

# INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

## (Disciplinary Committee)

No. IBBI/DC/316/2026

21st April 2026

### ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11011/146/2024-IBBI-1064/1161 dated 28.07.2025, issued to Mr. Mukesh Gupta, who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) having Registration No. IBBI/IPA-001/IP-P-01494/2018-2019/12254 and a Professional Member of the Indian Institute of Insolvency Professionals of ICAI.

#### 1. Background

- 1.1. The corporate insolvency resolution process (CIRP) of Bhasin Infotech and Infrastructure Private Limited (Corporate Debtor/CD) commenced *vide* order of the National Company Law Tribunal, New Delhi Bench (AA) dated 04.12.2023 on an application filed by Col Gautam Mullick & Ors. under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) and Mr. Mukesh Gupta was appointed as Interim Resolution Professional (IRP). The director of the suspended board of the CD filed an appeal before the Hon'ble National Company Law Appellate Tribunal (the NCLAT) where it was observed on 07.12.2023 that no further steps may be taken and the appellant, who are directors of the suspended board, shall not create any third party interest in respect of the units of the Respondents.
- 1.2. The Board received a complaint against Mr. Mukesh Gupta with regard to his assignment as IRP in the CIRP of the CD. The Board examined the allegations in the above complaint *vis-à-vis* reply of Mr. Mukesh Gupta and based on such examination; the Board formed a *prima facie* opinion that Mr. Mukesh Gupta has contravened provisions of the Code and Regulations made thereunder and issued SCN to Mr. Mukesh Gupta on 28.07.2025. Mr. Mukesh Gupta submitted his reply to the SCN on 24.08.2025.
- 1.3. The SCN and its response by Mr. Mukesh Gupta were referred to the Disciplinary Committee (DC) for disposal. Mr. Mukesh Gupta availed the opportunity of personal hearing before the DC through virtual mode on 04.12.2025. Mr. Mukesh Gupta also submitted his additional written submissions on 17.12.2025. The DC has considered the SCN, the reply to SCN, oral and written submissions of Mr. Mukesh Gupta, and proceeds to dispose of the SCN.

#### 2. Alleged Contravention, submissions of Mr. Mukesh Gupta and analysis and findings of the DC.

## 2.1. Failure to take custody and control of assets of CD.

2.1.1 Section 17(1) of the Code provides that from the date of his appointment, the management of the affairs of the CD shall vest in the IRP. Further, the powers of the Board of directors (BOD) of the CD shall stand suspended and be exercised by the IRP. Section 18(1)(f) of the Code provides that the IRP shall take control and custody of any asset over which the CD has ownership rights.

2.1.2 In the matter of CD, the CIRP was admitted on 04.12.2023. The suspended BOD filed an application before the NCLAT challenging the admission order dated 04.12.2023 wherein the NCLAT vide order dated 07.12.2023, *inter alia*, held as follows:

*“In the meantime, in pursuance of the impugned order, no further steps shall be taken. We make it clear that the Appellant shall not create any third party interest in respect of the units of the Respondents.”*

2.1.3 During the course of examination before the Board, Mr. Mukesh Gupta, in his reply, submitted that the management and control of the affairs of the CD was not managed by him pursuant to the restraint order dated 07.12.2023 passed by the NCLAT. As regards his reply, it is observed that even though the NCLAT has barred any further steps to be taken in the matter, but until the admission order is set aside, the management and control of affairs of the CD remains with the IRP. In the matter of *Ashok Kumar Tyagi vs. UCO Bank, Company Appeal (AT) (Insolvency) No. 1323 of 2022*, the NCLAT vide order dated 21.11.2022, *inter alia*, held as, *“The Admission Order of Section 7 Application has only been stayed and not quashed thus the Corporate Debtor can not be permitted to function as it was functioning prior to 28.10.2022.”*

2.1.4 It is further noted that an IA. 1509 of 2025 was filed by one of the shareholders in the matter, *inter alia*, praying to *“Pass necessary orders clarifying that even after the order dated 7th December, 2023, the Interim Resolution Professional/Respondent No.2 will continue to manage the day-to-day operations of the Corporate Debtor/BIIPL and its Suspended Board of Directors will cease to have control over the affairs of the Corporate Debtor/BIIPL, effective immediately;..”* The NCLAT vide order dated 07.03.2025 held as follows:

*“17. Thus, we are not in doubt that on 04.12.2023 viz. the day when the IRP was appointed, the control and management of the affairs of the Corporate Debtor stood vested in the hands of the IRP, per legal fiction so created by sections 13 to 20 (supra). The issue is answered accordingly.*

...

*19. We make it clear this order does not recall the earlier order dated 07.12.2023 but only narrates the position of law and its effect upon the Corporate Debtor upon admission of CIRP on 04.12.2023. This position apparently is also agreed to by the appellant as he himself has filed this appeal as a suspended Director of Corporate Debtor. Admittedly after*

*07.12.2023 the RP is precluded from taking steps qua inviting claims; constituting of Committee of Creditors etc. etc, but this would not mean the Suspended Board shall be incharge of assets of the Corporate Debtor.”*

2.1.5 In view of the above, the Board observed that Mr. Mukesh Gupta failed to take custody and control of assets and affairs of the CD post commencement of CIRP and hence his actions are *prima facie* in violation of Sections 17(1), 18(1)(f), 208(2)(a) and (e) of the Code, Regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with Clauses 10 and 14 of the Code of Conduct specified in IP Regulations.

## 2.2. Submissions by Mr. Mukesh Gupta.

2.2.1 Mr. Mukesh Gupta submitted that the AA admitted the consolidated CIRP of M/s Grand Venezia Commercial Towers Private Limited and M/s Bhasin Infotech and Infrastructure Private Limited *vide* order dated 04.12.2023 in Company Petition (IB)No. 646/PB/2021. That, on the insolvency commencement date, the AA appointed him as the IRP of the CD. He received the admission order on 05.12.2023. Important paragraphs of the admission order dated 04.12.2023 are reproduced hereinbelow:

*“24. In pursuance of Section 13(2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016 with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016”.*

...

*“26. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Section 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.”*

That, the AA by its order dated 04.12.2023, required Mr. Mukesh Gupta, being the IRP, to perform functions as contemplated by Section 15, 17, 18, 19, 20 & 21 of the Code. Upon receiving the admission order on 05.12.2023, in order to perform his duties as mentioned under the Code and as specifically mentioned in the order dated 04.12.2023 in paragraph no. 24 and 26, he sent emails dated 05.12.2023 to the members of the directors of the suspended board of the CDs, requesting for various data, detail, documents pertaining to them. Mr. Mukesh Gupta sent the emails to the members of the suspended board of the CDs so that he can perform his duties as mentioned in the Code and specifically mentioned in the paragraph 24 and 26 of the admission order.

