

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD**

ITEM No.307
CP/27(AHM)2024

Order under Section 424 r/w Rule 56

IN THE MATTER OF:

Artha Energy Resources LLP
V/S
Tecso Projects Limited

.....Applicant

.....Respondent

Order delivered on: 05/03/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-sd-

**SANJEEV SHARMA
MEMBER (TECHNICAL)**

-sd-

**SHAMMI KHAN
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

C.P. No. 27/(AHM)/2024

(An application filed under Section 424(3) of the Companies Act, 2013 along with Rule 56 of the National Company Law Rules, 2016)

In the Matter of:

M/s. Artha Energy Resources LLP.

Having its address at:
A-902, Marathan Futurex,
Mafatlal Mills Compound,
NM Joshi Marg, Lower Parel,
Delisle Road, Mumbai,
Maharashtra – 400013.

..... Applicant

VERSUS

M/s. Tecso Projects Limited

Having its address at:
401, Benison Complex,
54, Hari Bhakti Society,
O.P. Road, Vadodara,
Gujarat – 390007.

..... Respondent

Order Pronounced On: 05.03.2026

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E:

For the Applicant : Ms. Vishal Raval, Advocate.

For the Respondent : Mr. Nishit Raj, Advocate

ORDER
Per Bench

1. The present petition has been filed on 28.06.2024 vide inward diary No. E-1636 by Mr. Anirudh A. Damani, the authorized officer of the **applicant company M/s. Artha Energy Resources LLP** vide its board resolution dated 23.04.2024 (Annexure-A). The Applicant has filed the present application under Section 424 of the Companies Act, 2013 along with Rule 56 of the NCLT Rules, 2016 for execution of order passed by this Bench vide its order dated 26.08.2016 in the matter of CP(IB) No.121/9/NCLT/AHM/2018.
2. The applicant Company is bearing LLP identification number: AAB-3390 and was incorporated on 31.01.2013 and stated to have its registered address at: A-902, Marathon Futurex, Mafatlal Mills Compound, N. M. Joshi Marg, Lower Parel, Delisle Road, Mumbai, Maharashtra – 400013.
3. The **Respondent is the company M/s. Tecso Projects Private Limited** incorporated under the provisions of the Companies Act, 1956 vide CIN: U74200GJ2010PLC061411. The company was incorporated on 01.07.2010. The registered address of the company is stated to be at: 401,

Benison Complex, 54, Hari Bhakti Society, O.P. Road,
Vadodara, Gujarat – 390007.

4. The applicant has prayed for following reliefs from this Bench:

- a. *To recover the amount of Rs. 3,60,49,196 plus service tax/GST plus penalties (together with interest on the principal sum up to the date of payment) and the costs of taking out this execution be realized by attachment and sale of the respondent/defendant's properties as mentioned in scheduled of property in para 5(h) and para 5(i).*
- b. *Any such order and or other further relief as the Hon'ble Tribunal deems fit and proper in the interest of justice.”*

5. The Applicant has placed the facts through the Petition and documents in the following manner: -

5.1 It is stated that the applicant, M/s. Artha Energy Resources LLP, entered into a 'Consultation Agreement' dated 30.04.2015 and a 'Channel Partner Agreement' dated 19.08.2015 with the respondent, M/s. Tecso Projects Ltd.

5.2 It is stated that the applicant had earlier filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 [C.P. (IB) No. 121/9/NCLT/AHM/2018] as an operational creditor, which was disposed of as withdrawn on 26.08.2019 in view of a settlement agreement executed between the parties.

