NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET OF THE HEARING ON 14th JULY 2026

IA (IBC)/3/GB/2024
CP (IB)/8/GB/2020

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

In the Matter of	Punjab National Bank (Erstwhile United Bank of India) Vs M/s Megha Granules Pvt. Ltd.
Under Section	U/s 7 of IBC, 2016.

Appearances (via video conferencing/physically)

IA (IBC)/3/GB/2024

For Petitioner (s) : Mr. Rashid Akhtar, Adv.

For Respondent (s) : Ms. Pragati Agarwala, Adv. (Proxy) R-2
: Mr.Vedant Sharma, Adv. (Proxy) R-3

ORDER

Order pronounced in open court *vide* separate sheets.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

Zeba (PS)

IN THE NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI
IA(IBC)/3/GB/2024
In
IA(IBC)/28/GB/2022
In
CP(IB)/8/GB/2020

An Application under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016

In the matter of:

ASSAM INDUSTRIAL INFRASTRUCTURE DEVELOPMENT CORPORATION (AIIDC), represented by Managing Director, Address-Bamunimaidam Industrial Estate, Bamunimaidam, Guwahati-781021, Kamrup (M), Assam**.**

.....Applicant

-Versus-

1. **M/S MEGHA GRANULES PVT. LTD,** a private limited Company being represented by its Director, having its registered office at Industrial Growth Center, Chaygaon, P.O-Chatabari, in the District of Kamrup, PIN-781141, Assam.

..... Herein after referred as O.P.1.

2.**NORTH EAST GRANULATORS,** Address: Industrial Growth Center, AIIDC, Chaygaon, Chatabari, Kamrup, Assam, PIN-781141, registered office at B101, Spanish Garden, Zoo Road, Opp. Assam State Zoo, Guwahati-781005, Assam.

......Herein after referred as O.P.2.

3. **SANDEEP KHAITAN,** Resolution Professional of Megha Granules Private Limited, Address: Industrial Growth Center, Chaygaon, P.O-Chatabari, in the District of Kamrup, PIN-781141, Assam.

.... Herein after referred as O.P. 3.

4. **COMMITTEE OF CREDITORS OF MEGHA GRANULES PRIVATE LIMITED,** through the Punjab National Bank (PNB), Address: Industrial Growth Center, Chaygaon, P.O- Chatabari, in the District of Kamrup, PIN-781141, Assam

.......Herein after referred as O.P. 4

----Opposite Parties

IA(IBC)/3/GB/2024
In
IA(IBC)/28/GB/2022
In
CP(IB)/8/GB/2020

Coram:

Shri Rammurti Kushawaha : Member (Judicial)

Shri Yogendra Kumar Singh : Member (Technical)

Appearances (through video conferencing):

For Applicant : Mr. S. Chamaria, Adv.

: Mr. N. M. Deka, Adv.

For Respondent (s) : : Mr. B. Sharma, Adv. for R-2

: Ms. P. Agarwalla, Adv.

: Mr. A. Prasad, Adv. for R-3

Order pronounced on: 14.07.2026

JUDGMENT

1. The present Interlocutory Application is filed before this Hon'ble Tribunal under the under section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016. The Applicant seeks the following substantive reliefs:
   i. *An order be made declaring the removal of the Opp. Party No. (3) as the "Interim Resolution Professional" and afterwards as "Resolution Professional" in the instant entire matter from the date of his both appointment and further his whole actions in this Resolution process as contemplated by him may be declared as void, illegal, tainted and oppressive for all purposes as such.*
   ii. *An order may be passed for setting aside the Order dated 05.05.2021 passed by the Hon'ble National Company Law Tribunal, Guwahati Bench, Guwahati in CP (IB) No. 08/GB/2020, wherein the Opp. Party No. (3) has been appointed as "Interim* Resolution *Professional" and afterwards, the approval given by the CoC thereby selecting the Opp. Party No. (3) as Resolution Professional to conduct the further course of action being Resolution Professional.*

iii. *An order may also be made for setting aside the Order dated 12.08.2022 passed in I.A. (IBC) No. 28/GB/2022 in CP (18) No. 08/GB/2020, wherein the proposal of the said Resolution Professional for accepting the Resolution plan of the Opp. Party No. (3) has been accepted by this Hon'ble Forum because of the various anomalies and financial irregularities exist in this whole circumstances and further take necessary action against the said Opp. Party No. (3) as deem fit and proper by this Hon'ble court.*

iv. *An order be passed by this Hon'ble forum for contemplation of Resolution process de novo of the Opp. Party No. (1), by appointing a suitable Interim Resolution Professional in CP (IB) No. 08/GB/2020 within time bound program and also by giving proper opportunity of hearing to the present applicant to participate the same proceeding for protecting their professional interest in strict terms.*

v. *A direction to be made to the effect that the "Central Bureau Investigation" (C.B.I.) or any other suitable Govt. Investigation agency at the State or Central Level shall initiate discreet enquiry and investigation for all the actions contemplated by the Opp. Party No. (1) to (3) or any other person found involved therewith in the instant referred case as much as all the financial matter involved with the series of events connected to the Resolution process carried out by the concerned persons.*

vi. *A direction to be made to the effect that based on prima facie case, a separate proceeding may be drawn out to investigate the whole issue under the purview of the Section 65 of the IBC Code 2016 to initiate proper proceeding against the all erring persons found involved in this instant case by this Hon'ble Tribunal.*

vii. *Any Other direction/directions, as it may deem necessary by this Hon'ble Tribunal.*

IN THE INTERREGNUM:

The operation of the Order dated 12.08. 2022 passed in I.A.(IBC) No. 28/GB/2022 in CP (IB) No. 08/GB/2020 may be kept in abeyance till the disposal of the instant petition pending before this Hon'ble Tribunal.

2. The following submissions are made on behalf of the Applicant in the present proceedings:

2.1. The present Applicant i.e., Assam Industrial Infrastructure Development Corporation (herein after referred as AIIDC) is a Government of Assam undertaking, established under the AIIDC Act 1990 for the purpose of securing, assisting rapid and orderly establishment and organization of industries in Industrial Areas, Industrial Estates, Growth Center, Industrial Infrastructure Development Center and in establishment of Commercial Estate for growth of industries in the state of Assam, represented by its Managing Director. This apart, the Respondent No. 01/ Corporate Debtor M/s Megha Granules Pvt. Ltd. is a private company incorporated on 05.05.2005 under the provisions of the Companies Act, 1956 and is engaged in manufacturing woven (sacks) bags, AD Pretex Bags and Tarpaulins made of PP/HDPE granules. Per contra, Respondent No. 02 / Resolution Applicant, i.e., North East Granulators, which is partnership firm incorporated on 26.02.2017 and duly registered under the provisions of the Partnership Act, 1932, having its office at Industrial Growth Centre, AIIDC, Chaygaon, Chatabari, Kamrup, Assam-781123 and is engaged in the business of manufacturing polypropylene granules, and filler (recycled) and related activities further the Respondent No. 03, is the Resolution Professional in the instant case and on the other hand, the Respondent No. 04 i.e., Committee of Creditors of Respondent No. 01 herein.

A Copy of the Authorisation Letter dated.19.12.2023 is annexed and marked as *Annexure*-1 to the application.

2.2. That, being aggrieved by the present proceedings initiated at the instance of Respondent Nos. 1 to 3, which directly affect the substantial interests of the Applicant Corporation and the larger public interest, the instant application has been filed through its authorised representative, namely the Managing Director, seeking reconsideration of the entire matter in the interest of justice and for safeguarding public interest.

2.3. That the basic facts pertaining to this application in precise are that the present applicant leased a plot of land situated at the Industrial Growth Centre, Chaygaon, District Kamrup, to Respondent No. 1/Corporate Debtor, M/s Megha Granules Pvt. Ltd. Pursuant thereto, a registered Lease Deed dated 22.04.2010 was executed between the parties, setting out the terms and conditions binding upon them and the same was also registered in the office of the Sub- Registrar (Sadar), Kamrup at Guwahati. Further, after obtaining the lease of the said plot of land, the Respondent No.1 took possession of the same and started its production activities from the said unit, constructed sheds etc. over the leasehold land by obtaining loan from different financial Institutions.

Copy of the lease Deed dated 22.04.2010 is enclosed as *Annexure* -2 to the application.

2.4. The Applicant submits that upon default by Respondent No. 1 in repaying credit facilities availed from the Punjab National Bank (Financial Creditor), the FC preferred an application under Section 7 of the IBC, 2016, being CP (IB) No. 08/GB/2020, seeking initiation of the Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor i.e, Opp. Party No. (1). Further, this Hon'ble Tribunal, vide order dated 05.05.2021, admitted the application, initiated CIRP, and appointed Mr. Sandeep Khaitan as the Interim Resolution Professional ("IRP / Respondent No. 3") with directions to issue the statutory public announcement in Form-A.

A copy of the order dated 05.05.2021 is annexed and marked as *Annexure-3* to the petition.

2.5. The Applicant submits that in purported compliance with the order dated 05.05.2021, the Respondent No. 3 (Resolution Professional) claims to have issued a Public Announcement in Form-A on 13.05.2021 under Section 13 and 15 of the IBC, 2016, read with Regulation 6 of the CIRP Regulations, and further published the same in two daily newspapers in Assam, namely 'Assam Rising' (English) and 'Dainandin Barta' (Vernacular). Crucially, the Applicants possess a vital, subsisting interest in the subject property. Prior to the execution of the Sale Deed dated 24.05.2022, an Agreement for Sale was executed between the parties on 21.05.2022, which explicitly and unequivocally disclosed that the property in question was subject to an existing mortgage.

2.6. That, it is further submitted that during pendency of the aforesaid application, the said Resolution Professional Mr. Sandeep Khaitan (Respondent No. 3) also filed an application under section 30(6) read with Section 31(1), 60(5) of the Code read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 before this Hon'ble Tribunal, bearing no. I.A. (IBC) No. 28/GB/2022, seeking inter-alia for approval of Resolution Plan dated 16.03.2022 for the Respondent No. 1, which was followed up by an addendum as requested by the Committee of Creditors (Respondent No. 4) submitted by the Respondent No. 2, i.e., North East Granulators, which was ranked as successful Resolution Applicant by the COC.

