IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, COURT-II

KOLKATA

I.A. (IBC) 1530/KB/2025

AND

I.A. (IBC) 1678/KB/2025

IN

C.P.(IB) No. 266/KB/2023

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

IN THE MATTER OF:

SHREE SHYAM MOTION PICTURES PRIVATE LIMITED

…OPERATIONAL CREDITOR

VERSUS

SPICY ENTERTAINMENT AND MEDIA LIMITED

…CORPORATE DEBTOR

AND

I.A. (I.B.C) 1530/KB/2025

An Application under Regulation 13(1C)(b)(ii) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, COURT-II

KOLKATA

IN THE MATTER OF:

DEEPAK SARUPARIA, Resolution Professional of Spicy Entertainment and Media Limited

…APPLICANT

AND

I.A. (I.B.C) 1678/KB/2025

An Application under Section 60(5) read with Section 14 of the Insolvency and Bankruptcy Code, 2016;

IN THE MATTER OF:

DEEPAK SARUPARIA, Resolution Professional of Spicy Entertainment and Media Limited

…APPLICANT

Versus

BOMBAY STOCK EXCHANGE LIMITED

…RESPONDENTS

CORAM:

SHRI LABH SINGH, HON'BLE MEMBER (JUDICIAL)

MS. REKHA KANTILAL SHAH, HON'BLE MEMBER (TECHNICAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, COURT-II

KOLKATA

APPEARANCE:

For BSE Ltd. in IA 1678 of 2025

Mr. Anunoy Basu, Adv.

Mr. Soham Sen, Adv.

For the Resolution Professional

Ms. Kiran Sharma, Adv.

Ms. Meenakshi Manot, Adv.

PRONOUNCEMENT: 20.11.2026

ORDER

Per: Ms. Rekha Kantilal Shah, Member (Technical):

1. The Court convened through hybrid mode.

2. The learned counsel for the parties were heard.

3. I.A. (I.B.C) 1530/KB/2025 and I.A. (I.B.C) 1678/KB/2025 were reserved for order on 01.09.2024. Both the Applications are being adjudicated upon by way of a common order.

I.A. (I.B.C) 1530/KB/2025

1. This Application has been filed by Mr. Deepak Saruparia (hereinafter referred to as the Applicant), the Resolution Professional of Spicy Entertainment and Media Limited (hereinafter referred to as the Corporate Debtor) seeking condonation of delay in the submission of belated claim by

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Central Depository Services (India) Limited (hereinafter referred to as CDSL).

2. Submissions on Behalf on the Applicant:

2.1 It is submitted that the Corporate Debtor was admitted into CIRP by this Tribunal vide order dated 05.11.2024[1] wherein the Applicant was appointed as the IRP. The Applicant was later appointed as RP vide order dated 27.03.2025[2].

2.2 It is submitted that on 08.11.2024, Public Announcement was made in Form A, published in Financial Express (English) and Ek Din (Bengali) newspaper wherein the last date for submission of claim was 19.11.2024[3].

2.3 It is submitted that in accordance with Regulation 36A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Applicant published Form G dated 01.01.2025 in Business Standard and Ek Din wherein the last date of receipt of EOI was fixed as 16.01.2025[4].

2.4 It is submitted that till the last date of receipt of EOI, the Applicant had received EOI along with EMD from the following Prospective Resolution Applicants:

[1] Annexure A-1.
[2] Annexure A-4.
[3] Annexure A-2.
[4] Annexure A-3.

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a. FairPlan Distributors Pvt. Ltd.

b. Lalith Kumat Kothari and Hemalatha Kothari

2.5 It is submitted that in the 11th CoC Meeting dated 30.04.2025, the CoC resolved to re-issue Form G. Thereafter, the Form G was published on 05.05.2025 wherein the Submission of EOI was fixed as 20.05.2025.

2.6 It is submitted that after the issuance of the RFRP to the Prospective Resolution Applicants, the Applicant received the claim of CDSL amounting to Rs. 3,12,179.66. Out of the total amount claimed, Rs. 1,53,400 has been categorized as acceptable and Rs. 1,58,779 is under verification as on the date of filing of the present Application.