- 5.3 As stated, the respondent failed to comply with the conditions of the said settlement agreement dated 22.08.2019, under which it had agreed to issue Secured Non-Convertible Debentures worth Rs. 1,50,00,000/- with interest at 15% per annum, redeemable in three years, to the applicant by 30.09.2019. The Clause-(F) of the settlement agreement specifically provided that in case of default, the respondent would not object to the admission of the insolvency petition for the claimed amount along with interest at 18% per annum.
- 5.4 It is submitted that the applicant thereafter approached the Hon'ble 14th Addl. Senior Civil Judge (Commercial Court), Vadodara, by filing Commercial Execution Petition No. 20 of 2023 on 31.08.2023 for execution of the order dated 26.08.2019. The Hon'ble Commercial Court, vide its order dated 27.12.2023, held that the Hon'ble NCLT, Ahmedabad Bench, has jurisdiction to try the execution petition.
- 5.5 As stated, the limitation for execution of order/decreed is 12 years, the applicant has filed the present execution petition under Section 424(3) of the Companies Act, 2013 read with Rule 56 of the NCLT Rules, 2016, seeking enforcement of the order dated 26.08.2019 passed in C.P. (IB) No. 121/9/ NCLT/ AHM/2018. A copy of memo of application u/s. 9 of IBC is placed on record as Annexure-F.

5.6 As submitted, the applicant had filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 as an operational creditor. The amount due upon default is Rs.1,24,18,358/- along with interest at 18% per annum from 21.02.2018. As stated, on 22.03.2024, the outstanding liability amounts to Rs. 3,39,98,618/-, together with legal costs of Rs. 20,50,578/- and applicable service tax/GST and penalties.

5.7 The applicant has furnished on record the schedule of movable property of the Respondent as under:

Sr. No.	Movable Property Details
1.	Rs.6,21,474/- shares in Tesco Charge Zone Private Limited
2.	37.44% holding in Billion Electric Mobility Private Limited
3.	100% of the shareholding of Tesco Energy Private Limited
4.	National Savings Scheme, sovereign Gold Bond and Fixed Deposit of Rs.19,86,640/-
5.	Trade Receivables of Rs. 3,68,88,770/-
6.	Loans and advances of Rs.19,27,85,440/-
7.	Bank Balance of Rs.4,15,97,050/-
8.	Cash in hand of Rs.4,73,260/-
9.	Vehicles worth Rs.19,84,540/-
10.	Office equipment worth Rs.3,07,240/-
11.	Investment in mutual funds of Rs.62,000/-
12.	AC, LCD Projector, Mobile Instrument, Electric Fittings worth Rs.24,22,900/-.

Sr. No.	Immovable Property Details
1.	Registered Office at 4 th Floor, Unit No.401 to 405 A, Benison Complex, Near Baroda Heart Institute, Old Padra Road, Vadodara, Gujarat – 390007.
2.	Residential Flat No.003, Ground Floor & Upper Floor, Block No.12 and two parking spaces bearing no. T-13 and T-14, are situated in an upper basement of “The Close(North)” Nirvana Country, South City-II, Phase-II, Situated in sectors 49, 50 and 57 in the Revenue Estate of the village Adampura, Fatehpura, Tigra Smarpur and Badshahpur, Sub Tehsil Wazirabad, District Gurgaon (Haryana).

6. That on issuance of the notice in the Petition, the Respondent has appeared and filed its reply on 02.06.2025 vide inward diary no. D1546 through its representative, Mr. Kartikey Hariyani, authorised vide Board Resolution dated 31.05.2025 denying various averments made in the Petition. The contentions of the Respondent are mentioned hereunder:

6.1 The Respondent submits that he is the Director of M/s. Tecso Projects Limited and duly authorized by Board Resolution dated 31.01.2025 to file the present affidavit. He states that he has read the application under Section 424(3) of the Companies Act, 2013 along with Rule 56 of the NCLT Rules and denies the correctness of its contents.