2.7. That, upon completion of all works regarding the Resolution process, consequently, this Hon'ble Tribunal vide order dated 12.08.2022 passed in I.A. (IBC) No. 28/GB/2022 in CP (IB) No. 08/GB/2020 was pleased to allow the application filed by the Resolution Professional, i.e., Sandeep Khaitan in respect of the Resolution Plan dated 16.03.2022 as submitted by the Resolution Applicant (Respondent No. 2). A copy of the order dated 12.08.2022 passed in I.A. (IBC) No. 28/GB/2022 in CP (IB) No. 08/GB/2020 is annexed as *Annexure-4* to the petition.

2.8. That, it is pertinent to mention here in that the Resolution Applicant (Respondent No. 2) i.e., North East Granulators Pvt. Ltd. had submitted a representation on 16.10.2023 before the applicant stating inter-alia to waive all the outstanding liabilities (Maintenance Charges) and dues as on 12.08.2022 for M/s Megha Granules Pvt. Ltd pursuant to the Hon'ble National Company Law Order & Renewal of Fresh lease for Forty (40) Bigha land allotted at AIIDC Chaygaon. Further, while submitting the said letter also the copy of the order dated 12.08.2022 passed in IA(IBC) No. 28/GB/2022 in CP (IB) No. 08/GB/2020. Also, the said Resolution Applicant (Respondent No.

2) also submitted the copy of the Resolution Plan dated 16.03.2022 with the aforementioned representation for necessary information to the Applicant.

2.9. The Applicant submits that upon receiving the letter dated 16.10.2023, a complete re-examination of the matter revealed that Respondent Nos. 1, 2, and 3 acted in collusion. With mala fide intent to secure undue advantages and cause loss to the public exchequer, they artificially engineered a situation to deliberately exclude the Applicant from the entire proceeding behind their back, causing irreparable harm to the Applicant's interest. In active connivance, Respondent Nos. 1 to 3 have committed acts amounting to cheating, breach of trust, and forgery. Keeping in view the mandate of Order VI Rule 4 of the CPC, 1908, and the definitions under Sections 406, 420, and 464 of the IPC, 1860, the specific material facts of this fraud are detailed below, enabling this Hon'ble forum to protect public property and initiate proper proceedings against the erring parties whose role found substantially illegal herein.

2.10. That, in addition to the leased property of the applicant, it is further stated here that in the Resolution Plan dated 16.03.2022, the Respondent No. 2/Resolution Applicant made such clause in "Column 20", which is otherwise perverse, oppressive and also violation of the rules and regulation as applicable thereof. The said clause has been designed in such a manner, which neither confirmed the condition laid down under the Registration Act /Transfer of Property Act and also specifically the Law applicable for the leased property of the applicant which has been more particularly governed by the specific statue namely Assam Public premises (Eviction of Unauthorized Occupants) Act 1971 as well as the Assam Industrial Land Management Policy, 2021. The copies of Assam Public premises (Eviction of Unauthorized Occupants) Act 1971 is annexed as *Annexure-5* and the Assam Industrial Land Management Policy, 2021 is annexed as *Annexure-6*.

2.11. It is further submitted that the Applicant was neither informed of the developments affecting its rights arising out of the leased assets nor afforded an opportunity of hearing before decisions were taken concerning waiver of lease rent and other ancillary dues, and the induction of a new lessee in place of the earlier one. According to the Applicant, these circumstances, taken together, warrant re-examination of the matter by this Tribunal for the reasons elaborated in the present Application.

2.12. It is relevant to state that following the order dated 12.08.2022 passed in I.A. (IBC) No. 28/GB/2022 in CP (IB) No. 08/GB/2020, Respondent No. 3 communicated with the Applicant on 20.08.2022, intimating the developments concerning Respondent Nos. 1 and 2 and requesting further correspondence as indicated in that letter. Subsequently, Respondent No. 2, even after taking over the assets of Respondent No. 1, corresponded with the Applicant on 28.09.2022, referencing the said order dated 12.08.2022. At that juncture, the Applicant was under the bona fide impression that since Respondent No. 2 had acquired the properties of Respondent No. 1, compliance with this Hon'ble Tribunal's order was incumbent upon it. The issues now raised herein were neither brought to the Applicant's notice by any source nor subjected to objective scrutiny at the relevant time, and were therefore inadvertently left unaddressed before this Hon'ble Tribunal. However, the correspondence dated 26.10.2023 issued by Respondent No. 2 prompted the Applicant to re-examine the entire matter comprehensively, with the assistance of legal and accounting experts. Upon their thorough examination and deliberation, several critical irregularities were identified, which are now being placed before this Hon'ble Tribunal for its kind consideration and necessary examination. In view of the above, the delay in filing the present application is attributable to sufficient cause and unavoidable circumstances. It is therefore most respectfully prayed that the delay be condoned in the interest of justice and protection of public money.

The copy of the letter dater dated 20.08.2022 is annexed as *Annexure 7*, the copy of the letter dated 28.09.2022 is annexed as *Annexure 8* and the copy of the letter dated 26.10.2023 is Annexed as *Annexure 9 to the* application.

2.13. That, the Applicant submits that Respondent No. 3, in connivance with Respondent Nos. 1 and 2, suppressed material facts regarding the relationship maintained amongst them. The various correspondences exchanged with the Applicant reveal that Respondent No. 1 admitted having a long-standing nexus with Respondent No. 3 and that the representative of Respondent No. 3 had personal relations with Respondent No. 1. The said correspondences further disclose that Respondent No. 3 is the sister concern of Respondent No. 1 and has been acting on behalf of Respondent No. 1 in the same line of business, as discernible from their own records.

2.14. That, the Applicant submits that Respondent No. 3 was under a statutory duty to place all relevant facts before this Hon'ble Tribunal fairly, impartially and without bias. However, while placing the Resolution Plan dated 16.03.2022, Respondent No. 3 projected himself as an independent entity without disclosing any direct or indirect relationship with Respondent No. 1 having a bearing on the concept of "connected person" under Section 29 of the Code. The clarification in this regard was furnished only subsequently pursuant to the query raised by this Hon'ble Tribunal vide Order dated 12.05.2022. According to the Applicant, the circumstances require scrutiny by this Hon'ble Tribunal, and the possibility of a "backdoor entry" of Respondent No. 1 through the influence of Respondent No. 3 cannot be ruled out.

2.15. That, the Applicant submits that the report of the Interim Resolution Professional, filed for seeking approval to proceed with the CIRP, did not disclose the liabilities of Respondent No. 1 towards the Applicant in their proper perspective. It is contended that the outstanding dues towards principal lease rent, late fees and other charges were not correctly reflected, nor were the legal complexities relating to the leasehold property adequately considered for the said lease hold property given to the opposite Party No 1. According to the Applicant, its claims and interests were overlooked for wrongful purposes, and therefore, the matter warrants re-examination by this Hon'ble Tribunal in light of the facts and documents forming part of I.A. (IBC) No. 28/GB/2022 in C.P. (IB) No. 08/GB/2020.

Copy of the order dated 12.05.2022 of the I.A(IBC) No.28/GB/2022 in C.P. (IB) No. 08/GB/2020 is enclosed as *Annexure 10* to the application.

2.16. That, the Applicant contends that Respondent No. 1 deliberately invoked the insolvency process to secure a "backdoor entry" and obtain benefits through Respondent No. 2 by adopting means which, according to the Applicant, could not have been achieved directly, thereby causing loss to public funds. It is further alleged that Respondent No. 2 assisted in the said process for vested interests and that his conduct, as the sole custodian of the CIRP, appeared suspicious from the threshold stage. The Applicant also points out that financial claims admitted by the Resolution Professional amounting to Rs. 198.12 Crores, as reflected in the list of claims dated 21.02.2022, were settled for Rs. 17.60 Crores as full and final settlement, which, according to the Applicant, raises serious concerns regarding financial irregularities and warrants re-examination by this Hon'ble Tribunal.

2.17. That, the Applicant submits that Respondent No. 1 is a "Rank defaulter" to pay his outstanding dues of Rs. 43,34,649/- up to July, 2022, despite being fully aware of the same, and that such dues were not properly taken into consideration. According to the Applicant, Respondent No. 1, being in violation of the Lease Agreement dated 22.04.2010, was not entitled to continue in possession of the leased premises in terms of the stipulations contained therein. Therefore, the continuance of the Oppo, Party No.3 in the same position of "Defaulter" deserves no right to hold the said leased premises in terms of the law applicable thereof. The Applicant further contends that this aspect was overlooked by Respondent Nos. 1 to 3, resulting in undue benefit being extended to Respondent Nos. 1 and 2 through the actions of Respondent No. 3. Accordingly, it is submitted that the issues relating to the leased property require further consideration by this Hon'ble Tribunal.

Copy of the Notice of Demand/Bill for rent due is enclosed as *Annexure*-11,

2.18. That, the Applicant submits that, in view of the complicated circumstances arising from the deprivation of its legal and natural rights and the alleged anomalies committed by Respondent Nos. 1 to 3, herein, this instant application has been filed amongst other following grounds: -

I. That, the Applicant submits that Respondent Nos. 1 to 3, acting jointly and severally in collusion, created an artificial situation to prevent the Applicant from participating in the resolution process and to keep it outside the purview of the CIRP so that they would be able to reach their destination without any hindrances. The primary and clinching evidences connected to their connives are pointed out herein as follows:

a. That, the Applicant submits that Respondent Nos. 1 and 3, at the time of initiation of the CIRP under Section 7 of the Code, made no endeavour to inform the Applicant about the proceedings despite it is lying within the premises of the Applicant. According to the Applicant, the information-sharing requirements under the IBC and the applicable Regulations were not duly followed, which is evident from the various documents available with the present case lying before this tribunal, thereby keeping the Applicant outside the resolution process and depriving it of an opportunity to participate.

b. That, the Applicant further contends that the public announcement in Form A dated 13.05.2021 was published only in Assam Rising and Dainandin Barta, which, according to the Applicant, it is neither a widely circulated newspaper in Assam nor even it has been collected by the present applicant in their office to get such an important information. It is alleged that such publication deprived the Applicant of an opportunity to protect its interests during the CIRP. This whole process of circulation of information was at the behest of pre-determined ill goal to give direct benefits to someone whom he has direct or indirect nexus in ante.

c. That, the Applicant submits that Clause 20 of the Resolution Plan dated 16.03.2022 sought continuation of the leasehold rights over the remaining 40 bighas of AIIDC land for the unexpired lease period, without execution of any fresh lease agreement. According to the Applicant, the basis on which Respondent No. 2 assumed that the lease would continue without a fresh agreement remains unexplained. It is contended that such stipulation is contrary to the statutory provisions governing AIIDC properties, including the Assam Public Premises (Eviction of Unauthorized

