NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

06.04.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)
ARUN BAROKA, MEMBER TECHNICAL
INDEVAR PANDEY, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.247 of 2026 &
I.A. No.1534 of 2026

Suyog Suryakant Talekar ...Appellant

Vs

1. **Trivenimudrai Project Ltd. & Another ...Respondent No.1**
2. **Baij Nath Ram Nath (India) Private Limited ...Respondent No.2**
   Through Its Authorised Representative Raunaq Kapoor

(Arising out of Order dated 13.01.2026 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in C.P.(IB) 265/ MB/ C-VI/ 2025)

For Appellant	:	Mr. Aastik Dhingra, Advocate
For Respondent	:	Ms. Purva Kohli, Advocate Ms. Prachi Wazalwar, Mr. Yahya Batatawala, Advocates

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

1. The appellant herein is the suspended director of the CD, who challenges an Order of the Adjudicating Authority dated 13.01.2026 in C.P.(IB) 265/ MB/ C-VI/ 2025 by which it has allowed the petition filed

by the respondent herein under Sec.9 IBC, and admitted the corporate debtor to CIRP.

2. The learned counsel for the appellant submitted that the appellant and the second respondent, the operational creditor have amicably settled the dispute and added that he has filed an application today with the Memorandum of Settlement. It is taken on record. The first respondent is the IRP, and the learned counsel for the IRP submitted that pursuant to the interim Order of this tribunal dated 13.03.2026 claims have been collated but CoC has not been constituted.

3. It is a case of offer of settlement by the suspended director of the CD but before the constitution of the CoC. The ready reckoner solution is in Regulation 30A (1)(a) of the CIRP Regulation. The metamorphosis of the law on settlement and withdrawal of a CIRP commenced with the judgment of the Hon'ble Supreme Court in ***Uttara Food & Feeds (P) Ltd., Vs Mona Pharmachem*** [(2018)15 SCC 587], followed by the legislative intervention through Sec.12A along with the introduction of Regulation 30A in 2018, and the inadequacy spotted therein in ***Swiss Ribbons Vs UOI*** [(2019)4 SCC 17] and the subsequent finetuning of Regulation 30A in 2019, have been well captured by the Hon'ble Supreme Court in ***Glas Trust Company LLC Vs Byju Raveendran*** [(2025)3 SCC 625], and hence they are not required to be revisited.

4. In ***Glas Trust Case***, the Hon'ble Supreme Court has held (paragraph 63.2) that even in cases falling under Regulation 30A (1)(a), "*the NCLT*

must hear the parties concerned and consider all relevant factors before approving or rejecting the application for withdrawal", on the rationale that once the CD was admitted to CIRP, the proceeding assumes the character of a proceeding *in rem*. There in essence are twin conditions which the Adjudicating Authority is required to abide by in terms of the ***Glas Trust*** instructions: (a) to hear all the parties concerned; and (b) to consider all the relevant factors. While the law is settled that the judgements should not be read like a statute, yet, these conditions may have to be understood as they were not explained. Turning to first of the two conditions, understanding those who may fall within the phrase '*parties concerned*', poses no difficulty as it can only refer to the other creditors of the CD since a CIRP is a proceeding in rem. Turning to the second part requiring consideration of *'all relevant factors', s*ince what those factors have not been explained, it is necessary to consider what those '*factors*' can be?

5. When other creditors of the CD are afforded a hearing, their views on the need for the proposed withdrawal of the CIRP are already obtained. However, the anxiety of the suspended directors of the CD to have the CIRP withdrawn still remains. Set in the context, "*Consider all relevant factors*" cannot be considered as a phrase without a purpose, or limited to only those facts which will go to the aid of the creditors. If this phrase is read deeply, it can be realised how it serves as a great equaliser that brings in a fair degree of balance to the equation. Its contextual significance is now examined:

a) The edifice of the IBC and its justification for commencing an insolvency resolution process under Sec.7 or Sec.9 IBC is premised on an underlying presumption that when there is a default to repay a debt, even a solitary debt - financial or operational, the corporate debtor is necessarily presumed to be not solvent, vis-à-vis all its debts that it owes to all its creditors, including those who may not have suspected the solvency of their debtor. If this presumption is eliminated from the equation, then every CIRP will mimic a proceeding for recovery of money, since for initiating a CIRP, an Adjudicating Authority is not required to examine the solvency of the CD but to enquire only the existence of a debt and the default in its repayment. Once this presumption sets in, it triggers an ancillary presumption: that failure to repay is necessarily due to the mismanagement of the CD to repay one creditor – the petitioning creditor, which necessarily need not be true in all cases. But in reality, these presumptions work. Now given the necessity to examine the other *relevant factors* besides the views of non-petitioning creditor of the CD, the Adjudicating Authority obtains an opportunity to examine the solvency of the CD.