- 6.2 The Respondent in its reply para no.3.1 raises a preliminary objection that the instant application is not maintainable under Section 433 of the Companies Act, 2013. It is averred that vide order dated 28.08.2019 in the matter of CP(IB) No.121 of 2018, it was only a withdrawal order and no liberty was granted to revive or reopen. There was no adjudication followed and no final order or judgment was passed.
- 6.3 The Respondent further states that the applicant has come to this Adjudicating Authority for enforcement of order dated 28.08.2019 and the limitation period of three years was completed on 28.08.2022 only. Hence, the present application is barred by the limitation. Further, the Respondent has denied that the limitation period for the execution of the order and decree is 12 years, which is not applicable. The Respondent submits that the applicant has failed to mention the relevant section and description number of the schedule of limitation and misleading the Tribunal.
- 6.4 The Respondent submits that Section 424(3) of the Companies Act, 2013 empowers the Tribunal only to enforce its own orders as if they were decrees. In the present case, there is no order of NCLT directing payment of Rs. 3,60,49,196/- plus service tax/GST and penalties. The Applicant is attempting to seek recovery of money without any adjudication, thereby using NCLT as a substitute for a recovery forum, which is not permissible. It is stated that the order passed by this

Bench on 28.08.2019 in CP(IB) No. 121 of 2018 was only a formal order of withdrawal of application.

- 6.5 The Respondent states that the matter CP(IB) No.121 of 2018 was withdrawn by mutual consent under Rule 44 of the NCLT Rules, 2016. There was No CIRP admitted, no moratorium under Section 14 of IBC was imposed, and hence no enforceable order exists. The Respondent further submits that the Tribunal can entertain execution only if CIRP was admitted and moratorium ordered, which is not the case here. Further, the impugned matter was disposed of as withdrawn and was settled out of court.
- 6.6 The Respondent further submitted that reliance on the Declaration-cum-Indemnity dated 22.08.2019 is misplaced. The agreement became unenforceable after 29.09.2022 under Section 3 of the Limitation Act, 1963. The Applicant failed to file a fresh Section 8 IBC application within time and has thereby lost the right to enforce the agreement.
- 6.7 The Respondent submits that the agreement was never adjudicated by any court. The Applicant ought to have approached the Civil Court under the Specific Relief Act, 1963 or filed a fresh IBC application. Instead, the Applicant seeks to misuse Section 424(3) to enforce a private agreement. The Commercial Court, Vadodara, in Execution Petition No. 20/2023, has already held that it

lacked jurisdiction. The present application is therefore an abuse of process of law.

- 6.8 As stated, the Applicant approached Hon'ble Additional Civil Judge (Commercial Court), Vadodara via Commercial Execution Petition No.20/2023 for execution of the impugned order dated 28.08.2019 in CP(IB) 121/2018 passed by this Bench. It is stated that the present application has been filed with the intent to create pressure to withdraw the defamation suit, filed in June 2023, (SPCS/23/2023) pending before the Vadodara Civil Court, where the Respondent has sought damages of Rs.750 crore against the Applicant's partner for defamatory statements published vide a post on LinkedIn website which is sub-judice. It is stated that the Applicant is misusing the process of NCLT to harass the Respondent.
- 6.9 The Respondent submits that the citations and judgments produced before this Hon'ble Tribunal are not applicable to the present application. The facts and issues in those cases are entirely different from the matter presently under adjudication.
- 6.10 In all the judgments relied upon by the Applicant, the applications under Section 7 or Section 8 of the Insolvency and Bankruptcy Code, 2016 were admitted. Consequently, CIRP was commenced and moratorium under Section 14 was imposed. In contrast, in the present case, CP (IB) 121/2018 was never admitted. It

was withdrawn **without** liberty to reopen. Therefore, the cited judgments cannot be applied. The Applicant relied on following judgments which are averred by the Respondent.