2.7 It is submitted that the Applicant vide email dated 04.07.2025[5], had sought reasons from the Operational Creditor for delay in submitting their claim.

2.8 It is submitted that in the 14th CoC meeting dated 04.07.2025[6], the resolution to ratify and approve the receipt of belated claims from creditors was approved.

2.9 It is submitted that in view of Regulation 13(1C)(b), the Applicant has sought the required recommendation from the CoC members regarding the receipt of belated claims from creditors

[5] Annexure A-6.
[6] Annexure A-7.

and seeks to submit the details of the belated claims with this Tribunal for condonation of delay.

3. **Analysis and Findings:**

3.1 We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned Counsels for the parties; and after hearing the learned counsels for the parties, we shall now proceed to consider the present application on its merits, specifically within the ambit of points involved in the instant application.

3.2 The primary issue for consideration before this Tribunal is whether the delay in submission of the claim by CDSL before the RP of the Corporate Debtor can be condoned.

3.3 In the present case, the Corporate Debtor was admitted into CIRP vide order dated 05.11.2024[7] and the last date for submission of claims in the Public Announcement was fixed as 19.11.2024. The initial Form-G was published on 01.01.2025[8] fixing 16.01.2025 as the last date for submission of EOI. Pursuant to the decision of the CoC in its 11th meeting, Form-G was reissued on 05.05.2025

[7] Annexure A-1 of the Petition.
[8] Annexure A-3 of the Petition.

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with a view to maximize the value of the Corporate Debtor, and the RFRP was issued on 09.06.2025.

3.4 The Applicant received the claim of CDSL on 24.06.2025 and, vide email dated 04.07.2025[9], sought an explanation from CDSL regarding the delay in submission of its claim. However, CDSL failed to respond to the said email and therefore did not furnish any explanation for the belated submission.

3.5 At this juncture, this Tribunal deem it apposite to rely upon Regulation 12 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which provides that a creditor who fails to submit its claim within the period specified in the public announcement may submit the claim with proof to the RP up to the date of issuance of the RFRP under Regulation 36B or 90 days from the insolvency commencement date, whichever is later. Further, the Creditor must also provide the reason for the delay where the claim is submitted beyond 90 days from the insolvency commencement date. The relevant extract of the Regulation 12 is reproduced hereinbelow:

> *(1) A creditor shall submit claim with proof on or before the last date mentioned in the public announcement.*
>
> *Provided that a creditor, who fails to submit claim with proof within the time stipulated in the public*

[9] Annexure A-5 of the Petition.

announcement, may submit his claim with proof to the interim resolution professional or the resolution professional, as the case may be, up to the date of issue of request for resolution plans under regulation 36B or ninety days from the insolvency commencement date, whichever is later:

Provided further that ***the creditor shall provide reasons for delay in submitting the claim beyond the period of ninety days from the insolvency commencement date***.

(Emphasis Added)

3.6 In the present case, the Insolvency Commencement Date is 05.11.2024 and the RFRP was issued on 09.06.2025. Since 90 days from the insolvency commencement date expired in February 2025, the relevant date for determining the permissible period for submission of claims, in terms of Regulation 12, would be 09.06.2025. The claim was received on 24.06.2025. Since the claim was submitted beyond the period of ninety days from the insolvency commencement date, the proviso under Regulation 12(1) mandates that the Creditor must provide reasons for delay in submission of its claim.

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3.7 From the email correspondence between the Applicant and CDSL, it is evident that immediately upon the receipt of CDSL's proof of claim, the Applicant sought an explanation for the belated submission of claim vide email dated 04.07.2025. The Applicant had also sent a reminder on 27.07.2025. However, CDSL did not respond to either of the emails. Further, vide order dated 22.06.2026[10], this Tribunal had directed the Applicant to call upon CDSL to explain the delay in submission of its claim.

