IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

IA (I.B.C)/2372(MB)2026
IN
CP (IB) No. 1053/(MB)/2017

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

Sane Guruji Premises Co-operative Society Limited,
386, Vir Savarkar Marg, Prabhadevi,
Mumbai, Maharashtra – 400 025
Email: ajay@comart.in ... **Applicant**

VERSUS

ARCK Resolution Professional LLP,
Sh. Anil Kohli, Liquidator of
M/s. Amar Remedies Limited
409, Ansal Bhawan, 16 K.G. Marg,
Connaught Place, New Delhi – 110 001 ... **Respondent**

In the matter of:
Amar Remedies Limited ... **Corporate Applicant**

Order delivered on 11.08.2026

CORAM:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Mr. Prateek Kushwaha a/w Mr. Dhimaan Dutta, Advocates
For the Respondent	:	Mr. Abhinav Mathur a/w Mr. Lokesh Pawaskar, Advocates

ORDER

Per : CORAM

1) Adv. Abhinav Mathur a/w Adv. Lokesh Pawaskar for the Respondent present. Adv. Prateek Kushwaha and Adv. Dhimaan Dutta for Applicant present through VC.

2) The present Application has been filed by the Amar Remedies Limited / Corporate Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016. The Applicant seeks following relief :

a. *Pass ex-parte ad-interim direction against the Respondent/ Liquidator to maintain status quo and not to distribute the amount forfeited in favour of the Corporate Debtor with respect to the performance security issued by the Resolution Applicant at the time of submission of the Resolution Plan till the disposal of the present application as there is no provision that the same to be distributed to the lenders;*

b. *Direct that an amount of Rs. 42,11,628/- pertains prior to the liquidation commencement date to be treated as the CIRP cost; or*

c. *Direct the Liquidator to distribute an amount of Rs. 42,11,628/- for the period from 25.03.2021 till 11.03.2024 towards the dues incurred and amount paid by the Applicant society from its own funds for preserving and maintaining the asset of the Corporate Debtor as going concern when the Resolution Plan was under implementation from the portion of forfeited performance security done in favour of the Corporate Debtor;*

d. *Direct the Liquidator to treat the Applicant society as 'Secured Operational Creditor' for the purpose of distribution of Rs. 23,54,356/- towards pre- CIRP dues under Section 53 of the Code, 2016 in view of the first charge created under Section 4 7 of the Maharashtra Co-operative Societies Act, 1960;*

e. *Pass such other or further order I order(s) as may be deemed fit and and proper in the facts and circumstances of the instant case.*

3) The Applicant herein is a co-operative society registered under Section 47 of the Maharashtra Co-operative Societies Act, 1960. The registered office of the Corporate Debtor is situated at the premises of the Applicant society and the complete address is Block No. 3, 2nd Floor, Sane Guruji Premises 386, S.V. Savarkar Marg, Opp. Siddivinayak Temple, Prabhadevi, Mumbai City MH - 400025.

4) The present Application arising from the impugned action of the Liquidator who despite admitting the fact that the Applicant society has incurred towards preservation and maintenance of the registered/ corporate office of the corporate debtor as going concern by making payment of appropriate Taxes to the BMC (Property Taxes), paid lease rent, utility bills (including water charges, common electricity bills and salaries to employees for providing amenities and services) and maintenance charges on behalf of the Corporate Debtor as the office is located in the premises of the Applicant society.

5) As a matter of fact and record it is in the notice of the Liquidator that the society has incurred expenses towards preservation and maintenance considering the same the going concern expenses were considered as a part of CIRP cost and post liquidation the same amount has been considered as liquidation cost and the same were paid in priority but for the period from 25.03.2021 to 11.03.2024 (period in which the approved Resolution Plan was under implementation) the same were not paid and made part of the water fall mechanism by treating the same as 'Operational Debt'.

6) The CIRP was commenced vide an order dated 16.06.2017 and the Resolution Plan submitted by one PK Hospitality Services Private

Limited/ Resolution Applicant was approved vide an order dated 25.03.2021 but for the period from 25.03.2021 to 11.03.2024 the Resolution Applicant has failed to implement the Resolution Plan which has then lead to passing of the liquidation order on 11.03.2024.