- (i) It is stated that in the matter of **Mr. Abhilash Lal, Resolution Professional of Seven Hills Healthcare Pvt. Ltd. vs. Mangti Trust**, the Section 7 application was admitted, CIRP commenced, and the Tribunal passed an order dated 04.02.2022 directing payment of Rs. 56,92,040/-. Whereas in the instant case, there is no order of recovery against the Respondent. The order dated 28.08.2019 in CP (IB) 121/2018 was only a formal withdrawal order. Hence, the precedent is not applicable.
- (ii) It is stated further in the matter of **Krishna Garg & Anr. vs. Pioneer Fabricators Pvt. Ltd.**, CIRP was commenced on 12.06.2019 with appointment of Interim Resolution Professional (“IRP”) and imposition of moratorium. A settlement was arrived after Moratorium. In the present case, there was no admission of CIRP and no moratorium under Section 14. Thus, the judgment applies only where CIRP has been admitted, which is not the situation here.
- (iii) In the matter of **SRLK Enterprises LLP vs. Jalan Transolutions (India) Ltd.**, the Section 7 application was admitted, CIRP commenced, and later a compromise was reached. The Adjudicating Authority dealt with withdrawal after CoC formation. In the present case, there was no admission of insolvency and no moratorium. Therefore, the judgment is not applicable.
- (iv) In the matter of **Parikh Fabrics Pvt. Ltd. vs. Superintendent Engineer, Operations Circle**, liquidation had already been ordered and the Liquidator sought enforcement of a prior order. In the present case, there was no admission of

insolvency, no moratorium, and no liquidation order. Hence, the precedent is distinguishable.

- (v) In the matter of ***M/s Prayag Polytech Pvt. Ltd. vs. M/s Bon Lon Petrochem LLP***, the application was under Rule 56 read with Rule 57 of NCLT Rules, 2016 for execution of an order imposing a fine of Rs. 1,00,000/-. In the present case, no fine has been imposed on the Respondent by NCLT or any court. Therefore, the citation is not applicable.

7. The Applicant has filed a Rebuttal Affidavit on 30.06.2025 vide inward diary no. D4268, denying most contentions raised by the Respondent in his reply. The contents of the Rebuttal Affidavit are reproduced as follows: -

7.1 The Applicant Mr. Anirudh A. Damani, in the present rebuttal has denied each and every averment made in the affidavit in reply.

7.2 It is stated that the Respondent in its email dated 06.02.2021 has clearly acknowledged the agreement and settlement terms. Copy of the email is placed on record as Annexure-G to the present rebuttal on page-4.

7.3 The Applicant further urged this bench to take on record the Whatsapp conversation between him and the Respondent/Representative wherein on 14.06.2022, the Respondent has noticeably agreed on the settlement chronology sent by the Applicant, out of which, Rs.2.98 Crores was due towards principal and interest along with expenses. It is stated that the same was accepted/affirmed by the Respondent/Representative. It

is further stated that the Respondent replied that his team is drafting a small Settlement Letter in that regards for settlement amount of Rs.1.50 Crores + GST. It is further stated that on 21.07.2022 by 13:16(IST), the Respondent agreed on the arrears of payment and replied, "Additional Payment not possible." The Respondent has annexed a copy of the said Whatsapp conversation as Annexure-H.

7.4 It is stated in the rebuttal that the Respondent also sent a photocopy of Demand Draft executed in favour of the Applicant Company bearing dated 18.07.2022 and No.199235 for an amount of Rs.1,62,00,000/- issued by the Bank of India. The Respondent annexed a photocopy of the same as Annexure-I. A certificate under Section 63 of the Bhartiya Sakshya Adhiniyamn 2023 is placed on record as Annexure-J to the present rebuttal.

8. In reply of the Rebuttal Affidavit, the Respondent has also filed a Counter Rebuttal Reply on 07.07.2025 vide inward diary no. D4403. The contentions of the Respondent in Counter Rebuttal Reply are mentioned hereunder: -

8.1 The Respondent submits that he is the Director of M/s Tecso Projects Limited and duly authorized by Board Resolution dated 31.01.2025 to file the present affidavit. He has perused the rebuttal affidavit filed by the Applicant and categorically denies its correctness.

