a corporate person who owes a debt to any person, while Section 3(7) defines a "corporate person" as a company (as defined under section 2(20) of the Companies Act 2013), a limited liability partnership (as defined under section 2(1)(n) of LLP Act 2008), or any other person incorporated with limited liability, but excludes a financial service provider.

8.3. Section 2(20) of the Companies Act, 2013 records the definition of the term 'Company' as under:

> *"(20) "company" means a company incorporated under this Act or under any previous company law;"*

8.4. It is important to look at the provisions of Section 248, Section 250 and Section 252 of the Companies Act 2013, which are reproduced here under.

"Section 248 : Power of Registrar to remove name of Company from register of companies

(1) Where the Registrar has reasonable cause to believe that—

(a) a company has failed to commence its business within one year of its incorporation; [or]

> * * * * *
> *(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under [3][section 455; or]*
>
> *(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or*
>
> *(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.]*

(2) Without prejudice to the provisions of sub-section (1), a company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

> *Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.*

(3) Nothing in sub-section (2) shall apply to a company registered under section 8.

(4) A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.

(5) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, <u>the company shall stand dissolved</u>.

(6) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, <u>obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:</u>

> *Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.*

(7) The liability, if any, of every director, manager or other officer who was exercising any <u>power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.</u>

(8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies."

"Section 250. Effect of Company notifies as dissolved

Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company."

"Section 252. Appeal to Tribunal.

(1) Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies:

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned:

Provided further that if the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.

(2) A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within thirty days from the date of the order and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation.

(3) If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies."

8.5. As per Section 248(4) of the Companies Act, the Registrar is required to publish the notice, issued under Section 248(1) and (2) of the Act, in the prescribed manner in the Official Gazette for the information of the general public and as per Section 248(5) of the Act, the Registrar, until some cause is shown to the contrary, after the expiry of time mentioned in the notice, strike off the name of the company from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of the notice, the company shall stand dissolved.

8.6. The effect of Section 248 is prescribed in Section 250 of the Act which states that the dissolved Company shall on and from the date mentioned in the notice issued under Section 248(5), cease to operate as a company and the certificate of incorporation issued to it shall be deemed to be cancelled from such date. However, there is an exception which provides for the realisation of the amount either due to the company and for the payment or discharge of the liabilities or obligation of the Company.

8.7. It is noted that in the present application the Registrar of Companies issued Form No. STK–5 on 20.12.2021. Subsequently, Form No. STK–7 under Section 248(5) of the Companies Act, 2013, read with Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, was issued on 07.04.2022 wherein at Serial No.1954 the name of the Corporate Debtor appears, evidencing that the Corporate Debtor stood struck off and consequently dissolved.

8.8. In such circumstances, this Tribunal is of the considered view that once the certificate of incorporation of the company is cancelled by operation of Section 250, the entity ceases to remain a corporate person within the meaning of Section 3(7) of the Code. Thus, continuance of the status of a “corporate person” is foundational to the initiation of CIRP under the Code. Resultantly, an application for initiation of CIRP against a struck-off company is not maintainable in law.

8.9. At this stage, this Tribunal is guided by the proposition laid down by the Hon’ble NCLAT in ***Fedex Express Transportation and Supply Chain Services (India) Pvt. Ltd. v. Zipker Online Services Pvt. Ltd. (2024) ibclaw.in 326 NCLAT***. In the said matter, an appeal was preferred by the Operational Creditor against the order of the Ld. NCLT, New Delhi Bench, which had held that the Corporate Insolvency Resolution Process (CIRP) cannot be initiated against a company whose name has already been struck off by the Registrar of Companies (RoC). In affirming the view of the Adjudicating Authority, the Hon’ble NCLAT observed that CIRP can only be initiated against a 'Corporate Debtor', which is defined as a corporate person who owes a debt. A 'corporate person' must be a company as defined under Section 2(20) of the Companies Act, 2013, i.e., a company incorporated under the said Act or any previous company law. The process of incorporation effectively stands terminated upon the publication of the notice under Section 248(5) of the Act, whereupon the company ceases to operate in terms of Section 250.Furthermore, the Hon'ble NCLAT held that the earlier judgments in ***Hemang Phophalia v. The Greater Bombay Co-operative Bank Ltd. & Anr. [2019 SCC OnLine NCLAT 1220]*** and ***Elektrans Shipping Pte.***

Ltd. v. Pierre D'Silva & Anr. [2019 SCC OnLine NCLAT 1169] were *per incuriam*. The Relevent para of the said judgement are extracted herein below;

