

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1348 of 2025

[Arising out of the Impugned Order dated 16.05.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Chandigarh Bench in I.A. No. 151/2025 in C.P. (IB) No. 248/Chd/Hry/2019]

In the matter of:

TEJINDER PAL SETIA

S/O LATE SH. B.K. SETIA

SUSPENDED DIRECTOR OF THE CORPORATE DEBTOR

I.E. CHANDIGARH OVERSEAS PVT. LTD.

R/O 131, A- BLOCK, MEERA BAG, DELHI- 110087

.... Appellant

Versus

SH. ARVIND KUMAR,

RESOLUTION PROFESSIONAL

CHANDIGARH OVERSEAS PVT. LTD.

REGD. OFFICE AT: SCO NO. 249, BASEMENT,

SECTOR 44-C, CHANDIGARH – 160047

EMAIL: irpcopl@gmail.com

.... Respondent

Present:

For Appellant : Mr. Paras Mithal, Mr. Prabhar Mithal and Mr. Arjun Katyal, Advocates.

For Respondent : Mr. Atul V. Sood, Advocate for RP.

J U D G M E N T

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('IBC' in short) by the Appellant arises out of the Order dated 16.05.2025 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench-I) in I.A. No. 151/2025 in C.P.(IB) No. 248/Chd/2019. By the impugned order, the

Adjudicating Authority has dismissed the I.A. No. 151 of 2025 filed by Appellant. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant-suspended management of the Corporate Debtor.

2. Coming to the brief facts of the present case, the Corporate Debtor-Chandigarh Overseas Pvt. Ltd. which was admitted into CIRP on 27.02.2023 was initially under another management before it was taken over by the present suspended management on 15.10.2014 by Tejinder Pal Setia-Appellant alongwith others. The Appellant-suspended management of the Corporate Debtor had challenged the CIRP admission order right upto the Supreme Court, however, the CIRP admission order attained finality on 06.09.2023. The Committee of Creditors (“**CoC**” in short) which was constituted by the Resolution Professional (“**RP**” in short) held its first meeting on 03.08.2023 admitting claims to the tune of Rs 137.68 Cr. which rose to Rs 171.66 Cr. by the time the second CoC meeting was held on 14.09.2023. In the third meeting of the CoC held on 15.10.2023, the RP informed the CoC that after analysing financial data, he has formed an opinion on the existence of avoidable transactions. Considering the possibility of avoidable transactions and in order to make their determination, the RP had appointed PNAM & Co. LLP as the Transaction Auditor on 09.10.2023. Basis the report of the Transaction Auditor, the RP thereafter filed two avoidance transaction applications bearing IA No. 701 of 2024 and IA No. 1068 of 2024 in respect of transactions undertaken by the Appellant. However, the Appellant thereafter, taking the ground that the RP had proceeded to file avoidance transaction applications without seeking their response, filed IA No. 2061 of 2025 before the Adjudicating Authority seeking directions for placing the

IA No. 701 of 2024 and IA No. 1068 of 2024 filed by the RP in abeyance; quash the existing Transaction Audit Report (“**TAR**” in short) and to order conduct of fresh TAR. After the filing of IA No. 2061 of 2024 by the Appellant, the RP dropped the idea of conducting forensic audit and proceeded to admit the claims of homebuyers including the claims of Accord Infrastructure Developers Pvt. Ltd. (“**Accord**” in short). While IA No. 2061 of 2025 was pending before the Adjudicating Authority, the Appellant-suspended management got an audit conducted on their own volition and at their own expenditure purportedly by a firm named Baker Tilly ASA India LLP (“**Baker Tilly**” in short) which report purportedly showed that the RP had wrongly admitted claims to the tune of Rs 114 Cr. Basis the report submitted by Baker Tilly, another member of the suspended management, Shri Jagbir Singh filed IA No. 151 of 2025 before the Adjudicating Authority with a prayer to keep IA No. 701 and 1068 of 2024 in abeyance; dismiss the pre-existing transaction report placed on record by RP and direct the RP to conduct fresh TAR. The Adjudicating Authority vide impugned order dismissed both IA No. 2061 of 2025 filed by the Appellant and IA No. 151 of 2025 filed by Shri Jagbir Singh. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

3. Making submissions on behalf of the Appellant, Shri Paras Mithal, Ld. Counsel submitted that the RP had wrongly and arbitrarily admitted inadmissible and fraudulent claims as brought out by a detailed audit conducted by Baker Tilly in their report which audit had been commissioned by the suspended management of the Corporate Debtor. These wrongly admitted claims included claims of Rs 32.60 Cr. of the previous management of the Corporate

