NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COURT II

Item No.120

IA 5866/2025 IA 5396/2025 IA 778/2026 IA 818/2026 IA 824/2026 IA 653/2026 Intervention Petition/41/2026 IA 2055/2026 in C.P. (IB)/96(MB)2024

CORAM:

SHRI SANJIV DUTT — **HON'BLE MEMBER (TECHNICAL)**
SHRI ASHISH KALIA — **HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF HEARING (HYBRID) DATED **14.07.2026**

NAME OF THE PARTIES : **Sunstar Industries Through Its Partner Mr. Tarrush Gupta Vs. Syska Led Lights Private Limited**

For Applicant in

IA 2055/2026 : Adv. Pulkit Sharma, Adv. Princi Jaiswal, Adv. Meghna Talwar i/b Dhir & Dhir Associates.

IA 5396/2025 : Adv. Girish B. Kedia, Mr. N D. Pardesi

For Applicant in

IA No. 5866/2025 : Mr. Setu Niket, Adv

For Respondent in
IA 5866/2025, IA 778/2026,
IA 4824/2026, IP 141/2026,
IA 2055/2026 & Applicant
in IA 5396/2025,
IA 818/2026,
IA 653/2026 : Adv. Nisha Kaba a/w Adv. Bijesh Gupta, Adv. Suraj Anand, Adv. Areen Shaikh i/b Adv. Harshit Khare

For Respondent 1

IN IA 818/2026 : Adv. Prayag Jain

For Suspended Directors

IN (I.A. 653/2026) : Adv. Manoj Kumar Garg

For Applicant in

IA No.41/2026 : Adv. Amit Gharte

Section 9 of (IBC)

ORDER

IA 5866/2025

This is an application filed by the applicant seeking following reliefs :-

(a) Direct the Resolution Professional to pay the monthly license fee, maintenance charges, electricity charges and other charges due to the Applicant accrued during the CIRP process since 08.10.2024 till December 2025 i.e. Rs. 52,16,485/- for the premises of the Applicant in use and possession of the Corporate Debtor;

(b) Direct the Resolution Professional to pay the monthly license fee of Rs. 3,58,574/- and monthly maintenance charges of Rs. 10,929/-, monthly electricity charges of Rs. 4500/- from the month of January, 2026 onwards for the premises of the Applicant in use and possession of the Corporate Debtor till the handover of possession of the Licensed premises;

(c) Direct the Resolution Professional to handover the possession of the Licenced Premises i.e. second floor of A-140, Sector-80, Noida, UP-201305 measuring 10,500 Sq Ft of the Applicant in possession of the Resolution Professional and the Leave and Licence Agreement dated 06.09.2022 has already been terminated by the Applicant;

It is submitted by the Resolution Professional (RP) that possession of the property has already been handed over to the Applicant. The Applicant has also claimed the outstanding rental dues, which shall be considered and dealt with in accordance with law. Accordingly, **IA No. 5866/2025 is allowed and stands disposed of.**

IA 778/2026

None present for the applicant. It is observed that the applicant is no more interested to prosecute the matter. Hence, IA 778/2026 is dismissed for non-prosecution. Hence, **IA 778/2026 is dismissed for non-prosecution.**

IA 818/2026

This is an application filed by the applicant seeking following reliefs :-

(a) Declare that the payment of ₹7.80 Crores made by the suspended management on behalf of the Corporate Debtor, Syska LED Lights Private Limited, to Respondent No. 1 – Sunstar Industries Limited (Operational Creditor) constitutes a transaction wherein preference has been given by the suspended management on behalf of the Corporate Debtor;

(b) Pass appropriate orders directing Respondent No. 1 – Sunstar Industries Limited to transfer the said amount of ₹7.80 Crores to the bank account of the Corporate Debtor;

It is submitted that an amount of Rs. 7.8 crore was paid by the Suspended Board of Directors, on behalf of the Corporate Debtor, to M/s Sunstar Industries towards outstanding operational dues arising from invoices raised during the period 2022–2023. The said payment was not made against any contemporaneous supply of goods or services and, therefore, constituted the discharge of an antecedent operational debt.

It is further submitted that, as on 31.03.2024, an amount of Rs. 6.56 crores remained outstanding and payable to M/s Sunstar Industries. Thereafter, the Suspended Management, on behalf of the Corporate Debtor, paid a sum of Rs. 7.8 crores, which included an amount over and above the principal dues, at a time when the Corporate Debtor was already under severe financial distress and had been classified as a Non-Performing Asset (NPA) on 20.11.2022.

In view of the above, the Applicant has sought a direction for refund of the said amount.

Learned Counsel has drawn our attention to the aforesaid payments and submitted that they were made in the ordinary course of business, although they were effected during the Corporate Insolvency Resolution Process (CIRP). It is further submitted that the said payments were made by the Directors of the Corporate Debtor from their personal accounts. Learned Counsel has also placed reliance upon paragraph 18 of the rejoinder, which reads as under:

(1) The CoC has discussed at length the transaction relating to Sunstar Industries, wherein (i) payments did not flow from the Corporate Debtor's bank account, but the liability of the Corporate Debtor was reduced in its books. It was also discussed that the Trnsaction Auditor has reported the transaction despite it being post-ICD, which members noted as beyond the audit mandate. The exact dues and amount of payments were reviewed from the report (pages 23, 26 and 30), indicating payments on 14 October and 25 October, Members noted that het auditor has not consistently disclosed all transaction dates and has relied upon management responses.