> *46. From the reproduction of the various provisions of the Act and the Code as well as narration of the said provisions in context of its applicability, we have tried to highlight that CIRP can be initiated only against a corporate debtor which may be either by the financial creditor, operational creditor or the corporate debtor itself. The corporate debtor, defined under Section 3(8) of the Code, means a corporate person who owes a debt to any person. The corporate person is defined under Section 3(7) to mean a company as defined in clause 20 of Section 2 of the Act. The Company is defined under Section 2(20) of the Act, a company which is incorporated under the Act or under any previous company law. The incorporation of company is provided in Section 7 of the Act much less in Section 7(2) of the Act when the Registrar register all the documents and information filed in terms of Section 7(1) and issue a certificate of incorporation in the prescribed manner and further also allot to the company a corporate identity number. The incorporation of the company comes to an end with the publication of notice by the Registrar in terms of Section 248(5) of the Act and the effect of the company so dissolved under Section 248(5) of the Act is in Section 250 of the Act as per which the company cease to operate as a company and the certificate of incorporation issued to it is deemed to be cancelled from the such date. Section 252(1) is a right of appeal to any person who is aggrieved against the order of RoC passed under Section 248 of the Act with a caveat of*

limitation of three years and Section 252(3) is right of appeal to a company or any member or creditor or workmen with a caveat of filing the appeal within a period of 20 years from the date of publication under Section 248(5) of the Act subject to the condition that it shall satisfy the Adjudicating Authority (NCLT) that the company was, at the time of its name was struck off, carrying on business or was in operation or otherwise it is just that the name of the company be restored to the register of the RoC.

47.These are the factual aspects which have to be pleaded and proved before the Adjudicating Authority in an appeal filed under Section 252(3) and nothing is automatic that as soon as an application is filed under Section 7 or 9 by a creditor (financial creditor or operational creditor), the order of the Registrar passed under Section 248(5) is set aside and the name of the company is restored to the register of the RoC.

48. Having said that, we have two decisions of this Court passed one after the other i.e. on 05.09.2019 and 06.09.2019 by three members bench in which it has been held that even if the name of the company has been struck off, the application under Section 7 or 9 of the Code for initiation of CIRP is maintainable.

49. In the first case, namely, Hemang Phophalia (Supra), the Greater Bombay Co-operative Bank Limited filed an application under Section 7 of the Code against the Corporate Debtor for resolution of an amount of Rs.9,11,08,439.37/- with interest. The said application was admitted on

12.06.2019 and the order of admission was challenged by Hemang Phophalia, ex-director and shareholder of the CD. On whose behalf it is argued that since the name of the CD was struck off from the register of RoC under Section 248 of the Act, therefore, the application under Section 7 against a non-existent company is not maintainable. It was also argued by the Appellant in that case that the CD has become non-functional from last many years and there is no employee working in company and even assets are not there, therefore, the RP cannot make the CD a going concern. In the said case, this Court after framing the question in para 6, referred to Section 248 of the Act and concluded in para 12 that "from sub-section 8 of Section 248, it is clear that Section 248 in no manner will affect the power of the Tribunal to wind up a company, the name of which has been struck off from the register of Companies." Thereafter, reference has been made to Section 250 and 252 of the Act. Though, it is observed that "Instead of liquidation, the first step to be taken is to ensure that in a time bound manner the value of assets of Corporate Debtor/ Company is maximized and to promote entrepreneurship, availability of credit by balancing the interest of all the stakeholders; within an active legal framework for timely resolution of insolvency and bankruptcy. Liquidation of assets of the 'Corporate Debtor'/ Company is not the object, but object is revival and rehabilitation of the 'Corporate Debtor'/ Company by way of 'Resolution' and maximization of the value of assets of the 'Corporate Debtor' and balancing the interest of all the stakeholders." Yet it has been held that

"In such a case and in view of the provisions of Section 250 (3) read with Section 248 (7) and (8), we hold that the application under Sections 7 and 9 will be maintainable against the 'Corporate Debtor', even if the name of a 'Corporate Debtor' has been struckoff." Finally, it has been held that if the application under Section 7 or 9 of the Code is filed then the name of the company which is struck off from the register of RoC is deemed to be restored in terms of Section 252(3) and in this regard a finding has been recorded in para 23 which is reproduced as under:

> *"23. In view of the aforesaid provision, we hold that the Adjudicating Authority who is also the Tribunal is empowered to restore the name of the Company and all other persons in their respective position for the purpose of initiation of 'Corporate Insolvency Resolution Process' under Sections 7 and 9 of the I&B Code based on the application, if filed by the 'Creditor' ('Financial Creditor' or 'Operational Creditor') or workman within twenty years from the date the name of the Company is struck off under sub-section(5) of Section 248. In the present case, application under Section 7 having admitted, the 'Corporate Debtor' and its Directors, Officers, etc. deemed to have been restored in terms of Section 252(3) of the Companies Act."*

50. In the second case, namely, Elektrans Shipping Pte. Ltd. (Supra) an application was filed under Section 9 by the Pierre D'Silva against Elektrans Shipping Pte. Ltd. which was admitted on 10.04.2019. The Appellant, being a shareholder filed the appeal against the order of *admission. It was submitted on its behalf that the name of the company (CD) was struck off by the RoC in terms of Section 248 of the Act, therefore, the application under Section 9 of the Code was not maintainable. This Court while referring to the provisions of Section 248, 250, 252 and relying upon the decision rendered by it in the case of Hemang (Supra) dismissed the appeal.*

51. The aforesaid two decisions are on the same issue on which the present appeal has been filed as to whether the application filed under Section 9 of the Code for initiation of CIRP, is maintainable against the CD if the name of the CD has been struck off from the register of RoC?

52. After taking into consideration the various provisions of the Act, mentioned and reproduced hereinabove and the provisions of the Code also referred to in the earlier part of this order, we are of the considered opinion that the judgments relied upon by the Appellant in the case of Hemang (Supra) and Elektrans (Supra) are not laying down the correct law and are per incuriam.

53. The reason for expressing this opinion by this three-member bench is that the Hon'ble Benches in the aforesaid two cases have not referred to various provisions of the Code as well as the Act and has not even appreciated as to who would be the Corporate Debtor, for the purposes of initiation of CIRP, on an application either filed under Section 7 or 9 of the Code.

56.………………………………………………………………………………

………………………..it has been repeatedly held by the Hon'ble Supreme Court that the Code is not a debt recovery mechanism but a mechanism for revival of a company fallen in debt. It has been held that the Code is a beneficial legislation intended to put the corporate debtor back on its feet and is not a mere money recovery legislation. The CIRP is not intended to be adversarial to the CD but is aimed at protecting the interests of the CD. Theprimary focus of the legislation is thus to ensure the revival and continuation of the CD by protecting the CD from its own management and from a corporate death by liquidation. The preamble of the Code speaks of maximisation of value of assets of the CD and balancing the interests of all the stakeholders with an object to keep the CD as a going concern.

57. Thus, in our humble opinion, the Hon'ble Benches, while delivering the aforesaid two judgments relied upon by the Appellant, have not appreciated the provisions of the Code and the Act in its true sense that it shall apply only to the CD which means a company duly incorporated and shall not apply to a company which cease to exist in terms of Section 248(5) and 250 of the Act and is thus no more a Corporate Debtor.

58. Even if a right of recovery is provided from the asset of the company under Section 248(6) or from the director etc. under Section 248(7) or even as per the exception in Section 250, the application under Section 7 or 9 shall still not be maintainable because it would lead to another form *of recovery which shall be on the basis of the provisions of the winding up.*

59. Thus, in our considered opinion, the finding recorded in para 21 of the judgment in the case of Hemang (Supra) is not correct and is per incuriam. It is held by the Hon'ble Supreme Court in the case of Government of A.P. and Anr. Vs. B. Satyanarayna Rao by LRs. And ors. (2000) 4 SCC 262 that "the rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue".

60. Last but not the least, Section 252(3) travels into an altogether different direction rather than the way it has been observed in the case of Hemang (Supra) because Section 252(3) gives a right of appeal to a company, member, director or workmen to challenge the order of the Registrar passed under Section 248 (5) on the three grounds, namely, while its name was struck off it was carrying on business, or was in operation or otherwise it is just which has to be established by pleadings and evidence before theTribunal and only then the order can be passed which shall again be a subject of an appeal in terms of Section 61 of the Code but in our humble opinion, there is nothing like automatic restoration on the filing of the application under Section 7 or 9 of the Code.

61. Thus, in view of the aforesaid facts and circumstances, we do not find any error in the order of the Adjudicating Authority which requires any *interference by this Court and hence, the appeal is hereby dismissed though without any order as to costs.*

8.10. The Applicant has failed to file any application or tried to seek relief under Section 248(8) or Section 252(3) of the Companies Act, 2013, to restore the Corporate Debtor. Further upon being struck off by the Registrar of Companies, the Corporate Debtor ceased to exist in the eyes of law as per the provisions of Section 248(5) as reiterated above.