Debtor prior to take-over by the suspended management without submission of any proof of debt. The RP had also admitted claim of Rs 8.82 Cr. in respect of Accord which was not in accordance with the books of accounts of the Corporate Debtor as the books to the contrary showed that Rs 5.39 Cr. was payable by Accord to the Corporate Debtor. In addition, there were several cases of duplicate/triplicate admission of the same debt of certain creditors besides admission of fully paid-up and duly satisfied claims of certain creditors. It was also contended that the RP had admitted Rs 39.80 Cr. worth of claims which were not reflected in the books of accounts of the Corporate Debtor while genuine claims though found on record were excluded. Submission was pressed that the RP had deliberately admitted claims of bogus claimants based on sham cash receipts while abandoning the conduct of forensic audit. It was therefore contended that the RP had violated Section 18(1)(b) of the IBC read with Regulation 14 of IBBI (Insolvency Resolution Process for Corporate Person) Regulation 2016 (“**CIRP Regulation**” in short) while considering the claims. Assailing the impugned order, it was also submitted that the Adjudicating Authority had erred in rejecting the forensic audit report conducted by Baker Tilly as placed on record by the suspended management. It was also submitted that the Adjudicating Authority had erred in dismissing IA No. 151 of 2024 by holding that there is no enabling provision in the IBC for suspended management to conduct a forensic audit at their own instance. It was also contended that the RP could not have initiated avoidance applications vide IA No. 701 of 2024 and 2061 of 2025 under Section 43 to 51 and Section 66 of the IBC without first forming the statutory opinion and fulfilling the determination test besides not

giving the suspended management an opportunity to respond to the transaction audit conducted by the RP.

4. Refuting the contentions of the Appellant, Shri Atul Sood, Ld. Counsel for RP submitted that the Appellant being the suspended management of the Corporate Debtor had no locus to conduct a transaction audit at his own instance. Hence, this report lacked sanctity and credibility and therefore rightly not taken cognisance of by the RP. It was also contended that the Appellant is a vexatious litigant who has been agitating the same issues *ad nauseum* before various fora of law with a view to disrupt and derail the resolution process. This suo-moto commissioning of transaction audit by the Appellant is a clear case of the Appellant trying to raise yet another frivolous application to side-track the approval of the resolution plan. It was further contended that when the resolution plan has already been approved by the CoC in exercise of its commercial wisdom with 99.21% vote share on 19.03.2024 and the approval of the plan is pending consideration of the Adjudicating Authority, the conduct of a transaction audit independently by the suspended management was a deliberate attempt on the part of the Appellant to contrive a reason to put a spanner in the resolution process.

5. We have duly considered the arguments advanced by the Ld. Counsel for both the parties and perused the records carefully.

6. In arriving at our analysis and findings, we need to first notice the prayers contained in the present appeal which is as reproduced below:

“a) Allow the present appeal and set aside the common impugned judgment and final order dated 16.05.2025 passed by Ld. National

Company Law Tribunal, Chandigarh Bench-I in IA No. 151/ 2025 in CP (IB) No. 248/ Chd/ Hry/ 2019 AND/OR;

b) Direct the Resolution Professional of the Corporate Debtor to cause a comprehensive transaction and forensic audit of the pre-CIRP period, with a view to ascertain and unveil the genuineness and veracity of all claims founded upon alleged forged agreements, cash receipts, or other suspicious instruments. AND/ OR;

c) Direct the Resolution Professional to undertake a thorough and meticulous verification and re-examination of all claims admitted thus far, so as to ensure that only genuine and legally sustainable claims are admitted in the CIRP. AND/ OR;

d) Pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of this case and thus render justice."

7. From the above prayers, it is clear that the order which has been assailed is only in respect of IA No. 151 of 2025 and not IA No. 2061 of 2025. It is therefore relevant to outline the prayers contained in IA No. 151 of 2025 which is as reproduced below:

"A. Take on record the present IA and the accompanying Forensic Audit Report.

B. Consequently rule upon the findings of the Forensic Audit Report qua the disputed claims admitted by the Respondent.

C. Pass any other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice and equity."

When we look at the main prayer in IA No. 151 of 2025, which has been filed under Sections 60(5) and 65 of IBC, it was prayed that the Adjudicating Authority may take on record the Baker Tilly forensic audit report and give its ruling on the findings of the Baker Tilly forensic audit report qua the disputed claims admitted by the RP.