(2) The legal counsel explained that since no asset moved out of the Corporate Debtor's account, and the payment was made by a third party/ director, it may not amount to breach of moratorium in the strict sense. Conceptually, such payment could give rise to right of subrogation, whereby the third party steps into the shoes of the creditor. However, the issues of preferential treatment and reduction of operational creditor liability during CIRP requires judicial determination.

(3) However, some members stated that reduction of liability of one creditor during CIRP gives undue priority and such transactions should be placed before the Hon'ble NCLAT for adjudication, irrespective of differing interpreatations. After discussion on the matter, it was agreed that the CoC is not required to conclusively decide the legal charcter of the transaction and the matter should be placed before the Adjudicating Authority for appropriate directions. Members specifically referred to Page 26(A12) of proposed to secured financial creditors, payments were made to Sunstar Industries resulting in undue financial advantage to an operational creditor.

It is further submitted that the Committee of Creditors (CoC) had also deliberated upon the payments made to M/s Sunstar Industries. However, the CoC resolved that appropriate proceedings would be initiated before the Adjudicating Authority, i.e., the National Company Law Tribunal (NCLT), for recovery of the said amount.

In view of the above, learned Counsel for the Respondent further submitted that the matter was carried in appeal before the Hon'ble National Company Law Appellate Tribunal (NCLAT), wherein the Hon'ble NCLAT observed as follows:

> *"Learned Counsel for the Appellant submits that after the Orders was passed by the Adjudicating Authority on 08.10.2024 admitting Section 9 Application, Appellant reached out to the Operational Creditor and figure of Rs.7.8 Crores has been decided out of which Rs. 4 crores has already been paid and the Appellant is handing over the Bank Draft of Rs.1 crore during the course of the day to the counsel for the other side."*

Ld. Counsel further submitted that the counsel appearing for the other side contended before the Hon'ble NCLAT that the payment was a lawful payment made by the Applicant.

After considering the rival submissions, this Bench proceeds to examine the provisions of Section 43(4) of the Insolvency and Bankruptcy Code, 2016, which reads as under:

A preference shall be deemed to be given at a relevant time, if –

(a) it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or

(b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.

Ld. Counsel sought to contend, by placing reliance on the provisions of Section 43(4) of the Insolvency and Bankruptcy Code, 2016, that the impugned transaction does not fall within the prescribed look-back period. However, from the pleadings on record, it is evident that although the payment was made by the erstwhile Directors to M/s Sunstar Industries during the pendency of the Corporate Insolvency Resolution Process (CIRP), the liability in respect thereof had arisen much earlier, pursuant to invoices raised during November, 2022 and March, 2023. It is further evident that the total outstanding operational dues as on 31.03.2024 were Rs. 6.56 crores, whereas the actual payment made to M/s Sunstar Industries amounted to Rs. 7.8 crores.

The underlying object of the Insolvency and Bankruptcy Code is that, upon commencement of the CIRP, the assets of the Corporate Debtor are to be preserved and dealt with strictly in accordance with the provisions of the Code. In the event of liquidation, the proceeds are to be distributed in the order of priority prescribed under Section 53 of the Code, under which insolvency resolution process costs, workmen's dues, employees' dues, and secured creditors are accorded priority.

In the present case, despite the Corporate Debtor being under CIRP, the outstanding dues of the secured creditors, workmen, employees, and CIRP costs were not discharged in accordance with the statutory priority. Instead, payment was made to the Respondent towards an antecedent operational debt, notwithstanding the priority scheme contemplated under the Code.

Ld. Counsel further submitted that the present application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, which reads as under:

> *Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of –*
>
> *(a) any application or proceeding by or against the corporate debtor or corporate person;*

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) 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 this Code.

In view of this, by making this payment the petitioner has put in such creditor or surety or guarantor who may beneficial position then it should have been in the event of distribution of assets being made in accordance with Section 53. In view of this this payment shall be returned back to the RP within a period of three weeks from today. Hence, **IA 818/2026 is disposed of as allowed.**

IA 824/2026

None present for the applicant. It is observed that the applicant is no more interested to prosecute the matter. Hence, IA 778/2026 is dismissed for non-prosecution. Hence, **IA 824/2026 is dismissed for non-prosecution.**

IA 653/2026

Ld. Counsel appearing for the Resolution Professional (RP) submits that, in view of the information furnished by the Respondent, the RP proposes to file a revised list of information/documents required from the Respondent.

Ld. Counsel for the Respondent submits that most of the information sought by the RP had already been furnished prior to the initiation of the Corporate Insolvency Resolution Process (CIRP).

In view of the above submissions, we observe that the Respondent shall extend all necessary cooperation to the Resolution Professional by providing any further information or documents, if required, for the effective conduct of the CIRP. List the application on **18.08.2026**.