8.2 The Respondent has denied the contents of the rebuttal affidavit in their entirety. The Respondent submitted that the affidavit is misleading, suffers from **suppresio veri** and **suggestio falsi**, and amounts to an abuse of the process.

8.3 The Respondent, with respect to Para-6 of the Rebuttal affidavit, has submitted that the Applicants placed a reliance on the e-mail dated 06.02.2021 and stated wholly irrelevant and misconceived. He further denied and stated that acknowledgment by e-mail cannot substitute for a valid and executable order of this Tribunal or any competent court of law. He further states that:

- Section 424(3) of the Companies Act, 2013 confers jurisdiction only to execute only that order passed by Tribunal or Appellate Tribunal which specifically directs payment or other executable relief. Whereas, in the instant case, there is admittedly no adjudicated order against the Respondent directing payment of Rs.3,60,49,196/- plus service tax/GST and penalties.
- The order dated 28.08.2019 in CP (IB) 121/2018 was merely a formal order recording withdrawal of the insolvency application under Section 8 of the Insolvency and Bankruptcy Code, 2016, without adjudication on merits or any direction for payment.

Accordingly, reliance placed by the Respondent on e-mail dated 06.02.2021 is irrelevant and does not render the application maintainable.

8.4 The Respondent further submitted in respect of Para-7, that reliance on alleged WhatsApp conversations dated 14.06.2022 and 21.07.2022 is wholly misconceived and irrelevant. He further stated that:

- Mere production of a photocopy of a Demand Draft, without any adjudicated order or decree directing payment, does not create any enforceable right. He further stated that informal discussions or draft settlement letters cannot substitute for a final order passed by a competent court or this Hon'ble Tribunal.
- The Applicant is misusing Section 424(3) by seeking recovery of money without any executable order. The proper remedy was to approach the Civil Court under the Specific Relief Act, 1963 or initiate fresh proceedings under Section 8 of IBC, both of which are now time-barred under the Limitation Act, 1963.
- The Applicant's proper remedy was to approach the Civil Court or file proceedings under IBC, both of which are now barred by limitation.

8.5 Thus, the Respondent objected the reliance on WhatsApp messages as a gross abuse of process.

9. A chronology of proceedings of this Bench in the present matter is briefly narrated as under: -

9.1 The matter was first listed on 25.07.2024. This Bench directed the Ld. Counsel Mr. Vishal Raval to file judicial precedents within 10 days from the date of the order.

9.2 On 29.08.2024, this bench has taken on record the submissions qua the maintainability of the present petition.

- 9.3 On 24.10.2024 the matter was adjourned. On 19.12.2024, notices were issued to the respondent. The matter was adjourned on 06.02.2025. On 23.07.2025, the reply of Respondent was taken on record. Granted some time to the respondent to file reply.
- 9.4 On 05.06.2025, this bench noted the rebuttal documents and directed to file with affidavit verification. This Bench further allowed the Respondent to file a counter rebuttal within a period of seven days.
- 9.5 On 17.07.2025 the matter was adjourned in view of attending an urgent meeting of Hon'ble President/NCLT. Due to paucity of time to hold another bench, the matter was further adjourned on 21.08.2024.
- 9.6 On 09.10.2025, this bench took on record the rebuttal affidavit filed on 30.06.2025 vide diary no. D-4268. Further a counter rebuttal was also taken on record filed on 07.07.2025 vide inward no. D-4403. This bench further directed both the parties to file their written submissions capturing important points of the pleadings with chronology of events.
- 9.7 On 11.12.2025, this Bench took on record the written submissions filed by both the parties. On 26.02.2026 the order was reserved for final pronouncement.
- 10.** The Applicant has filed written submissions on 11.12.2025 vide inward diary no. D-8404. The major contentions of the Applicant are as follows: -