7) During the period from 16.06.2017 to 25.03.2021 when the CIRP was going on cost of Rs. 40,81,479/- was incurred which has been paid by the liquidator on priority. From 11.03.2024 i.e., the date of passing of the liquidation order to 05.12.2024 i.e., the date of selling of the asset/ office to the new bidder again the Liquidator has made the payment of Rs.9,06,068/- on priority treating as the liquidation cost. But for the period from 25.03.2021 to 11.03.2024 when the Resolution Applicant who has failed to implement the Resolution Plan was in control and custody of the asset the cost incurred for preserving and maintaining the asset of the Corporate Debtor was Rs. 42,11628/- was declined by the Liquidator by way of reply to the legal notice dated 28.05.2026 as a priority cost despite forfeiture of performance bank guarantee of Rs. 2,00,00,000/- of the Resolution Applicant which was supposed to be used for the payment of cost incurred by the parties hampered due to failure of implementation of the approved Resolution Plan.

8) The Applicant is an aggrieved party due to failure on part of the Resolution Applicant to implement the Resolution Plan as the Resolution Applicant was using . the premises of the Applicant wherein the Registered office of the Corporate Debtor is situated and the forfeited performance security is to be used for making payment of the ongoing operational expenses which has been declined by the Liquidator citing it is neither as CIRP cost nor a Liquidation cost. The below mentioned chart summarised the operational payments received and unpaid for the ready reference:

Sr. No.	Claim period	Nature of Dues	Claim amount (in Rs.)	Status
1.	**14.01.2013 to 16.06.2017**	**Pre CIRP dues**	**Rs. 23,54,356/-**	**Unpaid**
2.	16.06.2017 to 25.03.2021	CIRP dues	Rs. 40,81,479/-	Paid
3.	**25.03.2021 to 11.03.2024**	**Dues incurred when the Resolution Applicant was in control and custody**	**Rs. 42,11,628/-**	**Unpaid**
4.	11.03.2024 to 04.06.2024	Liquidation dues from the date of passing of the Liquidation order till the date of replacement of the liquidator	Rs. 2,62,118/-	As per response to the Legal Notice dated 28.05.2026, the same will be paid.
5.	04.06.2024 to 05.12.2024	*Liquidation dues from the date of replacement of the liquidator till the date of selling the asset to the bidder	Rs. 6,43,950/-	Paid
* Being running liquidation dues/ cost calculated till the date of selling of the asset to the bidder				

9) Beside the above the Applicant is also aggrieved by the decision of the liquidator dated 28.05.2026 in treating the claim as 'Operational Creditor' instead of 'Secured Operational Creditor' despite having charge under Section 47 of the Maharashtra Co-operative Societies Act, 1960.

10) Being aggrieved by the decision of the liquidator dated 28.05.2026 in not treating the claim of the Applicant as 'Secured Operational Creditor' and not treating the operational expenses incurred during 25.03.2021 to 11.03.2024 for priority payment the present Application is moved for seeking appropriate directions as prayed.

11) It is stated that, consciously the Appeal under Section 42 of the Insolvency and Bankruptcy Code, 2016 is not filed as Section 42 provides for the Appeal within 14 days against the decision of the Liquidator accepting and rejecting of claims, however the dispute in the present Application is related to question of priorities for which jurisdiction is under Section 60(5). It is further stated, even otherwise for the above purpose if this Adjudicating Authority deems fit that Appeal under Section 42 is maintainable then without prejudice this Application shall be treated as Appeal under Section 42 as this application is filed within 14 days as provided under Section 42.

12) Heard the Learned Counsel and perused the material on record.

13) It is noted that the Applicant has filed present Application under Section 60(5)(c) of IBC against admission of their claim as unsecured Operational Creditor for pre-CIRP dues, while the Applicant claims that their dues should have been admitted as CIRP dues under the class of secured operational creditor. There is a specific provision under Section 42 of IBC requiring filing of an Appeal against the decision of the Liquidator within 14 days of the receipt of the decision, hence the Application being filed under the residuary powers of this Tribunal cannot be adjudicated under Section 60(5)(c) of IBC in view of specific remedy in terms of Section 42 being available. It is noted that the Applicant has alternatively pleaded consideration of this Application as an Appeal under Section 42 of IBC, in case this Tribunal is of the view that this Application cannot be adjudicated under Section 60(5)(c) of IBC with a prayer for condoning the delay in filing such Appeal beyond a period of 14 days provided under Section 42 of IBC. It is noted that the Applicant had filed its claim under direction of this Tribunal when the flat in the Applicant's society was auctioned by the Liquidator and there were pending dues on account of ground rent, BMC Tax and maintenance charges besides rate fees recoverable from the Corporate Debtor against the said flat. It is noted that the Applicant society is made of group of members, each one of whom owns a flat therein and the societies affairs are managed as a mutual benefit organization whereby the ground rent, BMC Tax and maintenance charges incurred by the Society for these flats as a whole are recovered from its members as pass through. In case of irrecoverability of said dues from any or more of members, such irrecoverable amount is to be borne by other members. In view of these, we consider it appropriate to consider the present Application as an Appeal and condone the delay in filing thereof in terms of Section 42 of IBC.