Occupants) Act, 1971, the Assam Industrial Land Management Policy, 2021, and other applicable laws such as the Registration Act and the Transfer of Property Act. The Applicant, therefore, submits that Clause 20 lacks legal sanctity and is incapable of practical implementation. It is further alleged that Respondent No. 3 neither examined the issue in its proper perspective nor consulted the applicant's authority for its applicability as such. Therefore, this clause is suffering from manifest illegality and it cannot be acted upon in practical in any manner.

d. That, the Applicant further submits that, despite relying upon Clause 20 of the Resolution Plan, Respondent No. 2, by communication dated 16.10.2023, sought execution of a fresh lease deed for the said 40 bighas of land, thereby taking a position inconsistent with the Resolution Plan. According to the Applicant, this contradiction renders Clause 20 impracticable and warrants reconsideration in light of the applicable statutory provisions which is applicable for the properties of the present applicant by this Hon'ble Forum for its better applicability.

e. That, the Applicant submits that the materials placed on record disclose a conflict of interest between Respondent Nos. 1 and 2. It is alleged that Respondent No. 2 projected itself as an independent entity and, by presenting misleading facts, secured acceptance of its Resolution Plan. According to the Applicant, despite the issue having surfaced during the proceedings, Respondent No. 3 failed to examine the matter impartially and instead supported the approval of the Resolution Plan in favour of Respondent No. 2. The Applicant, therefore, submits that the role of the representatives of Respondent No. 2, whose interests are alleged to be connected with Respondent No. 1, requires further examination by this Hon'ble Tribunal in light of the materials placed on record.

II. That, the Applicant submits that proceedings under Section 7 of the IBC are confined to the determination of "debt" and "default" as defined under Sections 3(11) and 3(12) of the Code. However, Respondent Nos. 2 and 3 travelled beyond the scope of such proceedings by dealing with issues relating to the Applicant's leasehold property through the Resolution Plan dated 16.03.2022. According to the Applicant, the lease issue is governed by independent statutory provisions and, therefore, requires separate consideration by this Hon'ble Tribunal so that the issue can be settled in right perspective without prejudice the greater interest of the lease property maintained by the present applicant.

III. That, the Respondent No. 3, while conducting the Corporate Insolvency Resolution Process, violated the statutory duties prescribed under Section 25 of the Insolvency and Bankruptcy Code, 2016 and the applicable IBBI Regulations. In particular, despite being under a statutory obligation to maintain an updated list of claims as per Section 2(e), the liability of the present applicant was not properly reflected in the records and was negligently dealt with by the Respondent No. 3 for wrongful purposes. Consequently, the applicant's dues were overlooked, thereby warranting re-examination of the matter by this Hon'ble Tribunal to protect the applicant's interest and the public funds involved.

IV. That, it is evident from the Expression of Interest published in **Form G** that the selected Principal Resident Agent (PRA) (Respondent No. 2) was a related party of the Corporate Debtor (Respondent No. 1), thereby attracting the proviso of Section 29A of the Code. Despite the same, Respondent No. 3, in connivance with Respondent Nos. 1 and 2, placed the name of Respondent No. 2 before the CoC for its approval, causing prejudice to the assets and property of the Corporate Debtor/ Respondent No. 1 as much as the financial aspects of the various institutions, which are connected to the Corporate Debtor/ Respondent No. 1 either in a way of financial creditor or by dint of operational creditor at different stage in course of running of the said unit.

V. That, Respondent No. 3 failed to comply with the publication requirements of **Form G** under Regulation 36A of the IBBI Regulations, 2016. The Expression of Interest dated 08.10.2021 was published only in two newspapers having limited circulation in Assam, instead of widely circulated newspapers, thereby restricting the participation of prospective resolution applicants. Such publication appears to have been made to confer an undue advantage upon Respondent No. 2 by facilitating transfer of the valuable assets of Respondent No. 1 at a nominal value through a "backdoor entry", causing loss to public funds. Accordingly, the actions of Respondent Nos. 1 to 3 warrant a detailed examination by this Hon'ble Tribunal for safeguarding and unearth the whole and all anomalies committed by the present Respondent No. 1 to 3 in their great connivances and at their hatch of criminal conspiracy etc. as well.

A copy of the list of newspapers approved by the Government of India is annexed herewith as *Annexure*-12.

VI. That, the integrity and impartiality of Respondent No. 2 had already been questioned by this Hon'ble Tribunal in **I.A. (IBC) No. 43/2021 in C.P. (IB) No. 09/GB/2019 (Piyush Periwal v. Stressed Assets Stabilization Fund & Ors.)**, wherein, by judgment dated 08.04.2022, adverse observations were made against Respondent No. 2, which continue to hold the field. Despite the same, Respondent No. 2 adopted the same modus operandi in the present CIRP, thereby prejudicing the resolution process, which itself proved that he is a 'habitual perpetrator'. The relevant observations of the said judgment are reproduced hereinbelow:

"20. Decision: Lack of Transparency, Conflict of Interests,

Non-Compliances of provisions of IBC, Termination of CIRP from the Second EOI stage and replacement of the present RP with a new RP to start EOI afresh.

20.1 The success of the corporate insolvency resolution depends strictly in terms of provisions of the I&B Code and Regulations made there under. In this case the process is tainted from the stage of Second EOI publishing in one local newspaper chain in Assam instead of publishing widely circulated newspaper published at the places of Registered Office, corporate Office and major Units of the CD, allowing a Resolution Applicant to file EOI when the Entity was not in existence and modifications in the Resolution Plan after the same had been submitted before the AA for approval. The RP has not performed his duties in fair and transparent manner as required under the CODE. He himself has offered his services to the promoters of the other company of RA when the Resolution Plan of the RA is under process for approval. The RP has filed FIR/Criminal *case, instead of taking up the matter before the AA under Section 74 of IBC for redressal of the issue, which had gone up to the Hon'ble Supreme Court"*

A copy of the judgement dated 08.04.2022 in I.A. (IBC)/43/2021 in C.P. (IB)/09/GB/2019 is annexed as *Annexure 13* to the petition.

VII. That, this Hon'ble Tribunal is empowered to seek assistance from the appropriate authorities and, upon forming a prima facie opinion, order an investigation under Section 210(2) of the Companies Act, 2013. It may also lift the corporate veil where the corporate structure is allegedly used to commit illegality or fraud. In the present case, the Respondent Nos. 1 to 3 are alleged to have acted in connivance for financial and other benefits. Therefore, the matter deserves to be referred to the Central Bureau of Investigation (C.B.I.) or any other appropriate State or Central Government investigating agency for a discreet enquiry into the alleged conspiracy and actions of the Respondent Nos. 1 to 3 and any other persons found involved.

VIII. That, Section 65 of the IBC, 2016 does not distinguish between the pre-admission and post-admission stages of the CIRP. Therefore, where a prima facie case exists regarding the fraudulent or malicious initiation of proceedings under Section 7 of the Code, this Hon'ble Tribunal may independently initiate appropriate proceedings under Section 65 of the IBC, 2016 against all the persons found involved in the present case.

3. In response thereto, Respondent No. 3 has filed its reply raising certain preliminary objections as well as submissions on merits. The substance of the same is summarized as follows:

A. PRELIMINARY OBJECTIONS

I. The present Application is not maintainable either in law or on facts and is liable to be dismissed at the threshold on the following grounds:

i. Delay in filing IA

The Applicant seeks to challenge the Order dated 05.05.2021 admitting the Corporate Debtor into CIRP and the Order dated 12.08.2022 approving the Resolution Plan. The challenge has been raised after an inordinate delay of approximately 971 days and 508 days respectively. The Application has been filed only after completion of the CIRP and implementation of the approved Resolution Plan, including payments made by the Successful Resolution Applicant. In view of the time-bound nature of the insolvency process under the IBC, the Application deserves dismissal on the ground of gross delay alone.

ii. Absence of Review Jurisdiction

The Applicant, in effect, seeks reconsideration of orders passed by this Hon'ble Tribunal itself. It is settled law that this Hon'ble Tribunal does not possess any power of review under the IBC. The proper remedy against the aforesaid orders was an appeal under Section 61 of the IBC before the Hon'ble NCLAT. The Applicant having failed to avail such remedy within the prescribed period of 45 days, the orders dated 05.05.2021 and 12.08.2022 have attained finality and cannot now be assailed before this Hon'ble Tribunal.

iii. Impermissible Challenge to Commercial Wisdom of CoC

The challenge to the Resolution Plan is, in substance, a challenge to the commercial decisions taken by the Committee of Creditors. The objections raised by the Applicant relate to terms and commercial aspects of the approved Resolution Plan, which fall exclusively within the domain of the CoC. The Resolution Plan was duly approved by the CoC after due deliberation and thereafter approved by this Hon'ble Tribunal. The Applicant seeks to impugn the 'Commercial Wisdom' of the Committee of Creditors (CoC), which has not only been duly approved by this Hon'ble Tribunal but has also been completed as on date of filing of the reply. It is well settled that the commercial wisdom of the CoC is paramount and is not subject to judicial review except on the limited grounds contemplated under the IBC. The present challenge is therefore legally untenable.

iv. Lack of Authorisation

The Application is further liable to be dismissed as the Applicant has failed to place on record any valid authorisation empowering Mr. Chinmay Prakash Phookan, the purported authorised signatory, to institute, sign or verify the present proceedings. Neither the Vakalatnama nor the supporting Affidavit is accompanied by any resolution, authority letter or other document evidencing such authorisation. The Application is therefore not maintainable on this ground as well.