2.2.2 That, in the interregnum, suspended Board of Director of both the CDs challenged the order dated 04.12.2023 passed by the AA by filing appeals before the NCLAT which were listed

on 07.12.2023. Being the IRP of the CDs, his counsel was also present before the NCLAT. After hearing the Appellant, the NCLAT gave its written view by the order dated 07.12.2023 that the major issue between the parties is tripartite lease deed and that the present was not a case for initiation of the CIRP since according to the Appellant all constructions are complete, and units are ready to occupy. The NCLAT also viewed that ends of justice be served by finding ways and means to protect the interest of the allottees by execution of the lease deed and by handing over the possession. The relevant excerpts of the order dated 07.12.2023 passed by the NCLAT are reproduced hereinbelow:

*“6. After considering the submissions of the Counsel for the parties, we are of the view that the major issue between the parties is tripartite lease deed and due to reason that certain unit holders have not taken possession and have been contending that there is default on the part of the Appellant. In view of the materials which have been placed by the Appellant, the present was not a case for initiation of the CIRP since according to the Appellant all constructions are complete and units are ready to occupy. We are of the view that in the ends of justice be served by finding ways and means to protect the interest of the allottees by execution of the lease deed and by handing over the possession.”*

Further, in view of the above, the NCLAT passed an interim order directing not to take further steps that in pursuance of the Order dated 04.12.2023 which is reproduced hereinbelow:

*“In the meantime, in pursuance of the impugned order, no further steps shall be taken. We make it clear that the Appellant shall not create any third party interest in respect of the units of the Respondents.”*

2.2.3 That pursuant to the Order dated 07.12.2023 passed by the NCLAT, the legal counsel of Mr. Mukesh Gupta informed him *vide* email dated 07.12.2023 about the Order stating that in view of the directions of the NCLAT he was to not take any further steps in furtherance of the CIRP proceedings. In view of the directions of the NCLAT, he consciously refrained from issuing the public announcement inviting claims from the creditors of the CD. He further submitted that in strict compliance with the said restraint order dated 07.12.2023, he did not undertake any other action as envisaged under the CIRP commencement order dated 04.12.2023. He submitted that, in view of the aforesaid restraint, the management and control of the affairs of the CD were never assumed by him and remained unaffected at the time of commencement of CIRP proceedings.

2.2.4 He submitted that paragraph 24 and 26 of the admission order dated 04.12.2023 passed by AA must be read in conjunction with order dated 07.12.2023 passed by the NCLAT. The aforesaid paragraphs required him to take make public announcement within 3 days as prescribed by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and perform all his functions

as contemplated, *inter alia*, by Section 15, 17, 18, 19, 20 & 21 of the Code. Whereas the order dated 07.12.2023 passed by the NCLAT clearly directed that in pursuance of the impugned order dated 04.12.2023, no further steps shall be taken. Accordingly, in compliance of the order dated 07.12.2023 passed by the NCLAT, he did not take steps nor performed functions as envisaged under paragraphs 24 and 26 of the admission order dated 04.12.2023 which is the impugned order which was stayed by the NCLAT in entirety, since the NCLAT viewed that the said case was not a fit case for CIRP. He submitted that order dated 07.12.2023 passed by the NCLAT was not only the stay order in which the NCLAT just stayed the invitation of claims and constitution of CoC, rather the said order was a complete restraint order not to take any steps nor perform any functions as mentioned in the impugned CIRP commencement order.

2.2.5 That during proceedings of the said Appeals, the NCLAT to assess the situation of the completeness of project of the CDs, directed him to file an affidavit stating the name of 140 allottees/financial creditor and also provide the status of the units constructed and directed him to physically inspect the units and give his comments *qua* each unit. In pursuant of the said direction, he filed an affidavit dated 11.09.2024 which contained the photographs of various units of the allottees in the project of the CDs which showed that the units were not complete.

2.2.6 That on 13.02.2025 and thereafter on 17.02.2025, an application bearing I.A. No. 1039 of 2025 was listed before the NCLAT wherein he submitted that in view of the interim Order dated 07.12.2023, he being IRP is unable to take actions and has not prepared the list of assets of the Company. On 13.02.2025, the NCLAT passed an order which stated that director of the suspended board, who is also an advocate, makes a statement they shall not operate account of the company till next date and there are no immediate plans for sale of assets of the CD. Statement was taken on record. Further, the IA No. 1039 of 2025 was listed on 17.02.2025 wherein after hearing the parties, the NCLAT passed an order which states in Paragraph 5 as:

*“At this stage, the Learned Counsel for the suspended Board of directors submit the operations of the bank accounts of the Corporate Debtor may be allowed to incur day to day expenses of the Corporate Debtor for smooth functioning of the company. Thus, the respondents are allowed to operate the accounts only for day to day expenses and in case the amount to be spend in more than Rs. 2 lacs, the IRP be informed in advance along with supporting documents. This system shall continue till next date. Interim order to continue.”*

Further, the NCLAT directed him to file status report stating, *inter alia*, the assets of the CD as on CIRP commencement date within three days and also directed the suspended board of the CD directors of the suspended Board of to co-operate with him.

2.2.7 He submitted that the statutory mandate contained under Section 17(1)(a) and 17(1)(b) of the Code requiring the IRP to take over the management of the affairs of the CD and exercise

powers of the Board of Directors could not be carried out by him in the present case due to the subsistence of the restraint imposed by the NCLAT. He was not in control or possession of the assets, records, or management of the CD due to said restraint order. It was only pursuant to subsequent directions of the NCLAT vide orders dated 04.07.2024, 23.08.2024 and 17.02.2025 that he was directed to carry out certain limited tasks such as submission of affidavit containing status of constructed units, names of allottees, physical inspection of the project site, and filing of a status report regarding assets of the CD. These directions were procedural in nature, issued for the assistance of the NCLAT, and cannot be construed as assumption of control and custody of assets or management under the Code. Therefore, in view of the clear restraint imposed by the NCLAT and absence of actual or constructive control over the CD or its assets, he submitted that no default, or non-compliance can be attributed to him in respect of the obligations under Sections 17 or 18 of the Code or the CIRP Regulations during the relevant period. He has at all times acted in good faith, in a bonafide manner, and in strict compliance with the judicial directions of the NCLAT.