b) Another aspect that may not be overlooked is that while the Code divides the creditors into two broad categories - financial and operational, on a rational analysis it can be further divided into two significant categories: those who deal with public funds, such as the banking institutions; and (ii) those who deal with private funds. The second category is made up of both financial creditors who deal with

their own funds and the operational creditors, whose dues essentially are private in character[1]. However, the Code, does not make a distinction as between these classes of creditors based on the nature of funds which they deal with or due to them, as the case may be, for differential treatment. In a given situation, a financial institution which has advanced loans to the CD may be confident of the CD's solvency, but when the CD is admitted to CIRP owing to its default to repay the debt due to a solitary petitioning creditor dealing with the private funds, the underlying presumption in CIRP gets activated which in turn raises the alarm bell, if not presses the panic busser, for all the creditors. Here the other creditors who may still be trusting the solvency of the CD do not have a choice to wait, for if they do not participate in the insolvency resolution process, they run the risk of forgoing their debts forever. This may result in a CD with a reasonable financial health soon finding itself in crutches. In a circumstance such as this, when the suspended directors of the CD offer a settlement proposal to the petitioning creditor in a scenario contemplated under Regulation 30A(1)(a), even the other creditors will have an occasion to be reassured of the solvency of the CD when the Adjudicating Authority gets an opportunity to ascertain the same upon considering "*all relevant factors*". Indeed, it provides a small window for the CD to exit from what otherwise appears as a

[1] *The paradox however, is governmental dues though public finance, but the distinction rests in the fact that differentiates between public's finance and public finance.*

'*padmavyuham*'. It may be that offer of settlement might have come one stage too late in cases falling under Regulation 30A(1)(a), but why not sensibilities of law be matched with the sensitivity to its implication? It is here, ***Glas Trust*** plays a role.

c) When the long title of the Code *inter alia* states that the Code aims to promote entrepreneurship, should it be presumed that once a defaulter is always a defaulter? Will it then work in aid of promoting entrepreneurship? After all, in a world of complexities and complications, cannot life be made easy if it can be within the space available? Whether according small acts of clemency in law to a sinner in commerce (the sin being a belated offer to settlement by the suspended directors of the CD after the admission of the CD to CIRP but before the constitution of the CoC) an anathema in our Constitutional scheme of things? Code may appear as a rare case of logic winning over experience to define the life of law, but here ***Glas Trust*** infuses space for factoring in life's experience with an element of pragmatism. This space has been made available for the Adjudicating Authority to weigh the implications of the offer of settlement on the interest of other creditors as well as that of the CD.

6. It may be that, the rigour of Sec.12A may be to keep the settlement of liability of the CD with the petitioning creditor outside the purview of a preferential transaction under Sec.43 of the Code, but here at least two other factors will necessarily be overlooked: (a) with the CD under

moratorium, offer of settlement is least likely to involve the asset of the CD, and therefore, any settlement for the purpose of Sec.12A can hardly invite the application of Sec.43 of the Code; and (b) secondly, if the same settlement takes place before the CD's admission to CIRP, will it not then amount to preferential transaction in any CIRP that might be initiated against the same CD in future? But then it is how the Code is designed, and it is required to be respected.

7. Those *relevant factors* that may influence the decision of the Adjudicating Authority while considering an offer of settlement for the purpose of withdrawing a CIRP within the meaning of Regulation 30A(1)(a), have not been provided. On a deeper contemplation, considering the factors which we enumerate below merit consideration since they provide consistency, predictability and objectivity while any petition under Sec.12A is presented vis-à-vis the cases falling under Regulation 30A(1)(a). The factors are:

    a) if any financial creditor has classified the account of CD as NPA, and if so, whether more than one year has passed since such classification;

    b) if the CD has been declared as 'wilful defaulter' by a financial creditor or its account has been declared as "fraud".

    c) if there is any decree for realisation money against the CD or anything that has the force of a decree for realisation of money;

d) List of creditors and the status of default of debt to other creditors;

e) if there is any litigation pending against the CD which may have a bearing on its solvency;

f) evidence of its solvency and creditworthiness of the CD and the ratio its assets bear to the total debt. In short, CD's balance sheet for such number of years as the Adjudicating Authority may deem it fit in the facts and circumstances of each particular case.

The list is not conclusive, but illustrative. Given the need to consider the factors enumerated above, which to repeat are illustrative merely, an Adjudicating Authority may not always be bound by the objections if any, of the other creditors of the CD, but is required to weigh the same alongside other *relevant factors*.

8. There is an ancillary issue. The counsel for the IRP has submitted that the initial cost/remuneration of the IRP has not been paid. Now, what will happen if after admission of a CD to CIRP, if IRP's initial cost is not paid by the petitioning-creditor? The consequence of non-payment is not stipulated. This is therefore, an issue that will fall may have to be considered within the inherent powers prescribed under Rule 11 of the NCLT Rules. Since, the matter will be now before the Adjudicating Authority, the IRP may approach it.

9. As stated elsewhere in this judgement, pursuant to the interim Order passed by this tribunal the IRP has collected or in the process of collating the claims, but is yet to constitute the CoC. We therefore, deem it appropriate to direct the appellant to move the IRP with its offer of settlement, who in turn may move the Adjudicating Authority with an application under Sec.12A IBC for the latter to consider the said application in terms of Regulation 30A(1)(a) IBC. Processing will begin only if IRP fees is paid in advance. This appeal is accordingly closed. And, in the eventuality of the contemplated Sec.12A proceeding failing, the appellant is entitled to revive this appeal. No costs.

I.A. No.1534 of 2026 is also closed.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

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