14) The Applicant is seeking treatment of its dues as secured operational creditor in view of statutory charge in terms of Section 47 of the Maharashtra Co-operative Societies Act, 1960 and also for treatment of dues arising during the period from date of approval of the Resolution Plan and day prior to passing of the Liquidation Order consequent to failure in implementation of the Resolution Plan.

15) This Bench, vide common order dated 19.12.2025 passed in IA 644/2025, APPEAL (IBC)/34(MB)2025 & IVN.P (IBC)/124(MB)2025 in C.P. (IB)/2205(MB)2019, after observing that *There is no provision in the code extending the CIRP period till the period an approved resolution plan fails*, has held that "*Accordingly, the period of CIRP can not be extended to include the period subsequent to its approval till commencement of liquidation, and the* *costs accruing during this period can not be considered as CIRP costs*". Further, in case of ***State Bank of India v. Adhunik Metaliks Ltd., 2020 SCC OnLine 20330,*** the co-ordinate bench of this Tribunal also held that **"***15. In view of the above proposition, the claims received during the period between 18th July, 2018 till 7th July 2019 can neither be treated as a part of "insolvency resolution process costs" nor do they fall within the ambit of "liquidation cost' and hence, cannot be accorded priority over other dues in terms of provisions of the law."* Accordingly, the claim of the Applicant for the period from date of approval of Resolution Plan till the date of admission of corporate debtor into liquidation process consequent to failure in implementation of Resolution Plan can only be admitted as Pre-CIRP costs.

16) Section 47(1)(b) of the Maharashtra Co-operative Societies Act, 1960 provides that "*Notwithstanding anything in any other law for the time being in force, but subject to any prior claim of Government in respect of land revenue or any money recoverable as land revenue and to the provisions of sections 60 and 61 of the Code of Civil Procedure, 1908, any outstanding demands or dues payable to a society by any member or past member or deceased member, in respect of rent, shares, loans or purchase money or any other rights or amounts payable to such society, shall be a first charge upon his interest in the immovable property of the society.*

17) In case of ***State Tax Officer v. Rainbow Papers Ltd.,*** **(2022) ibclaw.in 107 SC*****, it is held that***

> *"29. As argued by the learned Solicitor General, the term "Secured Creditor" as defined under the IBC is comprehensive and wide enough to cover all types of security interests namely, the right, title, interest or a claim to property, created in favour of, or*

provided for a secured creditor by a transaction, which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person.

30. The learned Solicitor General rightly argued that in view of the statutory charge in terms of Section 48 of the GVAT Act, the claim of the Tax Department of the State, squarely falls within the definition of "Security Interest" under Section 3(31) of the IBC and the State becomes a secured creditor under Section 3(30) of the Code."

18) Accordingly, the term security interest was held to include a charge created by operation of law, hence, as the Applicant had a charge over the said flat in relation to their dues in terms of Section 47(1)(b) of the Maharashtra Co-operative Societies Act, 1960, their dues qualify as secured creditor. However, it is further noted that an explanation has been inserted to the definition of security interest under Section 3(31) of IBC with effect from 26.05.2026 to provide that "*For the removal of doubts, it is hereby clarified that the security interest shall exist only if it creates a right, title or interest or a claim to a property pursuant to an agreement or arrangement, by the act of two or more parties, and shall not include a security interest created merely by operation of any law for the time being in force*".

19) The question arises whether the said explanation is retrospective in its effect as, generally, the explanation in the nature of clarifications is held to be retrospective in its operation.