3.8 In compliance with the aforesaid direction, the Applicant, vide email dated 26.06.2026[11], had asked CDSL to furnish reasons for the delay in submission of its claim. However, even after being granted another opportunity to explain its delay, CDSL chose to not respond and therefore failed to give any explanation for the delay whatsoever.

3.9 The requirement under Regulation 12 to provide reasons for delay in submitting claims is not a mere procedural formality which can be ignored. A creditor seeking consideration of a claim submitted beyond the prescribed timeline has to mandatorily explain the circumstances that prevented it from timely submitting its claim. Such an explanation is necessary to determine whether the belated submission of claims deserves to

[10] Annexure A-01 of the Supplementary Affidavit.
[11] Annexure A-03 of the Supplementary Affidavit.

be condoned. In the present case, there is a conspicuous absence of any explanation from CDSL. Despite being granted numerous opportunities to give reasons for delay, CDSL has deliberately chosen to not communicate with the Applicant regarding circumstances that led to the delay in submission of its claim.

3.10 In view of the foregoing, we find that CDSL has not furnished any reason to explain the delay in submission of its claim. Despite being given repeated opportunities on various occasions to furnish reasons for the delay, CDSL has chosen not to respond at all. In the absence of any justification demonstrating any reason for the belated submission of claim, we find no basis whatsoever to condone the delay in submission of the claim by CDSL.

4. In view of the foregoing discussions, **I.A. (I.B.C) 1530/KB/2025** is **dismissed.**

I.A. (I.B.C) 1678/KB/2025

1. This Application has been filed by Mr. Deepak Saruparia (hereinafter referred to as the Applicant), the Resolution Professional of Spicy Entertainment and Media Limited (hereinafter referred to as the Corporate Debtor) against Bombay

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Stock Exchange Limited (hereinafter referred to as the Respondent) and seeks the following reliefs:

a. *Allow the present Application;*

b. *Direct the Respondent to refund the amount of Rs. 49,60,369/- (Rupees Forty Nine Lakhs Sixty Thousand Three Hundred and Sixty Nine Only) paid by the Corporate Debtor during the period of CIRP which has been appropriated by Respondent towards Pre-CIRP dues, within a period of two weeks from the date of passing of the order;*

c. *Pass such other orders as may be deemed just, fit and proper in the facts and circumstances of the present matter.*

2. Facts:

2.1 The Delisting Committee of the Respondent vide order dated 12.07.2024[12] had delisted the equity shares of the Corporate Debtor. Aggrieved by the said order, the Corporate Debtor had preferred an appeal bearing No. 660 of 2024 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as SAT) on 08.11.2024[13], challenging the delisting of its shares.

[12] Annexure B of the Reply Affidavit.
[13] Annexure G of the Reply Affidavit.

2.2 The Corporate Debtor was admitted into CIRP vide order dated 05.11.2024[14] and the IRP had made a public announcement on 08.11.2024[15].

2.3 In compliance of the directions of the Hon'ble SAT, the Corporate Debtor had deposited an aggregate amount of Rs. 51 Lakhs with the Respondent for restoring its listing status. However, the appeal was dismissed vide order dated 05.05.2025[16] and the shares of the Corporate Debtor remained delisted.

2.4 The Applicant issued a legal notice dated 06.08.2025[17], demanding refund of Rs. 49,60,369/- (Rupees Forty Nine Lakhs Sixty Thousand Three Hundred and Sixty Nine Only).

2.5 The Respondent vide letter dated 08.09.2025[18], agreed to refund only the reinstatement fees of Rs. 9,94,000/- (Rupees Nine Lakhs and Ninety Four Thousand Only).

2.6 Thus, the present Application has been filed by the Applicant seeking refund of the entire amount of Rs. 49.6 Lakhs.

3. Submissions on Behalf of the Applicant:

3.1 It is submitted that on 05.03.2025, the Hon'ble SAT issued directions to the Corporate Debtor to deposit the outstanding

[14] Annexure A-1 of the Petition.
[15] Annexure A-2 of the Petition.
[16] Annexure A-7 of the Petition.
[17] Annexure A-9 of the Petition.
[18] Annexure A-10 of the Petition.