8.11. It is further observed, from the Affidavit of Service dated 25.03.2025, that the Applicant has asserted service of court notice upon the Corporate Debtor via speed post, allegedly delivered on 17.03.2025, and upon the Director of the Corporate Debtor on 15.03.2025.In view of the fact the CD has ceased to exist with effect from 07.04.2022, the purported service of notice upon the Corporate Debtor on 17.03.2025 cannot be treated as a valid service. Once the company stands dissolved, service cannot be made upon such a non-existent entity.

8.12. In regard to the above, it is pertinent to mention the Judgement of Hon'ble NCLAT in the matter of **Starlog Enterprises Ltd., v. ICICI Bank Ltd. Company Appeal (AT) (Insolvency) No. 5 of 2017** wherein it was held that principles of natural justice must be adhered to by the Adjudicating Authority in Admitting insolvency Application. It was emphasized that failure to issue notice to the corporate debtor vitiates the proceedings. The relevant extract is reproduced below:-

"7. In the present case admittedly no notice was issues by the adjudicating authority' to the corporate debtor, before admitting the application filed under Section 9 of the I&B Code. For the said reason

the judgement order cannot be upheld having passed in violation of the principle of natural justice………………………………………………………………………

……………………………………………………………………… .

22. In some of the cases, an insolvency resolution process can and may have adverse consequences on the welfare of the company. This makes it imperative for the 'adjudicating authority' to adopt a cautious approach in admitting insolvency applications and also ensuring adherence to the principles of natural justice."

8.13. In the present case, a notice was directed to be issued vide order dated 07.03.2025 at the point of time when this Tribunal was not aware that the Corporate Debtor had been "Struck Off", since the Applicant had failed to disclose this fact in the Application. The Corporate Debtor had been non-existent on the date of notice and hence service on a non-existent person is not a valid service.

8.14. It is further observed that under the Insolvency and Bankruptcy Code, 2016, service upon the Corporate Debtor is contemplated at two stages—firstly, prior to filing of the application in terms of Rule 4(3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, and secondly, pursuant to issuance of notice by the Adjudicating Authority in compliance with the judgement of Hon'ble NCLAT in the starlog matter (Supra).

Sub rule 3 of Rule 4 of the Insolvency and Bankruptcy (Application To Adjudicating Authority Rules) 2016 states that

"4. Application by Financial Creditor

…

[(3) The applicant shall serve a copy of the application to the registered office of the corporate debtor and to the Board, by registered post , before filing with the Adjudicating Authority.]"

In the instant case, both the services are rendered ineffective in view of the fact that the Corporate Debtor was not in existence at the relevant time.

8.15. Further this Tribunal is guided by the judgement by Hon'ble Supreme Court in matter of **Pr. Commissioner of Income Tax vs Maruti Suzuki India Limited Civil Appeal 5409/2019** wherein it was held that issuance of notice to a non-existent entity constitutes a substantive illegality and renders the proceedings void ab initio, and not merely a procedural defect capable of being cured. The relevant extract is reproduced herein;-

"20. In Spice Entertainment, a Division Bench of the Delhi High Court dealt with the question as to whether an assessment in the name of a company which has been amalgamated and has been dissolved is null and void or, whether the framing of an assessment in the name of such company is merely a procedural defect which can be cured. The High Court held that upon a notice under Section 143(2) being addressed, the amalgamated company had brought the fact of the amalgamation to the notice of the assessing officer. Despite this, the assessing officer did not substitute the name of the amalgamated company and proceeded to make an assessment in the name of a non-existent company which renders it void. This, in the view of the High Court, was not merely a procedural defect. Moreover, the participation by the amalgamated company would have no effect since there could be no estoppel against law :

"11. After the sanction of the scheme on 11th April, 2004, the Spice ceases to exit w.e.f. 1st July, 2003. Even if Spice had filed the returns, it became incumbent upon the Income tax authorities to substitute the successor in place of the said

„dead person‟. When notice under Section 143 (2) was sent, the appellant/amalgamated company appeared and brought this fact to the knowledge of the AO. He, however, did not substitute the name of the appellant on record. Instead, the Assessing Officer made the assessment in the name of M/s Spice which was non existing entity on that day. In such proceedings an assessment order passed in the name of M/s Spice would clearly be void. Such a defect cannot be treated as procedural defect. Mere participation by the appellant would be of no effect as there is no estoppel against law.
12. Once it is found that assessment is framed in the name of non-existing entity, it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of Section 292B of the Act."