20) In case of ***Sree Sankaracharya University of Sanskrit v. Manu, 2023 SCC OnLine SC 640***, the Hon'ble Supreme Court considered the issue "*whether the Government Order dated 29th March, 2001 to the extent that it modifies the Government Order dated 21st December, 1999 would be applicable to those lecturers who had acquired a Ph.D. degree at the time of their recruitment, such as, Respondent No. 1, who were placed in the selection grade before 29th March, 2001*". The Hon'ble Court took note of ***State of Bihar v. Ramesh Prasad Verma, (2017) 5 SCC 665***, the extract from the treatise, ***Principles of Statutory Interpretation, 11th Edition (2008) by Justice G.P. Singh*** on the sweep of a clarificatory/declaratory/explanatory provision, ***Commissioner of Income Tax, Bombay vs. Podar Cement Pvt. Ltd., (1997) 226 ITR 625 (SC)*** , and ***Allied Motors Pvt. Ltd. vs. Commissioner of Income Tax, Delhi, (1997) 224 ITR 677 (SC).*** In case of Sree Sankaracharya (Supra), it is held that, in order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous, and it is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it. The Hon'ble Court quoted the following excerpts from treatise of Justice G.P. Singh :

> *"The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies and approved by the Supreme Court: For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any Statute. Such acts are usually held to be retrospective.*

[…] An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended. The language 'shall be deemed always to have meant' or 'shall be deemed never to have included' is declaratory and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the constitution came into force, the amending Act also will be part of the existing law." [Emphasis by us]

21) After considering the relevant law, the Hon'ble Supreme Court culled out the following principles:

i. If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.

ii. In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.

iii. An explanation/clarification may not expand or alter the scope of the original provision.

iv. Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.

22) Further, in case of ***M.M. Aqua Technologies Ltd. v. Commissioner of Income Tax, Delhi-III AIR 2021 SUPREME COURT 3997 (CIVIL APPEAL NOS.4742-4743 OF 2021),*** the Hon'ble Supreme Court considered the amendment in section 43B of the Income Tax Act, 1961 by insertion of Explanation 3C whereby it was declared "for the removal of doubts" that the conversion of interest into loan shall not be deemed to have been actually paid. The Hon'ble Court held that *a retrospective provision in a tax act which is "for the removal of doubts" cannot be presumed to be retrospective, even where such language is used, if it alters or changes the law as it earlier stood",* after taking note of its decision in **Sedco Forex International Drill. Inc. v. CIT, (2005) 12 SCC 717**

23) In case of M M Aqua (Supra), the Hon'ble Supreme Court observed that *Interestingly, the 'sum payable' referred to in Section 43B(d), with which we are concerned, does not refer to the mode of payment*, and noted that "it is clear that interest was "actually paid" by means of issuance of debentures, which extinguished the liability to pay interest". Accordingly, it said follows :

> *"21. Explanation 3C, which was introduced for the "removal of doubts", only made it clear that interest that remained unpaid and has been converted into a loan or borrowing shall not be deemed to have been actually paid. As has been seen by us hereinabove, particularly with regard to the Circular explaining Explanation 3C, at the heart of the introduction of Explanation 3C is misuse of the provisions of Section 43B by not actually paying interest, but converting such interest into a fresh loan. On the facts found in the present case, the issue of debentures by the assessee was, under a rehabilitation plan, to extinguish the liability of interest altogether. No misuse of the provision of Section 43B was found as a matter of fact by either the CIT or the ITAT. Explanation 3C, which was meant to plug a loophole, cannot therefore be brought to the aid of Revenue on the facts of this case. Indeed, if there be any ambiguity in the retrospectively added Explanation 3C, at least three well established canons of interpretation come to the rescue of the assessee in this case………….."*

24) Finally, the Hon'ble Supreme Court held the amendment of Section 43B by insertion of an Explanation beginning with words 'For removal of doubt' as prospective in nature on the proposition that the earlier section 43B did not contain 'mode of payment' for discharge of liability so as to make it eligible for deduction, and the words "actually paid" were already interpreted to include discharge of liability by mode other than actual cash payment.

25) It is also relevant to refer to the decision in case of Sedco Forex (Supra), wherein it is held that :

17. As was affirmed by this Court in Goslino Mario [(2000) 10 SCC 165] a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. (See also Reliance Jute and Industries Ltd. v. CIT [(1980) 1 SCC 139] .) An Explanation to a statutory provision may fulfil the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section [See Sonia Bhatia v. State of U.P., (1981) 2 SCC 585, 598] . If it is in its nature clarificatory then the Explanation must be read into the main provision with effect from the time that the main provision came into force [See Shyam Sunder v. Ram Kumar, (2001) 8 SCC 24 (para 44); Brij Mohan Das Laxman Das v. CIT, (1997) 1 SCC 352, 354; CIT v. Podar Cement (P) Ltd., (1997) 5 SCC 482, 506]. But if it changes the law it is not presumed to be retrospective, irrespective of the fact that the phrases used are "it is declared" or "for the removal of doubts".