2.2.8 Mr. Mukesh Gupta submitted that the authority has erroneously relied upon the judgment laid down by the NCLAT in *Ashok Kumar Tyagi (supra)* by not considering the judgment as a whole specifically the operative portion of the Order dated 21.11.2022. The NCLAT, while considering the issues in *Ashok Kumar Tyagi (supra)* categorically held in paragraph 19 that, in view of the stay of the Order dated 28.10.2022 (whereunder the IRP was appointed), the said appointment itself could not take effect, rendering the IRP incapable of discharging any function in pursuance of the stayed order. Consequently, the NCLAT unequivocally clarified that no further action could be undertaken by the IRP post the interim order dated 07.11.2022 passed by the NCLAT wherein the IRP was entitled to carry on any function *qua* the CD as the impugned order had become inoperative. The operative directions issued thereafter in paragraph 20 were confined to ensuring continuity of essential operations of CD through its existing officers/CEO, solely for the purpose of wages, ration, electricity dues, and necessary expenses, with periodic reporting to the IRP and suspended management. Thus, the Authority's reliance, without considering this specific operative finding and context, is incorrect and incomplete. Relevant paragraph of the Order dated 21.11.2022 passed in *Ashok Kumar Tyagi (supra)* is reproduced hereinbelow:

*“19. However, in view of the stay of the Order dated 28.10.2022, the IRP can not carry on any functions since the IRP was appointed by the same order and by stay of the Order, no further action can be taken by the IRP in pursuance of the Order dated 28.10.2022. The Order dated 28.10.2022 has become inoperative in view of the Interim Order of this Tribunal dated 07.11.2022. Hence the Appellant is right in his submission that IRP can not discharge any function after the Impugned Order dated 07.11.2022.*

*20. The question which needs to be considered in this Application is that how the day-to-day functioning of the Tea Gardens may be carried on when IRP is not entitled to discharge any function and the Corporate Debtor also cannot be restored as it was functioning prior to 28.10.2022. There are wages to be paid to the workers, Ration is also to be distributed by*

*the Company to its workers, there are electricity dues and some other necessary expenses. The workers of the Corporate Debtor and its functioning can not be made to suffer in the facts of the present case. We thus are of the view that for the purposes of payment of wages to the workers and distribution of ration, payment of electricity dues and other necessary expenses, ways and means have to be found out so that Corporate Debtor may continue as a going concern. In the facts of the present case, we are of the view that difficulties in running the corporate debtor as a going concern, can be mitigated by issuing following directions:*

*I. The Chief Executive Officer (CEO)/Officers of the Corporate Debtor authorized to operate the Bank Accounts are permitted to make payment of wages of workers, workmen and employees as was being paid earlier to passing of the order dated 28.10.2022. The payment of Electricity Dues and other necessary expenses may also be carried out by the officials as mentioned above subject to submitting all details of expenditure on weekly basis to the IRP as well as to the Suspended Managing Director of the Corporate Debtor.*

*II. That for making any other payment it is always open for the Appellant to file an appropriate application for seeking leave of this Court.*

*III. The Settlement, if any, by the Suspended Directors of the Corporate Debtor with UCO Bank shall require leave of this Tribunal.*

*IV. I.A. No. 4221 of 2022 is allowed. Indian Bank is permitted to intervene in the matter. I.A. No. 4291 of 2022 and I.A. No. 4340 of 2022 are disposed of, as above.”*

2.2.9 Further, an application bearing I.A. No. 1509 of 2025 was filed by DS Chewing LLP before the NCLAT seeking clarification of the Order dated 07.12.2023 passed by the NCLAT. Further, a similar clarification Application vide I.A No. 1557 of 2025 was filed by Mr. Satinder Singh Bhasin being the director of the suspended board before the NCLAT to clarify the terms of the order dated 07.12.2023 passed by the NCLAT. The NCLAT vide order dated 07.03.2025 clarified that Mr. Mukesh Gupta shall have the control of management and affairs of the CD. Relevant excerpt of the Order dated 17.02.2025 is reproduced hereinbelow:

*“17. Thus, we are not in doubt that on 04.12.2023 viz. the day when the IRP was appointed, the control and management of the affairs of the Corporate Debtor stood vested in the hands of the IRP, per legal fiction so created by sections 13 to 20 (supra). The issue is answered accordingly.*

...

*19. We make it clear this order does not recall the earlier order dated 07.12.2023 but only narrates the position of law and its effect upon the Corporate Debtor upon admission of CIRP on 04.12.2023. This position apparently is also agreed to by the appellant as he*

*himself has filed this appeal as a suspended Director of Corporate Debtor. Admittedly after 07.12.2023 the RP is precluded from taking steps qua inviting claims; constituting of Committee of Creditors etc. etc, but this would not mean the Suspended Board shall be incharge of assets of the Corporate Debtor.”*

- 2.2.10 Mr. Mukesh submitted that after the above clarification order dated 07.03.2025 he sent emails to the ex-management for handing over the control and management of the affairs of the CD and consequently visited the Project Grand Venice of the CD at Greater Noida for taking the custody of the Project of the CD on 17.03.2025 and took physical charge of Project of the CD. Mr. Mukesh Gupta called upon the employees of the CD No 2 present at the Project Site and after detailed deliberations gave directions to the employees to directly report to him for affairs of the CD. Further, various notices were pasted at the Project site in respect of order dated 04.12.2023 passed by the NCLT and order dated 07.03.2025 passed by the NCLAT.
- 2.2.11 However, due to non-cooperation from the suspended Management of the CDs, he filed an application on 15.04.2025 under Section 19(2) of the Code bearing I.A. No. 1799 of 2025 seeking cooperation and access to all list of assets and information to enable him to take control over the assets of the CD wherein the AA was pleased to issue notice upon the Directors of the Suspended Board of the CDs on 21.04.2025 and the matter is now listed for further consideration..
- 2.2.12 He further submitted that with the objective of taking control of the project of the CDs, he along with his team also visited the project site of the CD situated at Plot No. SH- 3, Site-IV, Near Pari Chowk, Uttar Pradesh-201308 on various other dates, with the objective of taking control of the project. However, his team members were obstructed by the guards stationed at the entrance and were denied access to the premises and also issued veiled threats stating that attempting to enter the premises would be detrimental to their safety and well- being. This obstruction and threat demonstrate a clear attempt to hinder his duties as IRP therefore he also filed an application bearing I.A. No. 2059 of 2025 on 26.04.2025 under Regulation 30 of CIRP Regulations, 2016 seeking assistance of local administration i.e. Police Commissionerate, Greater Noida, the SHO, Beta 2 Police Station, Greater Noida, Gautam Buddh Nagar, Uttar Pradesh – 201308 for providing assistance to him with respect to the handover of the project wherein the AA *vide* Order dated 26.05.2025 was pleased to allow I.A. No. 2059 of 2025 directing the concerned authority to assist the IRP in discharge of his duties as authorised by the NCLAT *vide* Order dated 07.03.2025.
- 2.2.13 He further submitted that he has been diligently discharging his duties in conformity with the provisions of the Code, including but not limited to, taking steps for assuming control and custody of the assets as envisaged under Section 18(f) of the Code, safeguarding the value of the property of the CDs, and taking necessary actions to preserve the going concern status of the CDs. However, the inability to take effective charge of the CDs was due to deliberate non-cooperation and active obstruction by the Suspended Management. He has

not only exhausted all reasonable steps and legal recourse to secure compliance with the provisions of the Code. Nevertheless, despite such efforts, the actual and effective handover of the management and control of the CDs continues to remain elusive till date.