- 10.1 The Applicant filed CP(IB) No. (121)/9/NCLT/AHM/2018 under Section 9 of the Insolvency and Bankruptcy Code, 2016 for recovery of Rs. 1,24,18,358 from the Respondent. During the pendency of the petition, both parties executed a settlement agreement dated 22.08.2019. The matter was disposed of by order dated 26.08.2019.
- 10.2 The Applicant submits that the Respondent failed to comply with the terms of the settlement agreement dated 22.08.2019. Due to non-compliance, the Applicant initiated Commercial Execution Petition No. 20 of 2023 before the Senior Civil Judge, Vadodara on 31.08.2023 seeking execution of the order dated 26.08.2019.
- 10.3 The Senior Civil Judge, Vadodara, by order dated 27.12.2023, held that the Hon'ble NCLT, Ahmedabad has jurisdiction to entertain and decide the execution proceedings arising from its own order. Thereafter, the Applicant filed the present execution application before this Tribunal.
- 10.4 The Applicant submits that the present application is filed under Section 424(3) of the Companies Act, 2013 read with Rule 56 of the NCLT Rules, 2016. Section 424(3) provides that any order of the Tribunal may be enforced as if it were a decree of a civil court.
- 10.5 The Applicant states that the execution petition is within limitation. Under Article 136 of the Limitation

Act, 1963, an execution petition can be filed within 12 years from the date of decree. The order sought to be executed is dated 26.08.2019 and the present proceedings are within the prescribed period.

- 10.6 The Applicant relies upon MA (BC)/1/2022 in IA (IBC)/52/2021 in TCP (IB)/32/7/AMR/2019 in the matter of **Abhilash Lal, RP of Seven Hills Healthcare Pvt. Ltd. vs Mangti Trust**, wherein it was held that orders passed under IBC can be enforced through execution proceedings before the Tribunal.
- 10.7 The Applicant further relies upon Company Appeal (AT) (Insolvency) No. 92 of 2021, **Krishna Garg & Anr. vs Pioneer Fabricators Pvt. Ltd.**, wherein the Hon'ble NCLAT recognized the power of the Adjudicating Authority to enforce compliance of its own orders.
- 10.8 The Applicant also relies upon Company Appeal (AT) (Ins) No. 294 of 2021, **SRLK Enterprises LLP vs Jalan Transolutions (India) Ltd.**, wherein it was held that the Tribunal has authority to ensure implementation of its directions passed in insolvency proceedings.
- 10.9 The Applicant further places reliance on I.A. (IBC) 1715 of 2023 in IA No. 351 of 2021 in CP (IB) No. 294/7/HDB/2017, **Parikh Fabrics Pvt. Ltd. vs Superintendent Engineer**, wherein the NCLT entertained execution proceedings for non-compliance of its IBC order.

- 10.10 The Applicant also relies upon IA-491/2024 in IB-383(ND)/2019 in **M/s Prayag Polytech Pvt. Ltd. vs M/s Bon Lon Petrochem LLP**, wherein it was observed that if an order passed in IBC proceedings is not complied with, execution can be initiated before the Tribunal.
- 10.11 The Applicant submits that the Respondent has not denied the settlement agreement dated 22.08.2019 or the subsequent communications including WhatsApp messages dated between 30.05.2022 and 07.07.2022 and preparation of Demand Draft dated 18.07.2022 for Rs. 1,62,00,000, which shows acknowledgment of liability.
- 10.12 In view of the above facts and legal position, the Applicant has sought execution and enforcement of the order dated 26.08.2019 passed in CP(IB) No. (121)/9/NCLT/AHM/2018 and prayed that appropriate directions be issued against the Respondent for compliance of the said order and recovery of the outstanding amount in accordance with law.
- 11.** The Respondent also filed written submissions on 04.12.2025 vide inward diary no. D-8127, the submissions and judgment relied on by the Respondent are as follows: -
- 11.1 The Respondent submits that the present application under Section 424(3) of the Companies Act, 2013 is not maintainable as the order dated 28.08.2019 passed in CP (IB) 121/2018 was only an order of withdrawal of the insolvency application. The said order did not

adjudicate any liability and did not grant liberty to revive. Therefore, it is not an executable order.