18. There was and is no ambiguity in the main provision of Section 9(1)(ii). It includes salaries in the total income of an assessee if the assessee has earned it in India. The word "earned" had been judicially defined in S.G. Pgnatale [(1980) 124 ITR 391 (Guj)] by the High Court of Gujarat, in our view, correctly, to mean as income "arising or accruing in India". The amendment to the section by way of an Explanation in 1983 effected a change in the scope of that judicial definition so as to include with effect from 1979, "income payable for service rendered in India".

19. When the Explanation seeks to give an artificial meaning to "earned in India" and brings about a change effectively in the existing law and in addition is stated to come into force with effect from a future date, there is no principle of interpretation which would justify reading the Explanation as operating retrospectively.

26) It is also noted that in case of ***Shri Prithvi Cotton Mills Ltd. & Anr vs Broach Borough Municipality & Ors (1) [1954] 2 S.C.R. 608, Hon'ble Supreme Court*** said that ***"****Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances****".*** The said observation of the Hon'ble Supreme Court were made while examining retrospective application of a Validation Act enacted by the legislature, and the Hon'ble Court finally said that *If the legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions.* Accordingly, the aforesaid observation that the legislature does not possess reversing the decision in exercise of judicial power were made with a caveat that if the legislature has competence to levy a tax, it can do so by Validation Act also even if reverses the earlier judicial decision.

27) Coming to the Explanation, it is noted that the said Explanation seeks to clarify that the security interest shall exist only if it creates a right, title or interest or a claim to a property pursuant to an agreement or arrangement between parties and aims to specifically excludes security interest created by operation of law. Indubitably, there is no quarrel to legislative competence on this issue. The clause 2 of Notes on Clauses to The Insolvency And Bankruptcy Code (Amendment) Bill, 2025 sets the background of said amendment, which reads as follows :

> *"It seeks to insert an explanation in clause (31) of section 3 of the Code to clarify that security interest shall exist only when it creates a right, title or interest or a claim to a property pursuant to an agreement or arrangement by the act of two or more parties and shall not include a security interest created merely by operation of any law for the time being in force. Hence, a provision in central or state legislation or a subordinate law that states that a charge will be made on the property of the corporate debtor for non-payment of tax or a penalty shall not be considered a security interest. A security interest shall only exist where the parties to an agreement or arrangement agree to create a right, title or interest or a claim to a property, whether or not it is in writing. For instance, a charge created over the property of the corporate debtor to secure the financial debt under an agreement, or an arrangement where a mortgage is created by deposit of title deeds of its property between two or more persons."*

28) It is clear from the notes on clauses that the said Explanation is inserted to clarify that security interest shall exist only when it creates a right, title or interest or a claim to a property pursuant to an agreement or arrangement by the act of two or more parties and shall not include a security interest created merely by operation of any law for the time being in force.

29) In the case of Rainbow Papers (Supra), the Hon'ble Supreme Court agreeing with the learned Solicitor General, that the term "Secured Creditor" as defined under the IBC is comprehensive and wide enough to cover all types of security interests, held that the Security Interest, as contemplated in Section 3(31) of IBC, includes security interest created by operation of law, thus, it clearly demonstrates that there was no ambiguity or vagueness in the definition of Security Interest contained in Section 3(31) of IBC when it was interpreted by Hon'ble Supreme Court. As is noted in case of M. M. Aqua (Supra), the insertion of condition by way of Explanation 3C in Section 43B of Income Tax Act, 1961 that "*any interest referred to in that clause which has been converted into a loan or borrowing shall not be deemed to have been actually paid*" was held to be prospective in nature, as there was no ambiguity in the terms 'actually paid' requiring a clarification.

30) It is also said in the Sree Sankaracharya (Supra) that an explanation/clarification may not expand or alter the scope of the original provision. In the present case, the Explanation inserts an additional condition that there must be an agreement or arrangement by the act of two or more parties for creating a security interest. The security interest stood created once the conditions precedent enumerated in relevant statute for creation of security interest existed, and such condition generally are default in payment of debt under the relevant statute, such security interest created by operation of law prior to such amendment cannot be negated on account of insertion of Explanation, however the said Explanation, if held retrospective in its application, shall nullify the existing created security interests.