2.2.14 That the NCLAT vide Order dated 25.04.2025 again directed the directors of the suspended board to hand over the entire records of the CDs including files etc. to him physically on 01.05.2025 at the Project Site at 11:00am. Further, the NCLAT appointed an observer Justice (Retd.) Shri Rajnish Bhatnagar to visit the premises of the CD and to prepare a report containing a list of financial creditors who filed this petition and otherwise; the units allotted to them, and whether construction of these units is complete and immediate possession can be handed over to the said financial creditors. Pursuant to the Order dated 25.04.2025, he informed the directors of the Suspended Board of the CD *vide* email dated 30.04.2025 that he along with his team members shall be visiting the Project Site on 01.05.2025 at 11:00 am as directed by the NCLAT and further requested to handover the following:

A. Secretarial Records for the corporate debtors.

B. List of Shop owners in the Mall, with their contact details, and copy of the agreements executed with them for rent, or revenue sharing;

C. Agreements pertaining to Gondola Ride and other Entertainment Zone, if any and the manner in which the Revenue from the same is collected and deposited in the Bank.

D. Copy of all Agreements, Allotment letters executed with all the Allottees / Buyers in the Project, and list of all such Allottees;

E. Name, contact number and appointment letters of all employees and Officer in charge of various departments at the Project site. They should be present at the Project site and instructions issued to them to cooperate with the undersigned and assist them in all manner possible towards control and management of affairs of the Corporate Debtor;

F. Copy of all contracts, MOUs, agreements executed by the CDs with vendors etc.

G. List of all litigations by or against the Corporate Debtors with a excel containing Case number, Court details, Status of the case and next date of hearing in the same.

2.2.15 He submitted that meanwhile Application bearing I.A. No. 2593 of 2025 was filed by one of the directors of the suspended board for seeking modification of the meeting scheduled for 01.05.2025 at 11:00am by the NCLAT since the Ld. Supreme Court *vide* Order dated 25.04.2025 in Miscellaneous Application No. 239/2024 had fixed the same date i.e. 01.05.2025 as the date for the officers of UPSIDA to visit the Project site wherein the NCLAT changed the date of handing over all the records of the CD to 03.05.2025 at 11:00 am *vide* Order dated 01.05.2025.

2.2.16 Since all the records/ documents were not handover till 08.05.2025, he wrote another email to the directors of the suspended board on 08.05.2025 requesting them that handover of substantial documents / records of significant importance as requested in the emails dated 11.03.2025 and 30.04.2025 are pending to be handed over despite that Mr. Pranay Sharma had committed to handover all the records / data/ documents and handover of control & management within 3 days from 03.05.2025. In the said mail dated 08.05.2025, he reiterated

that during the meeting on 03.05.2025, he also requested for login credentials of 1) GST & Income tax login 2) SAP modules 3) CCTV 4) Net Banking. Further, *vide* the said email dated 08.05.2025, he informed the directors of the suspended board that he will be again present at the project site on 09.05.2025 to take the physical handover of control and management of the CDs and requested the presence of directors suspended board to handover of control and management of affairs of the CDs, which shall, *inter alia*, include Mall Management, Security, CCTV and Risk Management, Banking, Accounting, Maintenance & Operations etc. He further requested the directors of the suspended board to cause the Heads of all Departments of the CDs to be present at the Project site on 09.05.2025, so that necessary handover of control & Management of the CDs can be given to the IRP. On 09.05.2025 when he had visited the project site along with his team members, he was informed that the directors of the suspended board were not present at the Project Site nor Mr. Pranay Sharma was present. He thereupon wrote an email dated 09.05.2025 to the directors of the suspended board informing them that he was present at the Project site and was awaiting the handing over of the balance records / data / documents of CDs and handing over of the control & management of affairs of the CD, however there was no response from directors of the suspended board of on email dated 08.05.2025 and 09.05.2025. On 10.05.2025, inspection was carried out by the Committee led by the Observer Justice Rajnish Bhatnagar (Retd.). After the inspection, he wrote an email dated 10.05.2025 to the directors of the suspended board of stating that he is available at the Project site after completion of Inspection carried out by the Committee led by the Observer Justice Rajnish Bhatnagar (Retd.) and was waiting for the handing over of control & management of affairs of CDs to him, which has not been handed over till then. The matter was listed before the NCLAT on 14.05.2025 wherein he submitted that till date the entire records of the CDs and control and management of affairs / assets of the CDs is still not handed over and in view of the submissions made, the NCLAT observed that the control and management of the CD is yet to be handed over to him and directed him herein to file an affidavit stating the documents/records which are yet to be received by the suspended Management of the CD which was duly complied by him. In view of the above facts and circumstances, it is evidently clear that he has till date not received the full records and affairs of the management of the CDs despite the Orders passed by the NCLAT and in view of the wilful disobedience of the orders of the NCLAT, he has filed Contempt Petition bearing Contempt Petition No. 17-18 of 2025 and is *sub judice* before the NCLAT and is now coming up for further consideration on 10.04.2026.

### **2.3. Analysis and Findings of the DC.**

2.3.1 The DC has gone through the SCN, reply to SCN, additional written submissions filed by Mr. Mukesh Gupta and the oral submissions advanced during the personal hearing. The DC notes that the CIRP of the CD commenced on 04.12.2023 and Mr. Mukesh Gupta was appointed as IRP by the AA. Mr. Mukesh Gupta submitted that as per CIRP admission order he was required to perform functions provided under the code which includes duties under

section 13(2) (issuing public announcement), Section 17 (take over the management and control of CD), Section 18 (perform functions of collating claims, constitute CoC etc) and functions under Section 19 to 21 of the Code. He submitted that in the interregnum, the suspended directors of the CD challenged the admission order before the NCLAT, which was listed on 07.12.2023.