II. The basis of filing the Application is devoid of any merit and self-contradictory.

i. The Applicant has sought to challenge the approved Resolution Plan on two principal grounds, namely: (i) objections to the terms of the Resolution Plan i.e. commercial wisdom of the CoC; and (ii) on the assertions/basis that the Applicant was unaware and/or that there was a lack of application of mind.

ii. lnso far as the challenge to the terms of the Resolution Plan is concerned, as already stated, the same falls squarely within the domain of the commercial wisdom of the CoC and thus the same is not open to challenge.

iii. Insofar as the Applicant's contention that it was unaware of the CIRP proceedings and that there was a lack of application of mind is concerned, the same is wholly untenable and self-contradictory. While alleging that it was kept uninformed about the CIRP and the developments therein, the Applicant has, in the Application itself, admitted receipt of communications from the Resolution Professional and the Successful Resolution Applicant regarding the proceedings, including communications dated 20.08.2022 and 28.09.2022. The Applicant further acknowledges that it did not raise any objection at the relevant time as it was under a bona fide impression that the approved Resolution Plan would be implemented. These admissions clearly establish that the Applicant had knowledge of the CIRP and the orders passed by this Tribunal but consciously chose not to take any action. The plea that the issues came to light only upon a subsequent re-examination with the assistance of experts is merely an afterthought and cannot justify reopening concluded proceedings. Moreover, the Answering Respondent had, from time to time, informed the Applicant about the CIRP and its progress through various communications, including emails dated 04.06.2021 and 20.08.2022, which have been conspicuously omitted from the Application. The Applicant has failed to disclose these material communications and has approached this Hon'ble Tribunal without full and candid disclosure of facts. In the circumstances, the consequences of the Applicant's deliberate inaction cannot be shifted upon the Respondents. It is a settled principle that ignorance of law, lack of due diligence, or failure to act despite knowledge of relevant facts cannot be invoked as a ground to unsettle a completed CIRP and an implemented Resolution Plan.

A copy of the emails dated 04.06.2021 and 20.08.2022 issued by the Answering Respondent are annexed and marked as *Annexure*–A (Colly).

III. The allegations regarding collusion vis-a-vis the Answering Respondent is not only misplaced but also baseless.

i. The allegations contained in Paragraphs 'M', 'N' and Ground No. VI of the Application are founded upon a fundamental misunderstanding of the role of the Answering Respondent. A plain reading of the said averments indicates that, although reference has been made to Opposite Party No. 3, the allegations are in fact directed against Respondent No. 2 and appear to be the result of a typographical and factual error.

ii. Insofar as Paragraph 'M' is concerned, the assertion that Opposite Party No. 1 and Opposite Party No. 3 are sister concerns is patently incorrect. The Answering Respondent is not engaged in the same line of business as Respondent No.1 , but a reputed Resolution Professional appointed in discharge of statutory functions under the IBC. The Answering Respondent is an Insolvency Professional and Chartered Accountant.

iii. The averments contained in Paragraph 'N' are equally erroneous. The Applicant has incorrectly alleged that the Answering Respondent submitted the Resolution Plan dated 16.03.2022. In fact, the Resolution Plan was submitted by Respondent No. 2, whereas the Answering Respondent acted solely in his capacity as Resolution Professional. In any event, under the provisions of the IBC, the role of the Resolution Professional is confined to examining the Resolution Plan for compliance with Section 30(2) of the Code and placing the same before the Committee of Creditors. The commercial decision to approve or reject a Resolution Plan lies exclusively with the Committee of Creditors, and upon such approval, the Adjudicating Authority may approve the Plan under Section 31(1) of the Code. The Resolution Professional neither formulates the terms of the Resolution Plan nor exercises any authority in its approval or rejection.

iv. The Applicant has also sought to rely upon the Order dated 08.04.2022 passed in I.A. (IBC) No. 43/2021 in CP (IB) No. 09/GB/2019 to cast aspersions on the conduct of the Answering Respondent. Such reliance is wholly misplaced. The said order neither pertains to the facts of the present case nor supports the allegations made herein.

v. In any event, the Hon'ble NCLAT, while disposing of the appeal arising from the aforesaid order, expressly clarified by Judgment and Order dated 08.02.2024 that the observations made against the Resolution Professional therein were confined to the facts of that case and shall not be treated as adverse to the integrity of the Resolution Professional or be used as a basis for initiating any proceedings against him before any forum.

A copy of judgement and Order dated 08.02.2024 in the case of, "*Sandeep 'Khaitan, Resolution Professional of National ptywood tndustries Ltd. Versus Piyush Periwal & Ors.*"is annexed as *Annexure* B to the reply.

III. **PARA-WISE REPLY**

i. The contents of the Synopsis, save and except those which are matters of record, are denied as being baseless and devoid of any merit for the reasons more specifically set out in the preliminary Submissions.

ii. The contents of Paragraph "i" does not merit reply.

iii. The contents of Paragraph "ii" are denied. It is submitted that this Hon'ble Tribunal has no power to review its own orders. The Applicant's remedy, if any, was to prefer an appeal against the CIRP Admission Order and the Plan Approval Order. Having failed to do so, the said orders have attained finality.

iv. The contents of Paragraph "iii" are denied. lt is submitted that the present application is not within limitation. The present Application has been filed only after a gross delay of about 971 days in challenging the CIRP Admission Order and about 508 days in challenging the Plan Approval Order. ln any case, as stated earlier the said Orders cannot be challenged before this Hon'ble Tribunal.

v. The contents of Paragraph “iv A”, save and except matters of record, are denied for want of knowledge.

vi. The contents of Paragraph “iv B” are denied. It is specifically denied that the proceedings were initiated at the instance of the Answering Respondent. The Applicant is put to strict proof of the authority of its purported authorised signatory to institute the present proceedings.

vii. The contents of Paragraphs “iv C” and “iv D” are matters of record and require no reply.

viii. The contents of Paragraph “iv E” are denied for the reasons more specifically set out in the Preliminary Submission. It is specifically denied that no Public Announcement was made. The Public Announcement was duly published and the Applicant was also informed of the CIRP initiation through direct communications, including email dated 04.06.2021.

ix. The contents of Paragraphs “iv F” and “iv G” are matters of record. It is, however, reiterated that the Resolution Professional has no role in approval or rejection of a Resolution Plan.The role of the Resolution Professional is confined to examining compliance under Section 30(2) of the IBC, while approval of the Resolution Plan falls exclusively within the commercial wisdom of the Committee of Creditors. Once the CoC approves a resolution plan and it meets the criteria outlined in Section 30(2), the Adjudicating Authority has the authority to approve it in accordance with Section 31(1) of the lBC.

x. The contents of Paragraph “iv H”, save and except matters of record, are denied for want of knowledge.

xi. The contents of Paragraph “iv I” are denied. It is specifically denied that the Answering Respondent acted in collusion with any party or committed any act of cheating, breach of trust or forgery. It is specifically denied that the Answering Respondent caused any loss to the public exchequer. The Applicant is put to strict proof thereof. The allegation is, in any event, self-contradictory, as the Applicant itself admits that it subsequently "re-examined" and "revisited" the matter, which clearly demonstrates prior knowledge of the relevant facts. Having acknowledged such knowledge, the Applicant cannot simultaneously contend that such situation was created to kept away the present Applicant from the proceedings. Thus, the Applicant could not have been kept away,, since admittedly it was aware of the entire issue.

xii. The contents of Paragraph "iv J" do not pertain to the Answering Respondent. Without prejudice, it is submitted that the Applicant seeks to challenge matters falling within the commercial wisdom of the Committee of Creditors, which is impermissible in law.

xiii. The contents of Paragraph "iv K" are denied. It is specifically denied that the Applicant was not informed of the CIRP proceedings. The Applicant was duly informed through communications issued by the Answering Respondent, which is disproved from the other paragraphs of the Application itself, as well as the Emails dated 04.06.2021 and 20.08.2022.

xiv. The contents of Paragraph "iv L" are denied. lt is reiterated that ignorance of law cannot be a defence. The Applicant in the said paragraph duly admits knowledge as also the fact that it did not do "objective scrutiny" and that it was only after the letter dated 26.10.2023 that it applied its mind and 're-visited', the issue.

xv. The contents of Paragraph "iv M" are denied. The allegations of collusion are wholly baseless. The allegation of collusion is disproved from the paragraph itself. The assertion that Respondent No.1 and Respondent No.3 are sister concerns is factually incorrect. Respondent No. (3) is not a company but rather a court appointed officer/ Resolution professional. Moreover, Respondent No.3 is not engaged in the same line of business as Respondent No.1. The Answering Respondent is reputed insolvency professional and a Charted Accountant.

xvi. The contents of Paragraph "iv N" are denied. It is specifically denied that the Answering Respondent submitted the Resolution Plan. The Resolution Plan was submitted by Respondent No.2, whereas the Answering Respondent acted only in his statutory capacity as Resolution Professional. From a bare perusal of the para under reply it would become evident that the while reference has been made to the Answering Respondent, the allegations or actually against Respondent No. 2. It is reiterated that the allegations against the Answering Respondent are misconceived in view of the limited statutory role of the Resolution Professional under the IBC, as already set out hereinabove. In any event, the embargo under Section 29A(e) of the Code does not apply to a "connected person" or related party in the facts of the present case, as is evident from the proviso thereto.

xvii. The contents of Paragraph "iv O" are denied. Despite admittedly having knowledge of the CIRP, the Applicant never submitted any claim before the Resolution Professional. In any event, neither the books of the Corporate Debtor nor the information available with the suspended management disclosed any liability towards the Applicant. Thus, the Applicant cannot now raise an objection vis-a-vis its claim not being, *'revealed in the right perspective*".

xviii. The contents of Paragraphs "iv P" and "iv Q" are denied. It is once again denied that the Answering Respondent has colluded or any purported issued has been overlooked due to the Answering Respondent's own interest. lt is further denied that any undue or excessive benefit has been given to either Respondent No.1 or Respondent No.2 by the Answering Respondent. It is reiterated that the Resolution Professional discharged his statutory functions strictly in accordance with the provisions of the IBC.

xix. The contents of Paragraph "iv R" are denied for the reasons stated in the Preliminary Objections and the preceding paragraphs. The same is not being repeated herein for the sake of brevity.

xx. The contents of Ground No. I are denied for the reasons stated hereinabove.

xxi. The contents of Ground Nos. I(a) and I(b) are denied. The Applicant's allegation that it was not informed of the CIRP proceedings is contrary to its own pleadings and the contemporaneous communications placed on record as *Annexure*–A (Colly). Further, the objection regarding publication of the Public Announcement in allegedly low-circulation newspapers is misconceived and immaterial, particularly when the Applicant was independently informed through direct communications issued by the Answering Respondent.

xxii. The contents of Ground No. I(c), save and except matters of record, are denied. Without prejudice, it is submitted that during the compliance review of the Resolution Plan, the Answering Respondent had specifically flagged the impugned clause and informed Respondent No. 2 that the Resolution Plan could not be made conditional upon the grant of any reliefs sought therein. Respondent No. 2, in response, clarified that the Resolution Plan was not dependent upon the enforceability of the said clause. The same is evident from the email dated 16.03.2022, annexed as *Annexure*–C to the reply.