31) It is also noted that in case of ***M/s Avenue Realty v. Assistant Commissioner {W.A. (MD) No. 2662 of 2025 and C.M.P. (MD) No. 15106 of 2025}***, the division bench of Hon'ble Madras High Court (Madurai Bench) has held at Para *40 that "Thus, the amendment explicitly seeks to undo the consequences of the decision in Rainbow Papers. Being a clarificatory amendment, there is no doubt that it will have retrospective application"*. On the perusal of the said decision, it is noted that the Hon'ble Court applied decision in case of ***R. Rajagopal Reddy vs Padmini Chandrasekharan* *reported in AIR 1996 SC 238,* and** held so on following propositions :

a. Discussion in the Select Committee while considering the amendment noted that the amendment is intended to be restricted to 'transactions', which means that the security interest should be created pursuant to an agreement on the part of the asset holder while giving rights to the other party. Further, 'transaction', as defined under section 3 (33), includes an agreement or arrangement in writing to transfer assets, funds, goods, or services from or to the CD.

b. The clarificatory amendment also supports the interpretation given in in Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P) Ltd., reported in (2023) 10 SCC that tax dues cannot be equated as being akin to the dues payable to a secured creditor.

32) It is noted that the aforesaid decision has not considered the decision in the case of ***P. Mohanraj and Ors. v. Shah Brothers Ispat Pvt. Ltd.,* (2021) ibclaw.in 24 SC**, wherein it is held that "*This definition being an inclusive one is extremely wide in nature and would include a transaction evidencing a debt or liability. This is made clear by Section 96(3) and Section 101(3) which* *contain the same language as Section 14(3)(a), these Sections speaking of 'debts' of the individual or firm……..*" Accordingly, the definition of "transaction' including an agreement or arrangement for transfer can not be understood to mean a transaction of debt or liability can arise from an agreement or arrangement only, as the said definition is an inclusive definition. It has been consistently held by this Tribunal, and upheld by Hon'ble NCLAT as well as (say ***Desana Impex Ltd. v. Brick and Mortar Realty Pvt. Ltd.,*** **(2024) ibclaw.in 836 NCLAT** and ***Satish Balan Director of Balan and Chheda Developers Pvt. Ltd. v. Mrs. Neeta Navin Nagda,*** **(2023) ibclaw.in 422 NCLAT**) that written agreement is not required to prove a debt.

33) Further, in case of Paschimanchal Vidyut (Supra), the Hon'ble Supreme Court had not disagreed with decision in Rainbow Papers (Supra) in so far it held that the security interest can come into existence by operation of law also. Instead, the Hon'ble Supreme Court in Paschimanchal Vidyut (Supra) only said that Rainbow Paper didn't take notice of section 53(1)(e) of IBC which deals with Government dues for holding that Paschimanchal Vidyut is not a secured creditor as the said entry is a specific entry and the Govt. dues, whether secured or unsecured, falls under the said entry. Further, the decision in case of ***Greater Noida Industrial Development Authority v. Prabhjit Singh Soni and Anr.,*** **(2024) ibclaw.in 53 SC** ***was not brought to notice of Hon'ble Court in this matter, wherein the Hon'ble Supreme Court, after*** Paschimanchal Vidyut, reiterated at para 54.b that "*The resolution plan did not specifically place the appellant in the category of a secured creditor even though, by virtue of Section 13-A of the 1976 Act, in respect of the amount payable to it, a charge was created on the assets of the CD.*" Accordingly, with due respect to Hon'ble High Court, we are of considered view that the aforesaid decision can not be followed as a binding precedent.

34) In view of the aforesaid, we are of considered view that **a substantial case exists for holding that the Explanation inserted in Section 3(31) of the IBC introduces a substantive restriction upon the pre-amendment definition and should therefore operate prospectively from 26 May 2026, the date on which Section 2 of the Insolvency and Bankruptcy Code (Amendment) Act, 2026 was brought into force.**

35) In view of aforesaid discussion, we are of considered view that the claim of the Applicant merits admission as secured debt in the liquidation process, and is accordingly required to be treated for the purpose of section 53 of IBC.

36) In terms of above, IA(I.B.C)/2372(MB) of 2026 is allowed and disposed of.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

SUSHIL MAHADEORAO KOCHEY
MEMBER (JUDICIAL)

Rehan Shaikh
(Stenographer)