2.3.2 The relevant extract of the aforesaid order is as under: -

*“6. After considering the submissions of the Counsel for the parties, we are of the view that the major issue between the parties is tripartite lease deed and due to reason that certain unit holders have not taken possession and have been contending that there is default on the part of the Appellant. In view of the materials which have been placed by the Appellant, the present was not a case for initiation of the CIRP since according to the Appellant all constructions are complete and units are ready to occupy. We are of the view that in the ends of justice be served by finding ways and means to protect the interest of the allottees by execution of the lease deed and by handing over the possession. We issue notice in both the Appeals.*

*8. In the meantime, in pursuance of the impugned order, no further steps shall be taken. We make it clear that the Appellant shall not create any third party interest in respect of the units of the Respondents.”*

2.3.3 He submitted that his counsel also appeared before the NCLAT while the aforesaid order dated 07.12.2023 was passed and the legal counsel, through email, informed Mr. Mukesh Gupta to not take any further steps in furtherance of the CIRP Proceedings. The extract of said email is reproduced below: -

*“Dear Sir,  
The above captioned matter was listed today before the Hon'ble NCLAT, Chairperson Court, wherein, we appeared on your behalf physically.  
During the course of hearing Ld. Senior Advocates on behalf of Suspended Board of Directors made various submissions.  
The Hon'ble NCLAT after hearing submissions on behalf of all the parties has directed that 'no further steps shall be taken in pursuance of the impugned order and has listed the matter for further consideration on 15.01.2024.  
Accordingly, the matter shall now come up on 15.01.2024.  
You are requested not to take any steps in furtherance of CIRP order.”*

2.3.4 Mr. Mukesh Gupta submitted that in view of the aforesaid restraint, he consciously refrained from issuing the public announcement and any other action as envisaged under the CIRP commencement order dated 04.12.2023. Therefore, the management and control of the affairs of the CD were never assumed by him.

2.3.5 The DC has gone through the admission order dated 04.12.2023 passed by the AA along with the stay order dated 07.12.2023 passed by the NCLAT and the submissions made by Mr. Mukesh Gupta. The DC notes that the language used in the interim order dated 07.12.2023 by the NCLAT does give the impression that the CIRP was not to be proceeded with during the pendency of the appeal. In paragraph 6 of the said order, the NCLAT observed that the major issue pertained to the tripartite lease deed and to certain unit holders who had not taken possession and further recorded that “*the present was not a case for initiation of the CIRP.*” On the basis of this *prima facie* view, the NCLAT then passed an interim order directing no further steps shall be taken in pursuance of the impugned order dated 04.12.2023. Since, para 26 of the impugned order dated 04.12.2023 contained directions for performance of functions of IRP as contemplated in section 17 and 18 also which include taking custody and control of the CD, the directions in the interim order dated 07.12.2023 appear to cover steps to be taken for custody and control of the CD, specially in view of a subsequent direction to the Appellant (director of the suspended board) for not creating any third party interest and not the IRP which would have been the case if the control was to be with the RP.

2.3.6 Mr. Mukesh Gupta further relied upon subsequent interim orders of the NCLAT. He submitted that *vide* order dated 04.07.2024 & 23.08.2024, he was directed by the NCLAT to assess the situation of completeness of the project of the CD and to physically inspect each unit. The relevant extract of the order dated 04.07.2024 is reproduced as under: -

*“1. Ld. Sr. Counsel for the Appellant has referred to paragraph 6 of the order dated 07.12.2023, crystalizing the issue before this court in the present matter. It is submitted the issue between the parties is as if bipartite or tripartite lease deed is to be entered into between the unit holders, UPSIDC and the developers. However, the Ld. Counsel(s) who appear for 140 allottees/financial creditor before the NCLT submit though the Ld. Counsel for the Appellant says the matter is settled between the allottees/financial creditor before the NCLT but the settlement deed as alleged by the Ld. Counsel for the Appellant is only with 50 such allottees/ financial creditor who were the complainants in FIR against the developers. Let the appellant file an affidavit stating the name of 140 allottees/financial creditor before the NCLT as well as the status of the units constructed etc.*

...

*4. The Ld. Counsel for the Appellant at this stage prays time to file an affidavit to disclose a Government order dated 28.06.2024 been passed in this matter and to bring it on record. Be filed within three weeks from today. The copy of the affidavit so filed by the appellant herein be provided to the IRP who shall also physically inspect the units and give his comments qua each unit.*

2.3.7 Thereafter, on 23.08.2024, the director of the CD filed the affidavit/status report, and the IRP submitted that he required additional time to complete the inspection exercise. The relevant extract of the aforesaid order is reproduced below: -:

*“1. This order be read in continuation of order dated 04.07.2024. It is the submission of Ld. Sr. Counsel for the Appellant an affidavit as was required per para 1 and 2 of the said order has been filed.*

*2. The Ld. Counsel for IRP is present. As per the said order, the IRP is to physically inspect the units and give comments for each unit. The Learned Counsel for IRP requires some more time to complete this exercise, though part inspection has been done.*

*....”*

2.3.8 The DC notes that *vide* order dated 04.07.2024, the NCLAT directed the director of the suspended board of CD to file an affidavit/status report disclosing the names of allottees/financial creditors before the AA as well as the status of the units constructed. A copy of the said affidavit/status report was directed to be provided to the IRP, who was further directed to physically inspect each unit and provide his comments with respect to each unit. Subsequently, *vide* order dated 23.08.2024, the NCLAT noted that the affidavit/status report as required had been filed by the director of the suspended board of CD and that the IRP had sought additional time to complete the inspection exercise, and the matter was accordingly adjourned. It appears from the above interim orders that the primary responsibility of submitting the reports in respect of the construction work done by the CD was given to the director of the suspended board and IRP was directed to verify the same.

2.3.9 In compliance of the orders of the NCLAT, the IRP filed its report by way of an affidavit dated 11.09.2024.

2.3.10 The DC notes that in the said status report, it is recorded in paragraph 20 that the inspection was carried out in the presence of the suspended board of the CD and that the representatives of the allottees were not permitted to enter the premises during the inspection. The relevant extract of para 20 is reproduced as under: -

*“20. That the complete inspection was done in the presence of the representatives from the appellants and that the representatives from the allottees were not permitted entry during the inspection by the Appellant citing the legal advice available to them from their counsels.”*

2.3.11 The DC notes from the said status report itself, it was evident that the suspended management continued to exercise control over the project and the premises, and that such position was brought to the knowledge of the NCLAT.

2.3.12 Thereafter, an application bearing IA 1039/2025 was filed before the NCLAT wherein following reliefs besides other reliefs were prayed:

*“A. Direct the Respondent No.2 to take control of the management of the Corporate Debtor No.2 in terms of the provisions of the Insolvency and Bankruptcy Code, 2016;*

*B. Direct the Respondent No.2 to carry out his functions qua the Corporate Debtor No.2 in terms of the provisions of the Insolvency and Bankruptcy Code, 2016;*

*C. Direct the Respondent No.2 to take immediate control over the Bank Accounts of the Corporate Debtor No.2;”*

The DC notes that the above prayers show that the control was with the suspended management and not with the IRP.