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amount in favour of the Respondent and as against this, the Respondents shall provide a list of pending compliances to be undertaken by the Corporate Debtor[19].

3.2 It is submitted that in compliance with the order dated 05.03.2025, the Applicant deposited the following amount after seeking approval from the CoC to ensure that the listing status of the Corporate Debtor can be restored and the value of the Corporate Debtor can be maximized:

a. SOP Fines: Rs. 37,60,369/-

b. Revocation Application Processing Fee: Rs. 2,00,000/- (excluding GST)

c. Reinstatement Fee: Rs. 10,00,000/- on or before 31.12.2024 or Rs. 15,00,000/- after 01.01.2025 (excluding GST)

d. Annual Listing Fees: As applicable

3.3 It is submitted that an aggregate sum of Rs. 49,60,369/- (Rupees Forty Nine Lakhs Sixty Thousand Three Hundred and Sixty Nine Only) was paid by the Corporate Debtor[20] to the Respondent during the pendency of the appeal proceedings. Out of the aggregate sum of Rs. 49,60,369:

a. Rs. 37,60,369/- pertained to pre-CIRP period

[19] Annexure A-3 of the Petition.
[20] Annexure A-4 of the Petition.

b. Rs. 12,00,000/- pertained to reinstatement fees towards listing of shares during CIRP.

3.4 It is submitted that on the instructions of CoC, the Applicant had offered demand draft of Rs. 15,00,000/- to the Respondent, which was returned by the Respondent vide letter dated 06.01.2025[21]. However, the Respondent later on accepted the amount of Rs. 49 Lakhs paid by the Applicant.

3.5 It is contended that the Hon'ble SAT dismissed the appeal and upheld the delisting of the Corporate Debtor's shares. Thus, the status of the Corporate Debtor with BSE remains Delisted.

3.6 It is contended that since the appeal has been dismissed, the amounts paid by the Applicant during the CIRP and accepted by the Respondent, being paid under protest, constitutes asset of the Corporate Debtor and is liable to be refunded forthwith.

3.7 It is contended that in terms of Section 14 of the IBC, during the operation of moratorium, no Creditor is permitted to adjust or appropriate pre-CIRP dues against the assets of the Corporate Debtor after initiation of CIRP. The Hon'ble Supreme Court in Swiss Ribbons v. Union of India[22] has explained that moratorium is imposed in the interests of the Corporate Debtor so that its

[21] Annexure A-6 of the Petition.
[22] (2019) 4 SCC 17.

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assets are preserved during resolution and the process is not derailed by piecemeal recoveries.

3.8 It is submitted that on 15.07.2025, an email was sent by the Applicant to the Respondent requesting refund of the said amount, however, no refund was made[23]. On 06.08.2025, the Applicant issued a legal notice[24] to the Respondent demanding repayment of the said amount.

3.9 It is submitted that in response to the legal notice, the Respondent vide letter dated 09.09.2025[25] assured to refund the reinstatement fee of Rs. 9,94,000/- but refused to refund the fines and compliance charges amounting the Rs. 39,60,369/-. The Respondent further stated that since the Corporate Debtor made payment voluntarily and as part of its compliance and litigation strategy before the Hon'ble SAT, in anticipation of a favorable order, and therefore, such amounts cannot be reclaimed merely because the appeal failed. The dues were legitimate and payable in terms of SEBI requirements, there is no legal basis for refund.

3.10 It is submitted that payments of fines and penalties during the period of moratorium violates Section 14 of IBC. The proper recourse for the Respondent was to file its claim in the CIRP proceedings in From B or Form C and not to retain such amounts.

[23] Annexure A-8 of the Petition.
[24] Annexure A-9 of the Petition.
[25] Annexure A-10 of the Petition.

Even if the amounts were otherwise lawfully payable, they cannot be appropriated during the moratorium and any such payment is liable to be refunded.