- 11.2 The Respondent states that Section 424(3) permits execution only of an existing adjudicated order of the Tribunal. There is no order directing payment of Rs. 3,60,49,196 or any other amount. Hence, execution jurisdiction cannot be invoked to determine or recover any alleged claim.
- 11.3 The Respondent submits that the claim is barred by limitation. Even if the Declaration-cum-Indemnity dated 22.08.2019 is relied upon, the alleged obligation to issue debentures by 30.09.2019 could have been enforced within 3 years under Article 54 of the Limitation Act, 1963. The limitation expired on 29.09.2022.
- 11.4 The Respondent relies upon ***SRLK Enterprises LLP vs Jalan Transolutions (India) Ltd., NCLAT, 27.08.2024***, wherein it was held that IBC is not a recovery mechanism and that proceedings withdrawn without liberty cannot be revived. It was further held that parties must pursue other remedies available in law.
- 11.5 The Respondent also relies upon ***Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors., (2019) 4 SCC 17***, wherein the Hon'ble Supreme Court held that the IBC is not intended to be a recovery forum. The Code is

meant for insolvency resolution and not for enforcement of money claims.

11.6 The Respondent further relies upon ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353***, wherein the Hon'ble Supreme Court held that the IBC cannot be used as a substitute for debt enforcement proceedings. The Tribunal cannot determine disputed or unadjudicated claims in execution.

11.7 The Respondent submits that no CIRP was admitted in CP (IB) 121/2018, no Moratorium under Section 14 was imposed, and no Interim Resolution Professional was appointed. The application was withdrawn before adjudication. Therefore, there exists no executable direction or decree.

11.8 In view of the above facts and legal position, the Respondent has sought that CP/27/2024 be held not maintainable under Section 424(3) of the Companies Act, 2013 and be dismissed with costs.

12. We have heard the Ld. Counsel for both the parties and considered the submissions of both the parties and perused the material available on record. Upon consideration of pleadings, the following issues arise: _

- (i) Whether the order dated 26.08.2019 constitutes an executable order under Section 424(3) of the Companies Act, 2013?

- (ii) Whether execution jurisdiction can be invoked in absence of adjudicated direction for payment?
 - (iii) Whether the claim is barred by limitation?
 - (iv) Whether Section 424(3) can be invoked to enforce a private settlement not embodied in an executable order?
13. CP(IB) No. 121/2018 was filed by the Applicant under Section 9 of the Insolvency and Bankruptcy Code, 2016. During pendency, the parties entered into a settlement agreement dated 22.08.2019. Vide order dated 26.08.2019, the petition was disposed of as withdrawn.
14. It is not in dispute that no CIRP was admitted, no moratorium under Section 14 of IBC was imposed. no Interim Resolution Professional was appointed; no adjudication of liability was made and no quantified direction for payment was issued by this Tribunal.
15. **Analysis & Findings on Issue No.1:** Whether the order dated 26.08.2019 constitutes an executable order under Section 424(3) of the Companies Act, 2013?
- 15.1 Section 424(3) of the Companies Act, 2013 empowers this Tribunal to enforce “any order” as if it were a decree of a Civil Court. The provision presupposes the

existence of an operative, adjudicatory direction capable of execution.

15.2 Execution jurisdiction is strictly confined to the enforcement of the command contained in the operative portion of an order. It cannot enlarge, modify, supplement, or create substantive rights which were never adjudicated.

15.3 An execution proceeding cannot determine liability afresh, cannot adjudicate breach of contract, and cannot convert a private settlement into a decree unless the order itself embodies enforceable directions.