IP 41/2026

Counsel for the RP submits that the copy of the application has not been provided yet. Counsel for the applicant is directed to provide the copy of this application before the next date of hearing. **List this application on 18.08.2026.**

IA 2055/2026

This Tribunal, vide order dated 19.02.2026, disposed of the matter with a direction to the Applicant to approach the present Resolution Professional (RP) for appropriate relief. The matter was carried in appeal before the Hon'ble National Company Law Appellate Tribunal (Hon'ble NCLAT). Upon consideration of the matter, the Hon'ble NCLAT passed its order, wherein paragraphs 5 and 6 read as under:

Ld. Counsel for the RP also submits that he has no objection if the matter is sent back to the Adjudicating Authority for fresh consideration.

In view of the aforesaid, order passed in I.A No.4763 of 2025 is set aside. The I.A is revived before the AA for fresh consideration in accordance with law. We make it clear that we are not expressing any opinion on the merit of the case, however, the said application needs to be considered and decided prior to the plan approval application comes for consideration. The appeal disposed of.

The question that arises for consideration is whether the subsequent Resolution Professional, Ms. Ritu Rastogi, was justified in admitting the Applicant's claim only to the extent of ₹3,17,78,640/- as against the claim of ₹12,58,14,511.39, which had been admitted by the previous Resolution Professional, as reflected at page 11 of I.A. No. 4763/2025.

Learned Counsel appearing for the Resolution Professional has handed over copies of pages 2 and 3 of the revised list of claims. The said list, at Serial Nos. 1 and 2, reflects the claims considered by the subsequent Resolution Professional, wherein the Applicant's revised claim has been admitted only to the extent of ₹3,17,78,640/-, while the balance amount has been rejected and treated as not admissible under the category of Operational Debt.

Ld. Counsel Mr. Pulkit Sharma has drawn our attention in terms of the judgment passed by the Hon'ble NCLAT in the matter of Byju Ravenendran Vs. Aditya Birla Finance Ltd and others paragraph 47 and 48 which states as under :-

47. Similarly, the argument of the Appellant about the provisional constitution of the CoC can not be accepted because there is no provision in the Code. In this regard, we do not find any error in the finding recorded by the Tribunal in para 16 of the impugned order which read as under:-

"16.In order to reinforce the point and ensure understanding, we make it clear that the role of the IRP and RP is non-adjudicatory in nature, as they are expected to act as facilitators, but the NCLT holds the adjudicatory powers. We are reiterating again that as per the IBC there is no provision to 'provisionally' constitute the CoC, the CoC once constituted is final and cannot be revised by the IRP/RP without the interference of the Adjudication Authority."

48. In so far as the reclassification of the status of the financial creditor is concerned, the Tribunal has relied upon a decision of this Court in the case of Rajnish Jain Vs. BVN Traders & ors., CA (AT) (Ins) No. 519 of 2020 in which it has been held that : -

"59. Based on the above discussion, we clarify and hold that during CIRP, the IRP is authorized to collate the claims, and based on that he is empowered to constitute the Committee of Creditors. We hold that the Resolution Professional may add to existing claims of claimants already received, or admit or reject further Claims and update list of Creditors. But after categorization of a claim by the IRP/Resolution Professional we hold that they cannot change the status of a Creditor. For example, if the Resolution Professional has accepted a claim as a Financial Debt and Creditor as a Financial Creditor, then he cannot review or change that position in the name of updation of Claim. It is also to be clarified that while updating list of Claims the Resolution Professional, can accept or reject claims which are further received and update list."

In a nutshell, the crux of the judgment relied upon is that the Resolution Professional has no authority to alter or reclassify a claim once the claim has been admitted and the constitution of the Committee of Creditors (CoC) has been finalized. At the highest, if any modification was considered necessary, the Resolution Professional ought to have approached the Committee of Creditors and sought appropriate directions from this Tribunal before effecting any such change.

In the present case, the action of the subsequent Resolution Professional in reclassifying and modifying the claim, which had already been admitted by the previous Resolution Professional, is not permissible in law. Accordingly, the communication dated 24.04.2026 issued by the Resolution Professional is hereby set aside.

The Resolution Professional is directed to restore and recognise the Applicant's claim as originally admitted by the previous Resolution Professional, i.e., ₹12,58,14,511.39, in place of the revised admitted amount of ₹3,17,78,640/-.

The interim order passed by this Tribunal restraining the voting process is hereby vacated. After considering the claim of Unity Small Finance Bank as a Financial Creditor, the Resolution Professional shall reconstitute the Committee of Creditors, if so required, and proceed further with the Corporate Insolvency Resolution Process strictly in accordance with law.

The reclassification of the claim by the subsequent Resolution Professional, contrary to the admission made by the earlier Resolution Professional, is held to be unsustainable and impermissible in law. Consequently, **the present application stands allowed and the IA 4763/2025 be revived.**

<u>IA 5396/2025</u>

List this application on 15.07.2026.

Sd/-	**Sd/-**
SANJIV DUTT	**ASHISH KALIA**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

JNK