2.3.13 In this application, an interim order dated 13.02.2025 was passed wherein statement of director of the suspended board was recorded that till the next date of hearing they shall not operate the bank account of the CD and further submitted that there are no immediate plans to sell the assets of the CD. The relevant extracts are as under: -

*“5. However, the Learned Counsel for the Respondent No. 1, an erstwhile Director, who is also an advocate, makes a statement they shall not operate account of the company till next date and there are no immediate plans for sale of assets of the Company/Corporate Debtor. Statement is taken on record”*

2.3.14 Thereafter the matter was listed on 17.02.2025, wherein the NCLAT after hearing all the parties, passed the following order:

*“At this stage, the Learned Counsel for the suspended Board of directors submit the operations of the bank accounts of the Corporate Debtor may be allowed to incur day to day expenses of the Corporate Debtor for smooth functioning of the company. Thus, the respondents are allowed to operate the accounts only for day to day expenses and in case the amount to be spend in more than Rs. 2 lacs, the IRP be informed in advance along with supporting documents. This system shall continue till next date. Interim order to continue.”*

2.3.15 The DC notes from the above orders that in an application bearing IA no. 1039/2025 filed before the NCLAT, an interim order dated 13.02.2025 was passed wherein the Counsel for director of the suspended board of CD, made a statement that till the next date of hearing, they shall not operate the bank account of the CD and that there are no immediate plans for sale of the assets of the CD. Subsequently, in the hearing held on 17.02.2025, the NCLAT, upon a submission made by the Counsel for the director of the suspended board of CD that the bank accounts of the CD may be allowed to be operated for day to day expenses for smooth functioning of the CD, permitted the directors of the suspended board to operate the accounts for day to day expenses, with a further direction that in case the amount to be spent exceeds Rs. 2 lakhs, the IRP shall be informed in advance along with supporting documents, and the interim order was directed to continue till the next date. From the above orders, it is evident that the control and management of the affairs of the CD, including operation of its

bank accounts, was to remain with the directors of the suspended board and IRP was to be informed in case spend was more than Rs. 2 lacs.

2.3.16 From the above interim orders, the DC notes that from the stage of order dated 07.12.2023 granting stay on further actions along with direction to suspended board not to create any third party interest; through the order dated 04.07.2024 and 23.08.2024 issuing directions primarily to directors of the suspended board to file a report on the status of the units constructed and to the IRP to verify the same; through the order dated 13.02.2025 recording the submission made by director of the suspended board that they shall not operate the bank account of the CD and there are no immediate plans for sale of assets of the CD; and finally *vide* order dated 17.02.2025 allowing suspended board of directors to operate the bank accounts for day to day expense with prior information of transactions above Rs. 2 lakhs to IRP; the directions of the NCLAT suggest that the control of CD was to be with suspended board and not with IRP.

2.3.17 Thereafter, the NCLAT passed its order dated 07.03.2025 wherein the NCLAT has examined the scope and effect of its earlier interim order dated 07.12.2023, in the context of the statutory framework under the Code. The NCLAT started the analysis by first reproducing the prayers made in both the application from Para 1 to 4 i.e., IA 1509/2025 which was filed by DS Chewing Products LLP (one of the shareholders of the CD) and IA 1557/2025 filed by Satinder Singh Basin (suspended director of CD). Thereafter, from Para 5 & 6, the NCLAT has examined the admission order of the AA dated 04.12.2023 and mentioned about the order dated 07.12.2023 passed by the NCLAT wherein it was stated that no further steps shall be taken. Thereafter in para 7 the NCLAT referred to order dated 07.12.2023 passed by them. The extract of para 7 is reproduced below: -

*“7. Admittedly the order dated 07.12.2023 says no further steps shall be taken in the CIRP. Admittedly the order dated 07.12.2023 did not quash the impugned order dated 04.12.2023. Thus to understand the import of order dated 07.12.2023 one need to refer to relevant sections of IBC, 2016 as below:-“*

....

Thereafter, in Para 7 after the line as mentioned above, the NCLAT quoted relevant extracts of Section 13 to 20 of the Code. The NCLAT then, in para 8 & 9 observed that from the date of appointment of the IRP, the management of the affairs of the CD stood vested in the IRP on 04.12.2023 itself. The relevant extract is reproduced as under: -

*“8. Admittedly upon initiation of CIRP, the moratorium is to be declared which in fact was declared by the impugned order 04.12.2023. Admittedly *vide* such order, the IRP was appointed and admittedly per Section 17 of IBC, from the date of the appointment of the IRP, the management of the affairs of the Corporate Debtor stood vested with the IRP on 04.12.2023 itself.*

9. *A bare perusal of the order dated 07.12.2023 passed by this Tribunal shows the Tribunal only granted a stay on further steps to be taken by the IRP. Thus we cannot read the order dated 07.12.2023 as granting status quo ante or disturbing the fiction of law so created by the Sections above of the IBC, 2016.*”

2.3.18 Thereafter, the NCLAT relied upon the judgement of NCLAT in *Mukesh Kumar Jain v. Navin Kumar Upadhyay, 2023 SCC OnLine NCLAT 2359 & Chandra Prakash Vs Naveen Chaudhri, Company Appeal (AT)(Ins) No. 440/2022* to explain legal fiction regarding vesting of management in the IRP. Subsequently, the locus of appellant was discussed in para 12 of the order wherein it was noted that the appellant in IA 1509/2025 is a majority shareholder of CD, hence he needs to be heard. Thereafter, the NCLAT concluded in para 15 to 17 that the control should vest with the IRP. The relevant extract is reproduced as under: -

*“15. Thus considering the Statute and the law discussed above we find the natural consequence of order dated 04.12.2023 would be the entire management of the affairs of the Corporate Debtor, including preservation and protection of its assets, shall vest with IRP by the legal fiction so created.*

*16. We are of the considered view that no further steps to be taken would not mean the Board of Directors of the Corporate Debtor shall continue to manage the affairs of the company. ...*

*17. Thus we are not in doubt that on 04.12.2023 viz. the day when the IRP was appointed, the control and management of the affairs of the Corporate Debtor stood vested in the hands of the IRP, per legal fiction so created by sections 13 to 20 (supra). The issue is answered accordingly.”*

2.3.19 The DC has gone through the above judgement of the NCLAT. The DC notes that the NCLAT *vide* order dated 07.03.2025 has primarily analysed the legal position flowing from Sections 13 to 20 of the Code and the consequences of admission of CIRP and after relying upon judgement of *Mukesh Kumar Jain (supra) & Chandra Prakash (supra)* to explain the legal fiction regarding vesting of management in the IRP passed the order. However, the said order is in the nature of a clarification on the position of law and its effect in general, rather than clarification of the earlier orders passed by the NCLAT after examining all the interim orders passed before that date. In fact, the NCLAT in para 19 states that this order only narrates the position of law. The relevant extract is reproduced as under: -

*“19. We make it clear this order does not recall the earlier order dated 07.12.2023 but only narrates the position of law and its effect upon the Corporate Debtor upon admission of CIRP on 04.12.2023. This position apparently is also agreed to by the appellant as he himself has filed this appeal as a suspended Director of Corporate Debtor. Admittedly after*