8. At this stage, it may be useful to notice how the Adjudicating Authority has dealt with IA No. 151 of 2025 in the impugned order which is as reproduced below:

“10. Similarly, Applicant No.2 has filed I.A. 151 of 2025 alleging the misconduct of RP in accepting the claims. If the claim of any creditor has not been accepted, then the appropriate party to file an application to that effect would be the aggrieved party, not the suspended management of the Corporate Debtor. As admitted by Applicant No.2, IA No. 2105/2023 is pending before this Tribunal, which is filed by the Suspended Directors of the Corporate Debtor against the admission of the claim by the Respondent RP. Further, the present application is not maintainable under Section 65 of IBC as there is no allegation of fraudulent initiation of CIRP and there is no provision in the Code for the conduct of any "forensic audit" by the suspended directors of the Corporate Debtor.”

From a plain reading of the above impugned order, it is clear that the Adjudicating Authority did not take cognisance of the forensic audit report of Baker Tilly on the grounds that there is no allegation of fraudulent initiation of CIRP and there is no provision for conduct of forensic audit by suspended directors.

9. It is the case of the RP-Respondent that the transaction audit report of Baker Tilly purportedly initiated by the Appellant has no legal sanctity since commissioning of this report was not with the approval of the CoC. Dubbing this report to be a “ghost report”, it was added that the credibility and authenticity of the report was questionable as it was an unsigned, unstamped report bereft of the particulars of the concerned auditing entity. It had also been contended that alleged Baker Tilly report was full of disclaimers which makes the report lack due credibility and dependability.

10. When we look at the Baker Tilly report, as placed at page 275 of APB, it is indisputable that does not carry the name or signature of the forensic Auditor nor does it carry the stamp or detailed particulars of the agency which conducted the report. It only carries the signature of Jagbir Singh who had filed IA No. 151 of 2025. When we see the report lacking signature and stamping of the Transaction Auditor, this does put question marks on the authenticity and ownership of the report by the audit entity and violates transparency norm which is a fundamental auditing principles. The Baker Tilly report is also replete with innumerable disclaimers which have also been reproduced at para 7(h) of the impugned order which disclaimers are so comprehensive and exhaustive that it renders the report toothless. We are not persuaded with the explanation offered by the Appellant that this report was unsigned as it was a 'Draft Report' and that they had therefore sought the permission of the Adjudicating Authority to submit a certificate from the audit firm to substantiate that they had prepared its report. However, the Adjudicating Authority not having acceded to their request on 16.04.2025, the lack of stamping cannot be held against them. We do not find any infirmity in this order of 16.04.2025 since the Adjudicating Authority cannot be expected to rely on a Draft Report and that too with all-pervasive disclaimers. Further, such suo-moto commissioning of transaction audit report by the suspended management of the Corporate Debtor lacks credibility particularly when the suspended management has failed to provide unimpeachable evidence of fraudulent initiation of CIRP. For audit report to be held reliable and dependable, the audit must be conducted by independent and unbiased parties. On the other hand, a report commissioned by the suspended management is

akin to a report commissioned by an interested party and suffers from conflict of interest and bias which clearly undermines the integrity of the report and renders it vulnerable of being a one-sided, doctored report. Furthermore, the Appellant was not authorised to share the information it had received from the CoC or RP with the Transaction Auditor appointed by it which violates the confidentiality of the commercial decisions of the CoC. It is an established policy strand in CIRP jurisprudence that the suspended management at best can participate and share insights with a Transaction Auditor appointed with the approval of the CoC and not control the audit process by appointing a transaction auditor at its own will with selective, cherry-picked data.

11. Further, when we look at the impugned order, we find that the Adjudicating Authority has duly examined the allegations made by the Appellant that the RP had not afforded a fair chance to the Appellant before filing the avoidance application under Section 66 and found the allegations not to be correct since the Appellant had already filed objections to IA No. 701 of 2024 and IA No. 1068 of 2024 which had been filed by the RP under Section 66 and Section 43 of the IBC respectively. It was also noted by the Adjudicating Authority that the RP while filing these avoidance applications had also submitted a detailed report of formation of his opinion and determination of opinion on the avoidance transactions. The present appeal therefore seems to be a clever ploy on the part of the suspended management to indirectly re-agitate the issue of admission and exclusion of claims by the RP at a stage when the resolution plan has already been approved by CoC with overwhelming majority. We are persuaded to believe that the suspended management is indulging in all possible machinations to

somehow manage to derail the resolution process which is at an advanced stage. We are therefore of the considered view that the Adjudicating Authority had not committed any infirmity in not showing any indulgence to the Baker Tilly transaction audit report prompted by the suspended management of the Corporate Debtor.

12. In result, we do not find any merit in the present appeal. The Appeal is dismissed. The impugned order is affirmed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Place: New Delhi

Date: 10.03.2026

Abdul