xxiii. Ground No. I(d) does not pertain to the Answering Respondent and therefore calls for no reply.

xxiv. Ground No. I(e) is denied for the reasons more specifically set out in the Preliminary Submissions and the preceding paragraphs. It is reiterated that the Resolution Professional has no role in either the terms of the Resolution Plan or the approval/ rejection of a resolution plan

xxv. Ground No. II is denied for the reasons stated in the Preliminary Objections and the preceding paragraphs.

xxvi. Ground No. III is denied. It is specifically denied that the Answering Respondent adopted any wrongful measure or violated any statutory provision. The Applicant, despite having knowledge of the CIRP, failed to submit any claim, and neither the balance sheet of the CD nor the information received from the suspended board revealed any purported dues towards the Applicant.

xxvii. The contents of Ground No. IV are denied for the reasons stated in the Preliminary Objections and the preceding paragraphs. Without prejudice, it is submitted that Section 29A (e) does not apply to "connected person"/ related party which is apparent from the language of the proviso of Section 29A (e) itself. Moreover, since the CD is a MSME

Unit, Respondent No.2.was eligible to submit a Resolution Plan. This is in accordance with Section 240A of the Code.

xxviii. The contents of Ground No. V, save and except matters of record, are denied. The allegation regarding publication of the Public Announcement in newspapers of limited circulation is misconceived and immaterial, particularly when the Applicant was independently informed of the CIRP through direct communications issued by the Answering Respondent.

xxix. The contents of Ground No. VI are vehemently denied. It is specifically denied that the Answering Respondent is a "habitual perpetrator" or has acted contrary to any duty prescribed under the IBC. It is submitted that not only would the Order in question not apply to the instant case but even otherwise, the Hon'ble NCLAT, by its Judgment dated 08.02.2024, expressly clarified that the observations made therein shall not be treated as adverse to the integrity of the Resolution Professional nor form the basis of any proceedings against him. A copy of the said Judgment is annexed as *Annexure*–B to the reply.

xxx. The contents of Ground Nos. VII and VIII, save and except matters of record, are denied. It is specifically denied that the Answering Respondent acted in collusion with any person or entity, and the Applicant is put to strict proof thereof. In view of the foregoing facts and submissions, the present Application is liable to be dismissed.

4. In rejoinder to the reply filed by the Respondent, the Applicant has, inter alia, made the following submissions:

REPLY TO THE PRELIMINARY SUBMISSIONS OF OPPOSITE PARTY NO. 3

I. That, in reference to the paragraph 3.1 of the reply filed by the Opp. Party no. 3. The Applicant submits that it became aware of the Order dated 12.08.2022 only upon receipt of communication dated 16.10.2023, whereafter it re-examined the matter and discovered facts indicating fraud and material irregularities in the CIRP process. Accordingly, the cause of action and the right to apply accrued on 16.10.2023. The present application, having been filed within three years thereof, is well within limitation under Article 137 of the Limitation Act, 1963 read with Section 238A of the IBC. Moreover, the "sufficient cause of delay "to made approach before this Hon'ble Tribunal has already been distinctly mentioned in Para IV (G), (H) and (I) etc. of the interlocutory application filed by the present applicant.

II. That, in response to paragraph 3.2, it is submitted that the present application is not in the nature of a review under Section 114 read with Order XLVII of the Code of Civil Procedure, 1908. Rather, it has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, which confers wide jurisdiction upon this Hon'ble Tribunal to do substantial justice with the case of the present applicant. Since the relief sought falls within the ambit of Section 60(5) of the Code, the present application is rightly amenable under the said provision of law. Further, there was no occasion for the Applicant to prefer an appeal under Section 61 of the Code, as the Applicant's pleadings and contentions were not considered while passing the order dated 12.08.2022 by this Hon'ble forum erstwhile and it has inducted into the said proceeding at the first instance by the present applicant. In view of the present applicant it is a '*Misnomer conceptum'* in all terms.

III. That, in reply to Paragraph 3.3 of the Reply, the Applicant submits that the present application raises serious issues concerning substantial loss caused to the Applicant and the assets of the Corporate Debtor. The materials and facts now placed on record, which have a significant bearing on the resolution process, were not available before the Committee of Creditors at the time of taking its decision. Therefore, the Applicant is not seeking to question the commercial wisdom of the CoC; rather, it seeks consideration of relevant facts which were not placed before the CoC and which warrant judicial scrutiny. The Applicant, acting in the larger public interest, has brought these issues to the notice of this Hon'ble Tribunal playing the role of whittle blower, It may again be mentioned here that the issue of Commercial wisdom of the Committee of Creditors cannot ignored the public interest per se, more particularly the issue of misappropriation of huge public money, which is apparently seen here in this case is the core issue for further verification and adjudication.

IV. That, in response to Para 3.4, it is submitted that Section 60 of the Insolvency and Bankruptcy Code, 2016 not only confers jurisdiction upon this Hon'ble Tribunal but also empowers it to entertain and adjudicate applications seeking appropriate reliefs arising during the insolvency process. The present application has been duly instituted through the Managing Director of the Applicant, who holds the statutory position under law. Accordingly, the objection regarding the capacity of the signatory of the application is a baseless objection and it is seen that it has no legs to stand in any manner.

V. The contents of Paragraphs 4.1, 4.2 and 4.3 are denied. The Applicant submits that the relevant facts came to its knowledge only at a later stage for which the substantive justice may not be denied to the present applicant. The present application has been filed bona fide in public interest and for protection of public money, it is invariably required that this Hon'ble Tribunal in the light of the materials placed, may be pleased to re-examine the whole issue for securing justice in real terms.

REPLY AGAINST THE ALLEGATIONS OF OPPOSITE PARTY NO. 3

1. In reply to Para 5.1, it is submitted that the averments contained in paragraph (M) pertain to the alleged connivance between Opp. Party Nos. 1 and 2 and, due to an inadvertent error, the reference to Opp. Party No. 3 therein ought to be read as a reference to Opp. Party No. 2. It is further alleged that Opp. Party No. 2 facilitated the entry of Opp. Party No. 1 into the process concerning the transfer of ownership, while the statements made in paragraph (4) are reiterated as correct. The Applicant further contends that the conduct of Opp. Party No. 3 in dealing with the Resolution Plan is questionable and that he has failed to show his bonafide and has also failed to explain his lack of knowledge regarding the nexus between the incoming and outgoing parties to the resolution process, particularly in relation to the transfer of properties from Opp. Party No. 1 to Opp. Party No. 2. Further, with regard to Ground (IV), it is submitted that the Appellate Forum, in Company Appeal (AT) (Insolvency) Nos. 947 and 1001 of 2021 and 525, 526, 499 and 612 of 2022, directed deletion only of the observation "*treated as adverse to the integrity of RP*", while the remaining

observations contained in the Order dated 12.08.2022 passed in I.A. No. 28/GB/2022 remained undisturbed; accordingly, Opp. Party No. 3 cannot claim complete exoneration therefrom. The Applicant craves leave to rely upon the said order at the time of hearing of the present application.

PARAWISE SUBMISSION AGAINST THE PARAWISE REPLY FILED BY THE OPP. PARTY NO. 3

I. The Applicant has preferred not to offer any comments in response to paragraphs 6, 7 and 10 of the reply, the same being based on record.

II. That, in reference to the para 8, The Applicant contends that the present Application is maintainable under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

III. That, in reference to the para 9,It is submitted that the Application is not barred by delay, as the right to institute the proceedings accrued only in the year 2023 and the Application has been filed within the period prescribed under Article 137 of the Limitation Act, 1963. The Applicant further submits that the dispute concerns leasehold property and the public interest attached thereto.

IV. That, in reference to the para 11 and 12, The Applicant reiterates and relies upon the averments contained in Paragraph (B) of Column IV and Paragraphs (C) and (D) of Column IV of I.A. No. 03/2024 in C.P. (IB) No. 08/GB/2020.

V. That in reference to para 13 of the reply, the Applicant denies that the procedure prescribed for public announcement was duly followed and alleges that Respondent No. 3 manipulated the process to avoid active participation of the other bidders in the "Resolution Process" and facilitate undue advantage to a favoured party. The said respondent No. 3 in collusion with the other respondents in other way, "*Attempted to achieve through the backdoor that which is prohibited to be achieved by the front door*." It is further contended that the email dated 04.06.2021 requires judicial scrutiny of the Hon'ble Tribunal about its applicability in the light of the attending facts and circumstances etc.

VI. That, in reference to the para 14 of the reply, The Applicant alleges that the Resolution Process was not conducted in a fair and transparent manner and that the actions of Respondent No. 3 resulted in loss to public funds at large and with some hidden agendas etc. while conferring benefits upon the successful resolution applicant. The Applicant reserves its right to rely upon additional materials and documents at the time of hearing.

VII. That in reference to para 15,16,17,18 and 19 of the reply, The Applicant reiterates and relies upon the averments contained in Paragraphs (H), (I), (J), (K) and (L)Column IV of I.A. No. 03/2024 in C.P. (IB) No. 08/GB/2020.

VIII. It is specifically contended that the communications dated 04.06.2021 and 20.08.2022 did not disclose the true state of affairs and concealed material facts from the Applicant.

IX. That, in reference to the para 20, The Applicant clarifies that the reference made to Opposite Party No. 3 in Paragraph (M) of Column IV of I.A. No. 03/2024 was inadvertent and that the said reference ought to have been made to Opposite Party No. 2.

X. That in reference to para 21 of the reply, The Applicant relies upon the averments contained in Paragraphs (N) of column IV of the I.A No. 03/2024 filed by the applicant in C.P. (IB)08/GB/2020. The Applicant denies that Respondent No. 3 discharged his duties impartially and reiterates its allegation of collusion between Respondent Nos. 1 and 2, resulting in loss to public money and warranting investigation by the competent authority as well as by this Tribunal.

XI. That in reference to para 22,23,24 and 25 of the reply, The Applicant further relies upon the averments contained in Paragraphs (O), (P), (Q) and (R) of the I.A No. 03/2024 filed by the applicant in C.P. (IB)08/GB/2020.

XII. That, in response to Paragraph 26 of the Reply filed by Opposite Party No. 3, the averments made therein are specifically denied. It is reiterated that Opposite Party No. 3 failed to discharge his duties impartially and in a manner conducive to safeguarding the assets and liabilities of the Company. In this regard, the Applicant relies upon the averments contained in para I(a) and I(b) of the grounds set forth in I.A. No. 03/GB/2024 filed in C.P. (IB) No. 08/GB/2020.