*07.12.2023 the RP is precluded from taking steps qua inviting claims; constituting of Committee of Creditors etc. etc, but this would not mean the Suspended Board shall be in charge of assets of the Corporate Debtor.”*

- 2.3.20 The DC notes that in the above order, nothing adverse has been noted against the bonafide of actions/inaction of Mr. Mukesh Gupta (IRP). The DC also notes that the order dated 07.03.2025 has also clearly stated that it is not recalling its earlier order dated 07.12.2023 but only clarifying the position of law. Further this order dated 07.03.2025 has not taken into account the following portion of order dated 07.12.2023 “*We make it clear that the Appellant shall not create any third party interest in respect of the units of the Respondents.*”. It has also not taken into account other interim orders dated 04.07.2024, 23.08.2024, 13.02.2025 and 17.02.2025. Hence, it is an order clarifying the position of law with regard to vesting of the assets of the CD and not on the conduct of the IRP in taking over the control of the CD.
- 2.3.21 As regards the defence taken by Mr. Mukesh Gupta that the NCLAT had barred any further steps to be taken in the matter by order dated 07.12.2023, SCN has recorded that until the admission order is set aside, the management and control of affairs of the CD remains with the IRP. For this proposition, SCN relied on the judgement of *Ashok Kumar Tyagi (supra)*, wherein the NCLAT *vide* order dated 21.11.2022, *inter alia*, held that, “*The Admission Order of Section 7 Application has only been stayed and not quashed thus the Corporate Debtor cannot be permitted to function as it was functioning prior to 28.10.2022.*”
- 2.3.22 The DC has gone through the NCLAT order dated 21.11.2022 in *Ashok Kumar Tyagi (supra)* and notes that the CIRP of Darjeeling Organic Tea Estates Private Limited (CD) was initiated *vide* order dated 28.10.2022. The NCLAT *vide* interim order dated 07.11.2022 stayed the impugned order of the AA. It is pertinent to note that at that time the IRP was not able to take full control of the CD. Thereafter, three interlocutory applications were filed before the NCLAT, i.e., one by the suspended director seeking restoration of control to the Board of Directors and permission to operate bank accounts, one by Indian Bank seeking intervention, and one by the IRP seeking clarification of the interim order dated 07.11.2022 regarding his role and functions during the subsistence of the stay.
- 2.3.23 The NCLAT, while deciding the said applications, examined the effect and consequence of a stay order as distinct from a quashing order, placing reliance upon the judgment of the Hon'ble Supreme Court in *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association [(1992) 3 SCC 1]*, which laid down that a stay of operation of an order does not result in restoration of the position as it stood prior to the passing of the stayed order, and that the stayed order continues to exist in law even though it is rendered inoperative. The NCLAT held that since the admission order dated 28.10.2022 had been stayed and not quashed, the CD could not be permitted to function as it was functioning prior to 28.10.2022. The relevant extract of the said judgement is as under:

*“18. The difference between stay of an Order and quashing of any Order are well settled as noticed above. In event on the stay of the admission of Section 7 Application, the Corporate Debtor is allowed to function and position as was existing prior to 28.10.2022 is restored, there shall be no difference in staying an Order and quashing of an Order. What the Appellants are asking/praying is restoration of the position as was prior to admission of Section 7 Application. We can not accept such request made by the Appellant. The Admission Order of Section 7 Application has only been stayed and not quashed thus the Corporate Debtor can not be permitted to function as it was functioning prior to 28.10.2022.”*

2.3.24 The NCLAT further held that since the IRP was appointed by the very same order that had been stayed, the IRP could not carry on any functions in pursuance of the stayed order, and the IRP's role stood suspended for the duration of the stay. The relevant extract of the said judgment is reproduced as under:-

*"19. However, in view of the stay of the Order dated 28.10.2022, the IRP cannot carry on any functions since the IRP was appointed by the same order and by stay of the Order, no further action can be taken by the IRP in pursuance of the Order dated 28.10.2022. The Order dated 28.10.2022 has become inoperative in view of the Interim Order of this Tribunal dated 07.11.2022. Hence the Appellant is right in his submission that IRP cannot discharge any function after the Impugned Order dated 07.11.2022."*

2.3.25 The NCLAT thereafter addressed the question as to how the day-to-day functioning of the CD, which was a Tea Garden with a large workforce requiring weekly payment of wages, distribution of ration, and payment of electricity dues, could be carried out. In order to address difficulty, the NCLAT passed specific directions permitting the CEO and officers of the CD to make payment of wages, electricity dues, and other necessary expenses, subject to submission of all details of expenditure on a weekly basis to the IRP as well as to the suspended Managing Director.

*“20. The question which needs to be considered in this Application is that how the day-to-day functioning of the Tea Gardens may be carried on when IRP is not entitled to discharge any function and the Corporate Debtor also cannot be restored as it was functioning prior to 28.10.2022. There are wages to be paid to the workers, Ration is also to be distributed by the Company to its workers, there are electricity dues and some other necessary expenses. The workers of the Corporate Debtor and its functioning can not be made to suffer in the facts of the present case. We thus are of the view that for the purposes of payment of wages to the workers and distribution of ration, payment of electricity dues and other necessary expenses, ways and means have to be found out so that Corporate Debtor may continue as a going concern. In the facts of the present case, we are of the view that difficulties in running the corporate debtor as a going concern, can be mitigated by issuing following directions:*

*I. The Chief Executive Officer (CEO)/Officers of the Corporate Debtor authorized to operate the Bank Accounts are permitted to make payment of wages of workers, workmen and employees as was being paid earlier to passing of the order dated 28.10.2022. The payment of Electricity Dues and other necessary expenses may also be carried out by the officials as mentioned above subject to submitting all details of expenditure on weekly basis to the IRP as well as to the Suspended Managing Director of the Corporate Debtor.  
....”*