31. ……………….In this case, the notice under Section 143(2) under which jurisdiction was assumed by the assessing officer was issued to a non-existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in Section 292B.

33 In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Enfotainment on 2 November 2017. The decision in Spice Enfotainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Enfotainment."

8.16. In view of the above, the purported service of notice upon the Corporate Debtor on 17.03.2025 cannot be treated as valid service. Once the company stands dissolved, service upon such a non-existent entity is legally not possible. This Tribunal is of the opinion that since notice cannot be served upon a non-existent person and following the principles of natural justice as enshrined by the Hon'ble NCLAT in *Starlog Enterprises Ltd. v. ICICI Bank Ltd and Judgement of Hon'ble Supreme Court in Maruti Suzuki (Supra)* , this Tribunal finds that effective service upon the CD has not been made.

8.17. The arguments, with regard to the Maruti Suzuki (Supra), submitted by the Applicant contained in para 7.2 of this order does not help the case of the Applicant in view of clear findings of Hon'ble NCLAT in the Fedex Express case(supra) wherein it was held that on deletion of the name of the Corporate Debtor from the regiter of Companies , the Company ceases to exist and that the persons aggreived by the order of ROC for deletion of the name of the company have remedies available under section 252(1) and 252(3) of the Companies Act 2013 and that it is not automatic that as soon as application under section 7 or 9 is filed, the order of Registrar is set aside and the name of the company is restored to the Register of Companies. In view of the above, the Hon'ble NCLAT has declared its earlier decisions in the matters *Hemang Phophalia (supra)*and *Elektrans Shipping (supra) as per incuriam.*

8.18. The Applicant has relied upon the following judgments, which in our view do not help its case for the following reasons:-

a. Judgement of Hon'ble NCLAT in *Hemang Phophalia v. The Greater Bombay Cooperative Bank Ltd. [2019 SCC OnLine NCLAT 1220] and Elektrans Shipping Pte. Ltd. Vs. Pierre D'Silva & Anr. [2019 SCC OnLine*

NCLAT 1169] do not apply as the same are held per incuriam by the Judgement of three-member Bench of Hon'ble NCLAT in the matter of Fedex express Transportation and Supply Chain Services (India) Pvt Limited Vs Zipkar Online Services Pvt Ltd (2024) ibclaw.in 326 NCLAT. Further, the Judgement of Ld. NCLT, Delhi Bench, in the matter of Deepika Surana vs V.K.Aggarwal and Co. Pvt Ltd, which was based on judgement in Hemang Phophalia is also not valid.

b. *The Judgement of Hon'ble Delhi High Court in* matter of *A.B. Creations & Anr. v. Bhan Textiles Pvt. Ltd does not come to the rescue of the Applicant as in that particular case it was held that the company even after been struck off remains operational for realisation of dues and recovery of money by the creditor. However, the IBC being a beneficial legislation to revive the Corporate debtor and not a mere recovery forum. The whole purpose of IBC is for resolution and not recovery.*

c. The Judgement of Ravinder Kumar Aggarwal v.Income tax Officer does not apply to the facts of the present case as the Applicant has not approached this Tribunal for restoration of the Company under Section 252 of the Companies Act 2013.

8.19. In view of the legal position enunciated in the Fedex judgment (supra), and considering that the Respondent Company stands dissolved with its Certificate of Incorporation cancelled by operation of Sections 248 and 250 of the Companies Act, 2013, we are of the considered opinion that the Respondent no longer satisfies the definition of a 'Corporate Debtor' under the Insolvency and Bankruptcy Code, 2016 (the Code).

8.20. Further a Corporate Insolvency Resolution Process (CIRP) can only be initiated against a 'Corporate Debtor' under Section 7, 9, or 10 of the Code, as the case may be, however, since the corporate existence of the Respondent has ceased to exist, the present Application is legally untenable and is, therefore, liable to be rejected.

ORDER

In view of the aforesaid findings, this Application bearing C.P. (IB) 159/MB/2025 filed under Section 7 of IBC, 2016, by Adamji Investments Pvt Ltd, the Applicant (FC), for initiating CIRP in respect of M'Cons Media Marketing Pvt Ltd., the Corporate Debtor, is **Rejected**.

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-
SAMEER KAKAR
MEMBER(TECHNICAL)

//Sumant//