XIII. That, the contents of Paragraph 27 of the Reply are denied. The Applicant reiterates that the allegations raised therein warrant judicial scrutiny by this Hon'ble Tribunal and further denies the contention that Opposite Party No. 2 did not derive any benefit through the adoption of illegal means and procedures.

XIV. That, in response to Paragraph 28 of the Reply, the Applicant relies upon the averments contained in Ground I(d) of I.A. No. 03/GB/2024 filed in C.P. (IB) No. 08/GB/2020.

XV. That, with regard to Paragraphs 29 to 35 of the Reply filed by Opposite Party No. 3, the Applicant reiterates and adopts the submissions made in Grounds I(e), II, III, IV, V, VI, VII and VIII, respectively, of I.A. No. 03/GB/2024 filed in C.P. (IB) No. 08/GB/2020.

XVI. That, in response to Paragraph 36 of the Reply, the averments made therein are denied. The Applicant specifically denies that he is not entitled to the reliefs sought in I.A. No. 03/GB/2024 filed in C.P. (IB) No. 08/GB/2020.

XVII. That, in view of the foregoing submissions made in this Rejoinder to the Reply filed by Opposite Party No. 3 in I.A. No. 03/GB/2024 arising out of C.P. (IB) No. 08/GB/2020, this Hon'ble Tribunal may be pleased to grant the reliefs prayed for in the said application, including reconsideration of the Order dated 12.08.2022 passed in I.A. (IBC) No. 28/GB/2022 in C.P. (IB) No. 08/GB/2020.

5. Respondent No. 3, Mr. Sandeep Khaitan, erstwhile Resolution Professional of the Corporate Debtor, has filed written submissions, the substance whereof is as follows:
   i. The present Application is not maintainable as it substantially seeks to challenge the CIRP Admission Order dated 05.05.2021 and the Resolution Plan Approval Order dated 12.08.2022, thereby indirectly seeking a review of the orders passed by this Tribunal and assailing the commercial wisdom of the Committee of Creditors (CoC), which is impermissible under the Insolvency and Bankruptcy Code, 2016.
   ii. The Application is liable to be dismissed as it is barred by limitation, having been filed after an inordinate delay of 971 days from the CIRP Admission Order and 508 days from the Resolution Plan Approval Order. Such belated challenge defeats the objective of a time-bound insolvency resolution process.

iii. The challenge has been raised only after the Resolution Plan had been approved by the CoC, sanctioned by this Tribunal under Section 31 of the Code, after all payments under the Resolution Plan had been completed by the Successful Resolution Applicant and after the entire resolution process has been successfully concluded, thereby causing serious prejudice to stakeholders who have acted in good faith and in reliance upon the finalized orders.

iv. The Applicant's attempt to explain the delay through contradictory statements reveals the willful inaction rather than unawareness. While claiming to be "unaware" on one hand, the Applicant simultaneously admits to having "re-examined" and "revisited" the entire matter, thereby establishing prior knowledge and conscious decision not to act.

v. It is submitted that the Applicant's own averments in Paragraphs I, K and L of the Application disclose that it had received communications from the Resolution Professional dated 04.06.2021 and 20.08.2022, was aware of the CIRP proceedings, yet failed to take any timely action. Having consciously abstained from pursuing its alleged rights despite such knowledge, the Applicant cannot now seek equitable relief on the plea of ignorance or lack of objective scrutiny.

vi. It is contended that this Tribunal has no inherent or statutory power to review its own orders and that the exclusive remedy available to an aggrieved person was an appeal under Section 61 of the Code before the Hon'ble NCLAT within the prescribed period. Having failed to avail such remedy, the impugned orders have attained finality. These orders are now beyond challenge before any forum, much less before this Hon'ble Tribunal which passed the original orders. Furthermore, by filing the instant application, the Applicant is, in effect, seeking to indirectly appeal the Impugned Orders despite the fact that such appeals would properly lie only before the Hon’ble NCLAT and, in any event, are clearly time-barred.

vii. Respondent No. 3 submits that the Applicant's challenge essentially concerns the commercial aspects of the Resolution Plan, which lie exclusively within the domain of the CoC. The Resolution Plan dated 16.03.2022 was duly scrutinized for compliance under Section 30(2) of the Code, approved by the CoC in exercise of its commercial wisdom, and thereafter approved by this Tribunal under Section 31 of the Code before being successfully implemented.

viii. The allegations levelled against Respondent No. 3 are denied as misconceived and legally untenable. It is submitted that the Resolution Professional's role is confined to ensuring compliance with statutory requirements under Section 30(2) of the Code and does not extend to determining or influencing the commercial terms of a resolution plan or its approval by the CoC.

ix. Respondent No. 3 further contends that the allegations of collusion are misconceived and untenable. It is clarified that the Resolution Plan was submitted by Respondent No. 2 and not by Respondent No. 3. Reliance placed by the Applicant on observations made in unrelated proceedings is stated to be misplaced, as such observations have no bearing on the present proceedings and, in any event, were not upheld by the Hon'ble NCLAT particularly when the Hon'ble NCLAT, in its judgment dated 08.02.2024, categorically held that the said observations "*shall not be treated as adverse to the integrity of the RP*".

x. The Applicant's case is built on contradictory foundations, as while claiming to be "unaware" and alleging "non-informing," the Applicant simultaneously admits receiving direct communications from R3 dated 04.06.2021 and 20.08.2022, being aware of proceedings but choosing not to act due to lack of self-claimed "objective scrutiny," re-examining and revisiting the entire matter after correspondence dated 16.10.2023, and making a deliberate decision not to file any claim despite knowledge of CIRP.

xi. Respondent No. 3 has also questioned the maintainability of the Application on the ground of lack of proper authorization, contending that no valid authorization has been placed on record empowering the signatory to institute the present proceedings on behalf of the Applicant.

xii. In view of the submissions made hereinabove Respondent No. 3 submits that the present Application is hopelessly barred by limitation, having been filed after an inordinate delay in challenging the CIRP Admission Order and the Resolution Plan Approval Order, both of which have attained finality. It is contended that this Tribunal lacks jurisdiction to entertain what is, in effect, a review of its own orders, particularly when the statutory remedy under Section 61 of the IBC was not availed within the prescribed period. It is further submitted that the challenge essentially seeks judicial interference with the commercial wisdom of the Committee of Creditors, which is non-justiciable under the scheme of the Code. Respondent No. 3 also contends that the Resolution Plan has already been duly implemented after approval by the CoC and this Tribunal, and any interference at this stage would defeat the objectives of the IBC. The Applicant's own admissions, according to Respondent No. 3, demonstrate conscious inaction despite knowledge of the proceedings. The allegations of collusion are baseless and have been judicially settled by the Hon'ble NCLAT's categorical vindication of the Resolution Professional's integrity. Accordingly, dismissal of the Application, with exemplary costs for abuse of process and causing unnecessary delay in finalizing matters of public importance, has been prayed for.

6. Vide Convenience Note filed on behalf of the Petitioner, the following submissions have been made:
   i. The present Application has been filed under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 seeking reconsideration of the Order dated 12.08.2022 passed in I.A. (IBC) No. 28/GB/2022 in C.P. (IB) No. 08/GB/2020, whereby the Resolution Plan dated 16.03.2022 came to be approved by this Tribunal.
   ii. The Applicant submits that Section 240A of the Insolvency and Bankruptcy Code, 2016 grants a limited exemption from the disqualifications under Section 29A to promoters and guarantors of MSMEs to facilitate the revival of such enterprises. It is contended that, in the present case, Respondent No. 3, through the Supplementary Affidavit dated 04.06.2022, justified the eligibility of the Successful Resolution Applicant (SRA) by stating that Mrs. Indu Agarwal and Mrs. Dipali Agarwal, being spouses of the erstwhile directors of the Corporate Debtor, were "connected persons" within the meaning of

Section 29A(j), and therefore the SRA shall not be ineligible under Sec. 29A(e) of IBC Code. According to the Applicant, the benefit of Section 240A could not have been extended to the SRA, as the SRA is a separate partnership firm and is neither a promoter nor a guarantor of the Corporate Debtor. The Applicant therefore alleges that the eligibility of the SRA was incorrectly presented before this Tribunal, resulting in undue benefit being conferred upon the SRA to the detriment of public interest.

iii. It is further submitted that the approved Resolution Plan contemplated transfer of the entire 80 bighas of leased land to the SRA without execution of any fresh lease deed, despite 40 bighas having already been resumed by the Applicant from the Corporate Debtor. According to the Applicant, the inclusion of the entire 80 bighas in the Resolution Plan suppressed material facts and conferred undue benefit upon the SRA, contrary to the governing legal framework relating to leasehold rights.

iv. The Applicant contends that Respondent No. 3 did not conduct the public announcement process through Form-A and Form-G in a fair and transparent manner and thereby conferred undue advantage upon certain interested parties. It is further submitted that similar conduct on the part of Respondent No. 3 had been adversely commented upon by this Tribunal in I.A. (IBC) No. 43/2021 in C.P. (IB) No. 09/GB/2019 (Piyush Periwal v. Stressed Assets Stabilization Fund & Ors.) by order dated 08.04.2022. According to the Applicant, despite being aware of such observations, Respondent No. 3 failed to disclose the same to this Tribunal while seeking approval of the Resolution Plan in the present case, thereby warranting fresh scrutiny of the process adopted and the conduct of Respondent No. 3 for showing the "lack of integrity" on his part in this instant Case.

v. The Applicant submits that it became aware of the Order dated 12.08.2022 and the alleged irregularities in the CIRP only upon receipt of the communication dated 16.10.2023. Upon reconsidering the matter, the Applicant claims to have discovered the alleged fraud committed at the instance of Respondent No. 3 and, therefore, approached this Tribunal seeking appropriate relief. According to the Applicant, the "right to apply" accrued only on 16.10.2023, being the date of knowledge of the alleged fraud, and consequently, the present Application is within the period prescribed under Article 137 of the Limitation Act, 1963, read with Section 238A of the Insolvency and Bankruptcy Code, 2016, which makes the provisions of the Limitation Act applicable to proceedings under the Code and by applying the said yardstick, the Case filed by the present petitioner is undisputedly seems within time limit. In this context, it is important to note here that under Article 137 of the Limitation Act, 1963, limitation runs each time once the „ right to apply accrues" The Article 137 as well as Article 113 of the Limitation Act, 1963, use the expression "when the right to sue accrues" as distinct from Article 58 of the Act of 2016, which uses the expression " when the right to sue first accrues" Be it noted that the limitation period in terms of Article 137 of the Limitation Act, 1963 accrued three (3) years from which period begins to run from knowledge. Moreover, the sufficient cause of delay to made approach before this Hon'ble Tribunal has already been distinctly mentioned in Para IV (G), (H) and (I) etc. of the interlocutory application filed by the present petitioner.

vi. On the aforesaid grounds, the Applicant submits that the reliefs sought are just and equitable and prays for interference with the Order dated 12.08.2022 in the interest of justice.