- 2.3.26 The DC notes that the SCN proceeds on the assumption that the clarity provided *vide* order dated 07.03.2025 of the NCLAT was available to the IRP from the order dated 07.12.2023 prohibiting any further steps to be taken. However, there is ambiguity which was present in case of *Ashok Kumar Tyagi (supra)* as well as in the present case as brought out in following paragraphs.
- 2.3.27 The DC notes that judgement in *Ashok Kumar Tyagi (supra)* distinguishes between the stay of an order and the quashing of an order with reference to the passing of the control of the CD with the Board of Directors of the CD. When an admission order is quashed, the control of the CD will pass to the Board of Directors of the CD as if the admission order had not been passed irrespective of whether the control had been taken over by the IRP or not. However, in cases where further proceedings have been stayed, the present status of control will be of utmost significance. If at the time of passing of the stay order, control has been taken over by the IRP, the stay order will have the effect that the IRP will retain control of the CD to the extent it has already taken control, but no further proceedings can be taken up by the IRP. However, in a situation where the IRP has not yet taken control of the CD, IRP cannot take any further steps to take control of the CD without the express direction of the court. In fact, in the case of *Ashok Kumar Tyagi (supra)*, the facts were of this nature only as at the time of passing of stay order, IRP had not taken control, and the situation was fluid so both the suspended management and IRP had requested the NCLAT to clarify what should be done.
- 2.3.28 In the case of *Ashok Kumar Tyagi (supra)*, when faced with the difficulty of managing the day-to-day affairs of the CD during the subsistence of the stay, the NCLAT issued specific directions permitting operation of Bank Accounts of the CD through its CEO for payment of wages of workers and other necessary expenses. However, in the present case, the issue was not expressly resolved by a single order rather the interim orders issued from time to time. In the present case, the NCLAT *vide* interim order dated 07.12.2023 directed that no further steps shall be taken in pursuance of the admission order dated 04.12.2023 and simultaneously directed the directors of the suspended Board not to create any third-party interest in respect of the units of the project. Further, in orders dated 04.07.2024, 23.08.2024, 13.02.2025 and 17.02.2025 directions were issued to the directors of the suspended board, *inter alia*, to submit status reports of the units constructed, to refrain from sale of assets of the CD, and to operate the bank accounts of the CD in a limited manner. The series of these

orders from 07.12.2023 to 17.02.2025 indicate that the IRP was not to take further control of the CD till the time position of law was clarified by order dated 07.03.2025 of NCLAT.

2.3.29 The DC notes from the case of *Ashok Kumar Tyagi (supra)* that, owing to ambiguity regarding the role and functions of the IRP after the stay granted by the NCLAT, the IRP had filed an application before the NCLAT seeking clarification of its order dated 07.11.2022, whereby the CIRP order dated 28.10.2022 was stayed, specifically in respect of his role and functions during the subsistence of the stay. Similarly, in the present case, the IRP should have sought clarification regarding the scope of his authority after the stay order dated 07.12.2023 which was evidently not done.

2.3.30 The DC notes from the submission of Mr. Mukesh Gupta that after the clarification order dated 07.03.2025 passed by NCLAT, Mr. Mukesh Gupta took steps first by filing application under Section 19(2) of the Code before the AA seeking cooperation from suspended management. Thereafter, he filed another application before the AA seeking assistance of local administration i.e. Police Commissionerate, Greater Noida, for providing assistance with respect to the handover of the Project which was allowed and disposed of *vide* order dated 26.05.2025. It was held as under: -

*“...the IRP shall approach the Respondents and make a request in accordance with the procedure laid down for seeking such an assistance, and in such case, the Respondent shall assist the IRP in discharge of his duties in respect of the matter for which IRP has been authorized by the Hon’ble NCLAT vide order dated 07.03.2025 to do so. With these observations, the present application i.e. IA/2059/2025 is disposed of.”*

2.3.31 Though, Mr. Mukesh Gupta has the control of the project since 17.03.2025, however, all the documents were not provided by suspended management and an application under Section 19(2) is pending adjudication till date.

2.3.32 The DC further notes that Mr. Mukesh Gupta appeared before the NCLAT on 25.04.2025 and submitted that, despite repeated directions for handing over the records of the CD, the erstwhile management was not cooperating and that the records had not been handed over till that date. Based on these submissions, the NCLAT fixed 01.05.2025 as the date for handover of records and directed the suspended Board of Directors to cooperate. By the same order, the NCLAT also appointed an observer to visit the premises of the CD and prepare a report, inter alia, containing the list of financial creditors who had filed the Section 7 petition, the units allotted to them, and the status of construction. Subsequently, the suspended management filed an application on 01.05.2025 seeking postponement of the handover to 03.05.2025, which was allowed. Till date no complete handover took place, and the suspended management assured the IRP that all documents would be provided within three days. While certain documents were thereafter furnished, the complete records and full handover of control were not provided. Despite multiple follow-ups and visits thereafter,

the required records continued to remain withheld. In these circumstances, Mr. Mukesh Gupta filed an affidavit before the NCLAT on 19.05.2025 and also initiated contempt proceedings, which are presently pending adjudication before the NCLAT.

- 2.3.33 From the above sequence of events, it emerges that even after the clarification order dated 07.03.2025 of the NCLAT and the subsequent steps taken by Mr. Mukesh Gupta before both the AA and the NCLAT, the effective and complete transfer of custody and control of the records and affairs of the CD did not take place. The DC took note of the steps taken by the RP, including approaching the AA and the NCLAT for securing cooperation of the suspended management and for obtaining custody and control of the CD's records and assets.
- 2.3.34 In view of the foregoing analysis, the DC is of the considered view that the sequence of interim orders passed by the NCLAT, coupled with the language employed therein, did give rise to ambiguity regarding the vesting of control and management of the CD. The SCN proceeds on the assumption that the clarity provided *vide* order dated 07.03.2025 of the NCLAT was available to the IRP from the order dated 07.12.2023 granting stay and there was no ambiguity in the present case. However, as discussed above, this clarity was not available as series of interim orders from 04.07.2022 to 17.03.2025 envisaged a limited role of IRP and thus conduct of Mr. Mukesh Gupta does not demonstrate wilful disregard of the provisions of the Code or the CIRP Regulations. However, it reflects a situation where greater diligence should have been exercised by seeking clarification from the NCLAT regarding the scope of his authority for taking custody and control of the CD.

### **3. Order.**

- 3.1. The DC in exercise of the powers conferred under section 220 of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby imposes penalty of Rs. 5,00,000/- (Rupees five lakh only) for not taking proactive steps to seek clarity from NCLAT regarding the scope of his authority for taking custody and control of the CD and directs Mr. Mukesh Gupta to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of "penalty imposed by IBBI" on <https://bharatkosh.gov.in> within 45 days from the date of issue of this order and submit a copy of the transaction receipt to the Insolvency and Bankruptcy Board of India.
- 3.2. This order shall come into force with immediate effect in view of Para 3.1.
- 3.3. A copy of this order shall be sent to the CoC/ SCC of all the corporate debtors in which Mr. Mukesh Gupta is providing his services, and the respective CoC/ SCC, as the case may be, will decide about continuation of existing assignment of Mr. Mukesh Gupta.
- 3.4. A copy of this order shall be forwarded to Indian Institute of Insolvency Professionals of ICAI (IIPI) where Mr. Mukesh Gupta is enrolled as a member.

3.5. A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.

3.6. Accordingly, the show cause notice is disposed of.

Dated: 21st April 2026

Place: New Delhi

Sd/-

(Sandip Garg)

Whole Time Member

Insolvency and Bankruptcy Board of India