3.11 It is submitted that the Hon'ble NCLAT in Uttarakhand Power Corporation Ltd. v. Shirdi Industries Ltd. and Anr.[26] has held that pre-CIRP dues were to be dealt with as per the approved resolution plan in instalments. Appropriation of the amount towards CIRP assets amounts to preferential treatment under Section 43 of IBC.

3.12 It is further submitted that even when the payment is made from the Corporate Debtor's account during CIRP in respect of antecedent dues, such money retains the character of estate assets and cannot be lawfully appropriated by the recipient outside the Code. Reliance has been placed on Uttarakhand Power Corporations Limited v. Shirdi Industries Ltd. and Anr. and Indian Overseas Bank v. Dinkar T. Venkatasubramanian.

4. Submissions on Behalf of the Respondent:

4.1 It is contended that since the Corporate Debtor failed to comply with the SEBI Act, 1992 and the rules, circulars, notifications

[26] (2024) ibclaw.in 603 NCLAT.

and regulations made thereunder, the trading in the securities of the Corporate Debtor was suspended with effect from 19.08.2022 in terms of the Notice dated 19.07.2022. Since the Corporate Debtor failed to complete the pending compliances and formalities for revocation of suspension of trading in securities, a show cause notice dated 26.06.2023[27] was issued seeking to show cause as to why securities of the Company should not be compulsorily delisted.

4.2 It is contended that the Delisting Committee vide order dated 12.07.2024 directed the Corporate Debtor to complete the pending compliances and formalities for revocation of suspension, including payment of processing fees, Annual Listing Fees, reinstatement fees and SEBI SOP fines. Thereafter, vide email dated 12.07.2024[28], the Respondent informed the Corporate Debtor of the pending compliances and formalities.

4.3 It is contended that since the Corporate Debtor failed to comply with the directions contained in the order dated 12.07.2024, the securities of the Corporate Debtor stood compulsorily delisted with effect from 18.09.2024.

4.4 It is contended that an appeal was filed on behalf of the Corporate Debtor against the order dated 12.07.2024 and the

[27] Annexure A of the Reply Affidavit.
[28] Annexure B of the Reply Affidavit.

notice dated 16.09.2024. The appeal was filed after the CIRP of the Corporate Debtor began and from the orders passed in the appeal from 18.11.2024 to 25.04.2025[29], it is evident that the Applicant chose to pursue these proceedings after taking control over the management of the Corporate Debtor.

4.5 It is contended that the order dated 05.03.2025[30] signals that the Corporate Debtor under the management of the Applicant had agreed to make payments to the Respondent, pursuant to which the Respondent would provide a list of pending compliances to the Corporate Debtor, which the Corporate Debtor had promised to comply with so that the question of the revocation of the said compulsory delisting of its shares could be considered.

4.6 It is contended that the Corporate Debtor had agreed too and was obliged to pay the sum of Rs. 49 Lakhs and the Respondent is not required to refund Rs. 37,30,369/- and Rs. 2,36,000 out of the entire sum of Rs. 49 Lakhs paid by the Corporate Debtor since the same is towards processing fee for the purpose of revocation of suspension of trading in the securities and the fines imposed for non compliance with the relevant provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

[29] Annexure H of the Reply Affidavit.
[30] Annexure I of the Reply Affidavit.

4.7 It is contended that the Respondent had returned Rs. 9,94,000 to the Corporate Debtor on 13.02.2026 which was paid towards reinstatement fees. Moreover, vide email dated 07.03.2025[31], the Respondent had informed the Corporate Debtor of its pending compliances. Before making such payments, the Corporate Debtor had not raised any issues pertaining to the refundability of the said amount.

4.8 It is contended that the aforesaid amounts were legitimately paid in terms of the directions of the Hon'ble SAT and as a part of the Corporate Debtor's compliance and litigation strategy in anticipation of a favourable order which did not materialize. The Respondent is not required to refund the same because the Corporate Debtor's appeal failed.