The Applicant, by way of the Additional Convenience Note, has, inter alia, submitted as follows:

i. The present Application, filed on 20.12.2023 seeking to set aside the orders dated 05.05.2021 and 12.08.2022, is stated to be within the period of limitation prescribed under Article 137 of the Limitation Act, 1963, which provides a limitation period of three years for filling such application.

ii. The Applicant submits that the alleged fraud, material irregularities and anomalies in the CIRP came to its knowledge only upon receipt of the communication dated 16.10.2023 from the Resolution Professional. It is contended that fraud vitiates all proceedings and, therefore, limitation ought to be computed from the date of knowledge, namely 16.10.2023, rendering the present Application within time.

iii. It is further submitted that the Applicant was deprived of effectively pursuing its claim due to the manner in which the Resolution Professional conducted the CIRP and issued the public notices in Form-A and Form-G. The Applicant has relied upon the observations made by this Tribunal in I.A. (IBC) No. 43/2021 in C.P. (IB) No. 09/GB/2019 (Piyush Periwal v. Stressed Assets Stabilization Fund & Ors.) and contends that similar irregularities arose in the present case, warranting interference with the impugned order dated 12.08.2022.

iv. The Applicant further submits that, notwithstanding the limited scope of judicial review over the commercial wisdom of the Committee of Creditors, this Tribunal is empowered under Section 60(5)(c) of the Code to examine allegations of illegality, procedural impropriety and violation of statutory provisions. Accordingly, the present Application is stated to be maintainable.

v. The Applicant contends that the benefit of Section 240A of the Code was wrongly extended to the Successful Resolution Applicants, who were neither promoters nor guarantors of the Corporate Debtor. According to the Applicant, such extension of benefit conferred an undue advantage upon the Successful Resolution Applicants and raises concerns regarding fairness, transparency and compliance with the provisions of the Code.

On the aforesaid grounds, the Applicant submits that the present Application deserves to be allowed and the reliefs prayed for therein be granted in the interest of justice, equity and fair play.

ANALYSIS OF THE TRIBUNAL

Having heard the learned counsel appearing for the Applicant as well as the learned counsel representing the Respondents, perused the pleadings, documents placed on record and the written submissions filed by the respective parties, this Tribunal proceeds to examine the issues arising for consideration.

At the outset, it is pertinent to note that although the present application has been instituted against Respondent Nos. 1 to 4, a detailed reply contesting the application has been filed only by Respondent No. 3, the Resolution Professional. As recorded in the Daily Order dated 03.06.2026, that pursuant to the approval and implementation of the Resolution Plan, the Corporate Debtor (Respondent No. 1) stood vested in the Successful Resolution Applicant, the Committee of Creditors had ceased to exist and the CIRP had concluded, rendering Respondent Nos. 1 and 4 defunct for the purposes of the present proceedings. Respondent No. 2 has also not filed any separate reply. Accordingly, the present application has been considered on the basis of the pleadings, documents and submissions available on record, particularly the reply filed by Respondent No. 3. The following issues, therefore, arise for consideration:

I. Whether the present application under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 is maintainable?

The principal relief sought by the Applicant is for setting aside the order dated 05.05.2021 admitting the Corporate Debtor into CIRP, quashing the order dated 12.08.2022 approving the Resolution Plan, removal of the Resolution Professional, directing a de novo CIRP and initiating investigation by the CBI.

The Applicant has invoked Section 60(5)(c) of the Code contending that this Tribunal possesses wide residuary jurisdiction to examine fraud and protect public interest. According to the Applicant, the application is not one seeking review of the earlier orders but seeks adjudication of issues which allegedly came to light only subsequently.

Per contra, Respondent No.3 submits that the present application is nothing but an indirect attempt to reopen concluded insolvency proceedings. It is contended that the Code does not confer any power of substantive review upon this Tribunal and that the statutory remedy against the orders dated 05.05.2021 and 12.08.2022 lay only before the Hon'ble National Company Law Appellate Tribunal under Section 61 of the Code.

After considering the rival submissions, this Tribunal finds merit in the preliminary objection raised by Respondent No.3.

Although the application has been styled as one under Section 60(5), the substantive reliefs unmistakably seek recall of the admission order as well as the order approving the Resolution Plan. The prayer for removal of the Resolution Professional from the date of his appointment, declaration that all actions taken during the CIRP are void and initiation of a fresh CIRP necessarily require reopening of orders which have already attained finality.

Section 60(5) undoubtedly confers wide jurisdiction upon the Adjudicating Authority in relation to matters arising out of or in relation to the insolvency resolution process. However, such jurisdiction cannot be interpreted as conferring a power of review which the statute itself does not provide.

The Hon'ble Supreme Court has consistently held that the Adjudicating Authority under the Code is a creature of statute and cannot exercise powers beyond those expressly conferred under the Code. The remedy against an order approving a Resolution Plan is by way of an appeal under Section 61 and not by filing a subsequent application before the same forum.

Accordingly, this Tribunal is of the considered opinion that, insofar as the Applicant seeks recall, review or reconsideration of the admission order dated 05.05.2021 and the Resolution Plan approval order dated 12.08.2022, the present proceedings are not maintainable.

II. Whether the application suffers from delay and is barred by limitation ?

Respondent No.3 has specifically pleaded that the admission order was passed on 05.05.2021 while the Resolution Plan came to be approved on 12.08.2022. The present application was instituted long thereafter when the Resolution Plan had already been implemented.

The Applicant seeks to explain the delay by contending that only after receiving the communication dated 16.10.2023 did it re-examine the matter and discover the alleged fraud committed by the Respondents.

The Applicant itself has admitted in the pleadings that communications dated 20.08.2022 and 28.09.2022 had already been received from the Resolution Professional as well as the

Successful Resolution Applicant informing it regarding approval of the Resolution Plan. The Applicant further admits that it did not challenge the proceedings because it was under a bona fide impression that the Resolution Plan would be implemented. The reply filed by Respondent No.3 further discloses communication dated 04.06.2021 informing the Applicant regarding commencement of CIRP.

The chronology of events, including the public announcement published in newspapers, followed by the communications dated 04.06.2021, 20.08.2022 and 28.09.2022, unequivocally establishes that the Applicant had sufficient notice of the CIRP and ample opportunity to assert its rights. Despite such repeated intimations, the Applicant neither lodged its claim nor availed the statutory remedy available under the Code.

More importantly, the law is well settled that once a Resolution Plan has been approved and implemented, the principle of finality assumes paramount importance under the Insolvency and Bankruptcy Code. The Code envisages certainty, revival of the Corporate Debtor and timely completion of the insolvency process. Entertaining challenges after implementation of the Resolution Plan would defeat the very object of the legislation.

Consequently, the application suffers from gross and unexplained delay and is barred by limitation.

III. Whether fraud, collusion and misconduct of the Resolution Professional have been established?

The Applicant has levelled serious allegations against the Resolution Professional alleging collusion with the Successful Resolution Applicant, suppression of material facts, manipulation of the CIRP, violation of statutory duties and deliberate exclusion of the Applicant from the resolution process.

It is settled law that allegations of fraud are required to be pleaded with complete particulars and supported by cogent evidence. Mere suspicion, conjectures or inferences cannot constitute proof of fraud.

In the present case, the Applicant has principally relied upon:

a. alleged relationship between the Successful Resolution Applicant and the Corporate Debtor;
b. publication of Form-A and Form-G in newspapers having limited circulation;
c. alleged omission to include Applicant's claim;
d. Clause 20 of the Resolution Plan;
e. previous observations made against the Resolution Professional in another insolvency proceeding.

Upon careful examination of the material available on record, this Tribunal is unable to find any convincing evidence establishing collusion between Respondent Nos.2 and 3.

Firstly, Respondent No. 3 has specifically denied all the allegations made against it. The allegation that Respondent No. 3 is a sister concern of the Corporate Debtor has already been clarified in the reply as an inadvertent factual error in the pleadings. The reply also points out that several allegations against Respondent No. 3 were merely typographical mistakes. Further, in the rejoinder, the Applicant has admitted that the allegation was actually intended against Respondent No. 2 and not against Respondent No. 3, who is the Resolution Professional in the present case.

Secondly, the role of a Resolution Professional is circumscribed by the provisions of the Code. The Resolution Professional neither submits the Resolution Plan nor approves it. His statutory duty is confined to conducting the CIRP in accordance with the Code, examining compliance under Section 30(2), placing compliant plans before the Committee of Creditors and thereafter presenting the approved Resolution Plan before the Adjudicating Authority.

Thirdly, the previous observations made against the Resolution Professional in another proceeding cannot by themselves establish misconduct in the present case, particularly when the Appellate Tribunal has subsequently clarified that such observations shall not be treated as adverse to his integrity.

Fourthly, except making generalized allegations of conspiracy, no documentary material demonstrating financial benefit, concealment of assets, manipulation of voting process or suppression of mandatory disclosures has been placed before this Tribunal.

Serious allegations affecting the professional reputation of an Insolvency Professional cannot be accepted merely on the basis of assumptions or inferences.

Consequently, this Tribunal holds that the allegations of fraud, collusion and misconduct remain unsubstantiated.

IV. Whether the Resolution Plan suffers from any infirmity on account of alleged violation of Section 29A of the Insolvency and Bankruptcy Code, 2016 and whether the Successful Resolution Applicant was ineligible?

The principal contention of the Applicant is that the Successful Resolution Applicant ("SRA") was a "connected person" with the erstwhile management of the Corporate Debtor and was, therefore, rendered ineligible under Section 29A of the Code. It is further contended that the Resolution Professional erroneously extended the benefit of Section 240A of the Code to the SRA despite the fact that the SRA, being a partnership firm, was admittedly not a promoter or guarantor of the Corporate Debtor. In support of the said contention, reliance has also been placed upon the decision of the Hon'ble Supreme Court in **Hari Babu Thota**, Civil Appeal No. 4422/2023.