15.4 The order dated 26.08.2019 in CP(IB) No.121/9/NCLT/AHM/2018 merely records that the Section 9 petition stood withdrawn in view of settlement between parties. The said order: -

- a. did not admit the petition,
- b. did not commence CIRP,
- c. did not impose moratorium under Section 14 of IBC,
- d. did not determine liability,
- e. did not quantify any payable amount,
- f. did not incorporate settlement terms into the operative portion, and
- g. did not grant liberty for revival

15.5 A withdrawal order recording settlement, without embodying settlement terms in its operative directions, does not assume the character of a decree.

15.6 Therefore, there exists no executable command within the said order as the foundational requirement for invoking Section 424(3) is absent.

16. Analysis & Findings on Issue No.2: Whether execution jurisdiction can be invoked in absence of adjudicated direction for payment.

16.1 Execution proceedings are derivative in nature. The executing forum cannot travel beyond the decree or order sought to be executed.

16.2 The Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors., (2019) 4 SCC 17*** held that the Insolvency and Bankruptcy Code is not a recovery legislation but a resolution mechanism.

16.3 In ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353***, the Hon'ble Supreme Court clarified that the Code cannot be used as a substitute for debt enforcement proceedings.

16.4 If this Tribunal were to determine breach of settlement, quantify dues, compute interest, and attach properties in execution of a withdrawal order, it would effectively convert insolvency jurisdiction into a civil recovery forum.

16.5 Such conversion would run contrary to the statutory architecture of the IBC and settled law of the Hon'ble Supreme Court.

17. Analysis & Findings on Issue No.3: Whether the claim is barred by limitation?

17.1 The Applicant relies upon Article 136 of the Limitation Act, 1963 providing 12 years for execution of a decree.

17.2 Article 136 applies only when there exists a decree or an executable order.

17.3 Since the order dated 26.08.2019 contains no adjudicated direction, Article 136 is inapplicable.

17.4 The settlement obligation to issue debentures was to be performed by 30.09.2019. Any independent enforcement of such contractual obligation would fall within the general limitation period of three years.

17.5 Proceedings initiated in 2024, seeking enforcement of an alleged contractual breach of 2019, are prima facie beyond such limitation.

17.6 Emails, WhatsApp exchanges, or photocopies of demand drafts may constitute evidentiary material in appropriate civil proceedings, but they cannot metamorphose a non-adjudicated withdrawal order into a decree for purposes of execution.

18. Analysis & Findings on Issue No.4: Whether Section 424(3) can be invoked to enforce a private settlement not embodied in an executable order?

18.1 Section 424(3) does not confer original adjudicatory power; it only confers enforcement power in respect of an existing adjudicated order.

18.2 The Applicant seeks:

- a. determination of breach of settlement,
- b. quantification of outstanding dues,
- c. attachment and sale of movable and immovable properties.

18.3 These reliefs require adjudication of disputed rights and contractual obligations, which lie beyond the scope of execution jurisdiction.

18.4 An executing forum cannot:

- a. create a decree where none exists,
- b. convert a private settlement into an executable command,
- c. adjudicate fresh disputes under the guise of enforcement.

18.5 The judgments relied upon by the Applicant are distinguishable as they pertain to cases where:

- a. CIRP had been admitted,
- b. moratorium imposed,
- c. compliance directions issued, or
- d. liquidation proceedings commenced.

18.6 In the present matter, no insolvency process was ever admitted. The foundational factual matrix is fundamentally different.

19. Upon comprehensive consideration, this Bench records the following findings: -

- (i) The order dated 26.08.2019 is a withdrawal order devoid of executable direction.
- (ii) No decree or adjudicated command exists for enforcement under Section 424(3).
- (iii) Section 424(3) cannot be invoked to enforce an alleged breach of private settlement.
- (iv) Entertaining this petition would convert insolvency jurisdiction into a recovery forum, contrary to binding precedent.
- (v) The petition is legally misconceived and not maintainable.

20. In view of the above analysis and reasons, **C.P. No. 27/(AHM)/2024** is **dismissed** as not maintainable under Section 424(3) of the Companies Act, 2013. No order as to costs.

21. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)