4.9 It is contended that the Ld. SAT considered the prayer of the Corporate Debtor for refund of Rs. 49 Lakhs paid by it and had rejected the same. The present Application amounts to a challenge of the said order, which cannot lie before this Tribunal.

4.10 It is contended that the Applicant is barred by the principle of Res Judicata and Constructive Res Judicata from filing the present Application as the issues that have already been decided by the Hon'ble SAT cannot be looked into again by this Hon'ble Bench and those issues which were not raised earlier cannot be

[31] Annexure J of the Reply Affidavit.

raised afresh in the present proceedings. The Respondent has relied upon Shiv Chander More and Ors. v. Lieutanant Governor and Ors[32] and Satish Chandra and Anr. v. Registrar of Cooperative Societies, Delhi and Ors.[33] to contend that where an issue could've been raised by a part in an earlier litigation, it ought to have been raised and could not have been raised in a subsequent litigation.

5. Rejoinder on Behalf of the Applicant:

5.1 It is contended that the IBC overrides SCRA, the SEBI Act and every rule, regulation and circular framed thereunder, to the extent of inconsistency. Reliance has been placed on the decision of the Hon'ble Supreme Court in Principal CIT v. Monet Ispat and Energy Ltd.[34] Further, in Vidyut Vitran Nigam ltd. v. Raman Ispat Pvt. Ltd.[35], the Hon'ble Supreme Court reaffirmed that statutory dues do not occupy a position outside the Code and must submit to its scheme.

[32] (2014) 11 SCC 744.
[33] (1994) 4 SCC 332.
[34] (2018) 18 SCC 786.
[35] (2023) 10 SCC 60.

6. Findings and Analysis:

6.1 We have perused the materials and evidences placed on record and heard the submissions and contentions of the parties. The primary issue for consideration before this Tribunal is whether the Respondent is entitled to retain the amount paid by the Applicant during CIRP towards Pre-CIRP dues while moratorium under Section 14 of IBC is in effect.

6.2 In the present case, the shares of the Corporate Debtor was delisted from stock exchange on account of non compliances under the SEBI Act, SCRA and the rules and regulations framed thereunder. Aggrieved by the delisting of its shares, the Corporate Debtor had filed and appeal before the Hon'ble SAT. During the pendency of the appeal, the Corporate Debtor was admitted into CIRP on 05.11.2024. Considering that restoring the listing status of the Corporate Debtor could potentially maximize the value of the Corporate Debtor, the Applicant with the approval of CoC, pursued the appeal and paid an aggregate sum of Rs. 49.6 Lakhs towards SOP Fines, revocation application processing fees and reinstatement fees.

6.3 However, the appeal was dismissed vide order dated 05.05.2025[36] and the Corporate Debtor remained delisted. Subsequently, the Respondent paid back Rs. 9.9 Lakhs which was paid by the

[36] Annexure K of the Reply Affidavit.

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Applicant towards reinstatement fees, but declined to refund the remaining amount of Rs. 39.6 Lakhs, contending that the said amount is the legitimate statutory dues payable by the Corporate Debtor. Whereas the Applicant contends that the Rs. 39.6 Lakhs paid by the Applicant amounts to pre-CIRP liabilities and therefore cannot be retained by the Respondent outside the statutory framework of IBC.

6.4 At the outset, neither the Applicant nor the Respondent has denied the existence of pre-CIRP dues. However, recovery of such dues is strictly prohibited when moratorium is in place under Section 14 of IBC. The purpose of the moratorium under Section 14 is to preserve the assets of the Corporate Debtor and ensure that the insolvency resolution process proceeds in accordance with the statutory scheme, without individual creditors securing recovery of their respective dues outside such process.

6.5 In the ***Uttarakhand Power Corporate Case (Supra)***, the Hon'ble NCLAT has observed that payments arising before the commencement of CIRP cannot be paid out of the asset of the Corporate Debtor during the CIRP. The relevant paragraph of the judgement is reproduced hereinbelow:

"16. Therefore, in the present facts of the case even if the electricity dues of the pre-CIRP period had been paid

voluntarily by the Corporate Debtor, since the amount was paid after the commencement of the CIRP, Section 14 which provides for moratorium would have come into play and no pre-CIRP payments could have been made out of the assets of the Corporate Debtor during CIRP.”