Per contra, the Respondents have submitted that the Corporate Debtor is an MSME and, therefore, the exemption contemplated under Section 240A was rightly invoked. It has further been contended that the issue of eligibility under Section 29A was specifically examined by the Resolution Professional and placed before this Tribunal by way of the Supplementary Affidavit dated 04.06.2022, whereafter this Tribunal, while approving the Resolution Plan by order dated 12.08.2022, accepted the said clarification.

Having considered the rival submissions, this Tribunal finds that the issue regarding the eligibility of the SRA under Section 29A is not a fresh issue raised for the first time in the present proceedings. The order dated 12.08.2022 itself records, in paragraph 8.1, the detailed clarification furnished by the Resolution Professional that although the spouses of the erstwhile directors were partners of the SRA, the Corporate Debtor being a Medium Enterprise within the meaning of the MSMED Act, 2006, the exemption available under

Section 240A was attracted. The Resolution Professional also clarified that the ineligibility under Section 29A(c) and the connected person provisions stood examined before the Resolution Plan was approved by this Tribunal.

The Applicant has not placed any fresh material to demonstrate that the aforesaid findings recorded while approving the Resolution Plan were obtained by fraud, suppression of material facts or misrepresentation. The reliance placed upon **Hari Babu Thota** is also of no assistance to the Applicant in the facts of the present case. The question whether the SRA satisfied the eligibility requirements under Section 29A, read with Section 240A of the Code, had already been considered by this Tribunal while exercising jurisdiction under Section 31 of the Code. The present application, in substance, seeks a re-appreciation of the very same issue, which would amount to an indirect review of the order approving the Resolution Plan, a jurisdiction not vested in this Tribunal.

Moreover, except making broad allegations regarding the status of the SRA and its alleged connection with the erstwhile management, the Applicant has failed to produce any cogent documentary evidence establishing that the SRA incurred any statutory disqualification under Section 29A which was overlooked by the Resolution Professional or by this Tribunal. Mere disagreement with the interpretation adopted in the approval order cannot constitute a ground for reopening a concluded Resolution Plan.

Accordingly, this Tribunal is of the considered opinion that the Applicant has failed to establish any violation of Section 29A of the Code or any infirmity in the applicability of Section 240A warranting interference with the Resolution Plan approved under Section 31 of the Code.

V. Whether the Applicant's leasehold rights and allegations regarding loss to the public exchequer justify setting aside the approved Resolution Plan?

The Applicant has repeatedly emphasized that it is a Government Corporation entrusted with protection of public assets and that valuable leasehold rights belonging to the Applicant have been adversely affected by the implementation of the Resolution Plan. It is further argued that public interest must prevail over commercial considerations.

There can be no quarrel with the proposition that public property deserves protection and that statutory authorities are expected to safeguard public assets. However, every allegation relating to public loss cannot *ipso facto* become a ground for reopening a concluded Corporate Insolvency Resolution Process.

From the material placed before this Tribunal, it appears that the Applicant had knowledge of the insolvency proceedings. Communications were admittedly exchanged between the Resolution Professional and the Applicant. Despite such knowledge, no claim was lodged before the Resolution Professional within the prescribed period, nor was any challenge made either before approval of the Resolution Plan or immediately thereafter.

The Code contemplates a structured mechanism for inviting claims, verification thereof and preparation of the Information Memorandum. If a creditor or stakeholder, despite knowledge of the proceedings, chooses not to assert its rights at the appropriate stage, the entire resolution process cannot subsequently be unsettled after its successful implementation.

The Applicant has also failed to establish that any proprietary right vested in it stood extinguished by virtue of the Resolution Plan in violation of any statutory provision. At best, the dispute relates to enforcement of contractual or leasehold rights, which may be pursued before the appropriate forum in accordance with law, if otherwise maintainable. Such disputes cannot furnish a ground to invalidate an approved Resolution Plan that has been already implemented as per the scheme of the code

Accordingly, this issue is also decided against the Applicant.

VI. Whether this Tribunal can interfere with the commercial wisdom of the Committee of Creditors?

A substantial portion of the Applicant's challenge is directed against the commercial terms incorporated in the approved Resolution Plan. According to the Applicant, the Resolution

Plan conferred undue advantage upon the Successful Resolution Applicant and resulted in substantial loss to public revenue.

The Respondents have opposed the said contention by submitting that the commercial viability and feasibility of a Resolution Plan lies exclusively within the domain of the Committee of Creditors.

This Tribunal finds merit in the submission advanced by the Respondents.

The Committee of Creditors, comprising financial creditors, is statutorily entrusted with the responsibility of evaluating the feasibility and viability of competing Resolution Plans. Once the Committee of Creditors, after due deliberation, approves a Resolution Plan by the requisite majority and the Plan satisfies the requirements of Section 30(2), the scope of judicial review available to the Adjudicating Authority becomes extremely limited.

In this regard, the Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.**, (2019) SCC OnLine SC, has clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. The Hon'ble Apex Court, in **paragraph 42**, observed as follows:

" Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra)."

The aforesaid principle has been consistently reiterated by the Hon'ble Supreme Court in **Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh**, Civil Appeal No. 4242 Of 2019 where the Apex court has reiterated the same and the relevant extract is as reproduced hereunder –

"28. …. The scope of interference by the Adjudicating Authority in limited judicial review has been laid down in the case of Essar Steel (supra), the relevant passage (para 54) of which we have reproduced in earlier part of this judgment. …..".

Similarly, in **Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Ltd.**, Civil Appeal No. 3224 of 2020 the Apex Court has held –

"202. The residual powers of the Adjudicating Authority under the IBC cannot be exercised to create procedural remedies which have substantive outcomes on the process of insolvency. The framework, as it stands, only enables withdrawals from the CIRP process by following the procedure detailed in Section 12A of the IBC and Regulation 30A of the CIRP Regulations and in the situations recognized in those provisions. Enabling withdrawals or modifications of the Resolution Plan at the behest of the successful Resolution Applicant, once it has been submitted to the Adjudicating Authority after due compliance with the procedural requirements and timelines, would create another tier of negotiations which will be wholly unregulated by the statute…….

204. …. . In this context, we hold that the existing insolvency framework in India provides no scope for effecting further modifications or withdrawals of CoC-approved Resolution Plans, at the behest of the successful Resolution Applicant, once the plan has been submitted to the Adjudicating Authority. A Resolution Applicant, after obtaining the financial information of the Corporate Debtor through the informational utilities and perusing the IM, is assumed to have analyzed the risks in the business of the Corporate Debtor and submitted a considered proposal. A submitted Resolution Plan is binding and irrevocable as between the CoC and the successful Resolution Applicant in terms of the provisions of the IBC and the CIRP Regulations…."

In the present case, the Applicant has not demonstrated any violation of Section 30(2) or Section 31 of the Code. Rather, the challenge is essentially directed against the commercial terms accepted by the Committee of Creditors. Permitting such challenge after implementation of the Resolution Plan would not only undermine the finality attached to insolvency proceedings but would also seriously affect the confidence of prospective resolution applicants participating under the framework of the Code. Therefore, no interference is warranted.

VII. Whether directions for fresh CIRP, removal of the Resolution Professional, investigation by the CBI or proceedings under Section 65 of the Code deserve to be issued?

The Applicant has prayed for far-reaching directions including removal of the Resolution Professional, declaration of the entire CIRP as void, initiation of fresh CIRP, investigation by the Central Bureau of Investigation and initiation of proceedings under Section 65 of the Code.

Such reliefs are extraordinary in nature and can be granted only where the record unmistakably establishes fraud, malicious initiation of proceedings or abuse of the insolvency process.

As already discussed, the Applicant has failed to produce cogent evidence establishing fraud or collusion. The allegations remain largely inferential and unsupported by documentary evidence. Mere suspicion, however strong, cannot substitute proof.

Similarly, no material has been produced to demonstrate that the Corporate Insolvency Resolution Process was initiated fraudulently or with malicious intent so as to attract Section 65 of the Code.

The Resolution Plan has already been approved by this Tribunal and implemented. Rights of various stakeholders have crystallized. Disturbing such settled rights in the absence of compelling statutory grounds would defeat the very object of the Insolvency and Bankruptcy Code.

Consequently, none of the extraordinary reliefs sought by the Applicant deserve to be granted.

FINDINGS OF THE TRIBUNAL

Upon an overall appreciation of the pleadings, documents and submissions advanced on behalf of the parties, this Tribunal arrives at the following conclusions:

i. The present application, though styled as one under Section 60(5) of the Code, substantially seeks review and recall of the orders dated 05.05.2021 and 12.08.2022, which is not maintainable before this Tribunal.

ii. The application suffers from gross delay and is barred by limitation. The Applicant had knowledge of the Corporate Insolvency Resolution Process and failed to avail the statutory remedy available under Section 61 of the Code.

iii. The allegations of fraud, collusion, suppression of material facts and misconduct against the Resolution Professional have not been established by cogent evidence.

iv. No violation of Section 29A or any mandatory provision of the Insolvency and Bankruptcy Code has been proved.

v. Issues relating to leasehold rights may survive independently but do not justify setting aside the CIRP or the approved Resolution Plan;

vi. The challenge substantially seeks interference with the commercial wisdom of the Committee of Creditors, which is impermissible within the limited jurisdiction of this Adjudicating Authority.

vii. The Resolution Plan has already attained finality and stands implemented. Reopening the completed Corporate Insolvency Resolution Process at this stage would be contrary to the objectives of the Insolvency and Bankruptcy Code and would seriously prejudice the rights that have accrued in favour of stakeholders**.**

viii. No case is made out for exercise of powers under Section 60(5) or for directing investigation by any specialised agency.

Accordingly, the Applicant has failed to establish any legal ground warranting interference with the CIRP or the approved Resolution Plan.

ORDER

1. In view of the foregoing analysis and findings, **IA (IBC)/3/GB/2024** filed by Assam Industrial Infrastructure Development Corporation in **IA(IBC)/28/GB/2022** in CP(IB)/8/GB/2020 is **DISMISSED.**
2. Accordingly, the instant petition, i.e. IA (IBC)/3/GB/2024 in CP(IB)/8/GB/2020 stands disposed of.

3. The Registry is directed to send e-mail copies of the order forthwith to all the concerned parties inclusive of the Counsel and the Interim Resolution Professional.
4. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
5. File be consigned to record.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

Signed this on 14th day of July, 2026

Niketa Choudhary (L.R.A)