6.6 Further, in ***Central Transmission Utility of India Ltd. v. Sumit Binani and Ors.***[37], the Hon’ble Apex Court has held that the appropriation of pre-CIRP dues after commencement of CIRP is impermissible and violative of Section 14 of IBC. The recovery of pre-CIRP dues must be pursued through the mechanism of submission of claims as contemplated under the IBC.

6.7 Thus, a Creditor cannot circumvent the statutory procedure prescribed under IBC and its regulations for recovery of its pre-CIRP dues merely because it is in possession of the assets belonging to the Corporate Debtor. Although the Respondent in the present case has a lawful claim against the Corporate Debtor, such claim does not entitle the Respondent to appropriate the asset of the Corporate Debtor in its possession to satisfy its dues while bypassing the insolvency process. The Respondent was required to submit its claim to the Applicant, following the verification of which, the claim would have been admitted.

[37] (2026) ibclaw.in 142 SC

6.8 It is also pertinent to note that the approval of CoC to pursue the appeal was intended to explore the possibility of restoring the listing status of the Corporate Debtor and thereby maximizing its value. Such approval cannot be construed as conferring any right upon the Respondent to recover its pre-CIRP dues in derogation of the IBC.

6.9 The Respondent has further contended that the Applicant is precluded from filing the present Application on account of principle of Res Judicata and Constructive Res Judicata. Since the issues pertaining to the refund of Rs. 39.6 Lakhs was raised before the Hon'ble SAT, the Applicant cannot raise the issue of refund of the said amount in subsequent proceedings before this Tribunal.

6.10 In this regard, the Hon'ble SAT in its order dated 05.05.2025[38] had noted that the Learned Advocate for the Appellant had submitted that in case the Tribunal (SAT) is not inclined to consider the appeal of the Corporate Debtor or grant further time, a direction may be issued to the BSE to refund the sum of Rs. 50 Lakhs to the CoC. The Hon'ble SAT had noted that the Corporate Debtor had failed to avail the opportunity granted by BSE and has remained non-compliant. Since a considerable amount of time had passed from the date of first order, the appeal was

[38] Annexure K of Reply Affidavit

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dismissed without consideration on merits. The relevant extract of the order is reproduced below:

> 11. Learned advocate for the appellant also submitted that in the event this Tribunal is not inclined to consider the appeal or grant further time, a direction may be issued to the BSE to refund the sum of Rs. 50 lakh to the Committee of Creditors and the same was opposed by Shri Tomu Francis.
>
> 12. We note that appellant has failed to avail the opportunity granted by BSE as also this Tribunal and has remained non-compliant. Nearly 10 months have elapsed from the date of first impugned order.
>
> 13. Therefore, in our considered view, this appeal does not merit any consideration and it is accordingly dismissed. No costs.



6.11 Thus, the objection of the Respondent based on the principle of res judicata cannot be sustained merely on the ground that the Applicant had sought a refund before the Hon'ble SAT. Since the order dated 05.05.2025 does not adjudicate upon the Applicant's entitlement to refund on merits, the Applicant is not barred from filing the present Application.

IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, COURT-II

KOLKATA

6.12 In view of the foregoing, the Respondent is directed to refund the entire amount retained towards pre-CIRP liabilities within two weeks from the date of receipt of this order.

6.13 **I.A. (IBC) 1530/KB/2025** is **dismissed** and **I.A. (IBC) 1678/KB/2025** in **C.P. (IB) No. 266/KB/2023** is **allowed** and **disposed of** in terms of the aforesaid directions.

7. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Authorised Representatives for information and for taking necessary steps.

8. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Rekha Kantilal Shah **Labh Singh**

Member(Technical) **Member(Judicial)**

Order signed on 20th November 2026

Anubhuti S. (LRA)