

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

IA (IB) No. 212/KB/2025

And

IA (IB) No. 1446/KB/2025

In

CP (IB) No. 1377/KB/2020

An Application under Section 60(5) of Insolvency & Bankruptcy Code, 2016
read with Rule 11 of the National Company Law Tribunal Rules, 2016

In the matter of:

UCO Bank

..... Financial Creditor

Versus

Nandini Impex Private Limited

..... Corporate Debtor

I.A. (IB) No. 212/KB/2025

In the matter of:

**Chandra Kant Khemka, (Suspended Board of Directors of Nandini
Impex Private Limited, under CIRP)**

.....Applicant

Versus

**The Committee of Creditors of Nandini Impex Private Limited (Under
CIRP)**

..... Respondent

I.A. (IB) No. 1446/KB/2025

**Chandra Kant Khemka, (Suspended Board of Directors of Nandini
Impex Private Limited, under CIRP)**

.....Applicant

Versus

Mr. Pratim Bayal & Anr.

..... Respondents

Date of Pronouncement: 4th day of May, 2026

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CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

CMDE SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

Mr. Rahul Auddy, Adv.] For UCO Bank

Mr. Aditya Gooptu, Adv.

Mr. Shaunak Mitra, Adv.] For Applicant, Chandrakant Khemka

Mr. Aditya Kanodia, Adv.

Mr. Dripto Majumdar, Adv.

Ms. Suparna Sardar, Adv.

Mr. Pratik Dutta, Adv.

Mr. Rishav Banerjee, Adv.] For Resolution Professional

Mr. Sourav Jain, Adv.

Mr. Pratim Bayal, RP] RP in person

Ms. Meenakshi Manot, Adv.] For Workers

Ms. S. Ahmed, Adv.

Ms. Meenakshi Manot, Adv.] For IOLL

Ms. Sharmishtha Ghosh, Adv.

Mr. Ranit Roy, Adv.

COMMON ORDER

PER: BIDISHA BANERJEE, MEMBER (JUDICIAL)

IA (IB) No. 212/KB/2025

1. The Court convened in hybrid mode.
2. Heard Ld. Counsels for the parties.

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3. The IA (IB) 212/KB/2025 has been preferred under Section 60(5) of the I&B Code, by Mr. Chandra Kant Khemka, one of the Directors of the suspended Board of Directors of Nandini Impex Private Limited (CD), which is currently undergoing CIRP against the Committee of Creditors of Nandini Impex Private Limited (CD) to seek the following reliefs:

“a. A fit and proper person be appointed as Receiver to take charge of the assets and properties of the Corporate Debtor:

b. An Order directing the Learned Receiver so appointed to make an inventory of the machineries and equipment of the Corporate Debtor lying in the sites mentioned in paragraph 11 above and to furnish a Report on the status of the same within a period of two (2) weeks or within such time as this Hon'ble Tribunal may deem fit and proper;

c. An Order be passed directing the Respondent No. 1/CoC to forthwith disburse funds to the Learned Receiver for the purpose of making payment of the pending wages and salaries of the employees and workers of the Corporate Debtor;

d. An order directing the Learned Receiver to make payment of the pending wages and salaries of the employees and workers of the Corporate Debtor upon receiving the same from the Respondent No. 1/CoC;

e. An Order be passed directing the Respondent No. 1/CoC to forthwith disburse funds to the Learned Receiver for the purpose of making payment of the arrears of rent due and owing to the landowners and yard owners at Najafgarh, Panchkula, Balasore and Bhubaneswar;

f. An Order be passed directing the Receiver to forthwith make payment of the arrears of rent due and owing to the landowners and yard owners at Najafgarh, Panchkula, Balasore and Bhubaneswar upon receiving the same from the Respondent No. 1/CoC;

g. Such further or other order or orders and/or direction or directions be passed as this Hon'ble Tribunal may deem fit and proper.”

4. Factual Matrix:

- 4.1. The Applicant, Mr. Chandra Kant Khemka, one of the Directors of the suspended Board of Directors of Nandini Impex Private Limited (CD), which is currently undergoing CIRP.

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- 4.2. The Respondent No. 1, UCO Bank, is the sole member of the COC of the CD currently undergoing CIRP.
- 4.3. The CD was admitted into CIRP, moratorium was declared on the CD in terms of Section 14 of the I&B Code and Mr. Santanu Bhattacharjee was appointed as the RP of the CD vide an order dated 20.09.2022.
- 4.4. The Applicant being aggrieved by the inactions on the part of the Respondent No. 1 preferred the application under Section 60(5) of the I&B Code, 2016, to ensure that there is no further depletion in the value of assets of the CD at the hands of the R1.

5. Submissions of the Applicant:

- 5.1. It is submitted that the R1 has failed to take steps to protect and preserve the value of the CD and keep it as a going concern, and also contributed to the depletion of the assets of the CD.
- 5.2. It is submitted that even after 2.5 years passed since the order of admission, there has been no resolution forthcoming for the CD primarily due to the mode and manner by which the CIRP of the CD has been conducted at the behest of the R1.
- 5.3. It is further submitted that the wages and salaries of the staff, workers, and employees of the CD have not been paid since 11 months which has adversely impacted the operations of the CD and they have expressed their deep anguish at the miserable affairs of the CD.
- 5.4. It is submitted that this Hon'ble Tribunal had by an order dated 30.09.2024 specifically directed the R1 to provide funds for making payment of salaries and wages to the workers and employees, and the said order was communicated by the RP and Agenda No. 5 of the Minutes of the 15 COC meetings convened on 28.10.2024 specifically records it, but the R1 had failed to comply with such directions.

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- 5.5. It is further submitted that the Applicant has been informed that the rent for the equipment store locations remain unpaid for several months and in some cases for more than a year.
- 5.6. Further that during the hearing of the instant petition on or about 07.01.2025, it came to the knowledge of the Applicant that the RP of the CD has resigned, but no intimation or reasons were provided for such resignation, and even after a lapse of substantial period of time, the R1 has failed to take any step for the replacement of the RP.
- 5.7. It is submitted that the untimely resignation of the RP of the CD has come at a crucial time in respect of the affairs of the CD since it was executing the balance pipeline works for IOCL at the West Bengal/Odisha border and the RP along with the Applicant were due to hold vital discussions with the IOCL regarding such work in December itself.
- 5.8. Further that the machineries and equipment of the CD are in a defunct condition at the diverse sites of the CD due to non-maintenance of the same and some equipments are lying in various locations unsheltered from the rain, resulting in rapid wear and tear.
- 5.9. It is alleged that the inactions on the part of R1 in preserving the machineries and equipment of the CD have severely depreciated and depleted the overall value of the assets of the CD.
- 5.10. Further that the falling value of the assets of the CD vitally affects the Applicant as the Applicant will have to ultimately bear the brunt of a failed resolution, which is clearly attributable to the erring conduct of the R1.
- 5.11. It is contended that the issue regarding the non payment of dues of the workers and diminishing value of the machines and equipment were raised by the Applicant in the 17th meeting of the COC of the CD that took place on 24.03.2025,

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5.12. Further that the R1 by its wrongful conduct is acting against the interests of the CD and is causing tremendous loss to the value of the assets of the CD.

6. Submissions of the Respondent:

- 6.1. Per contra, the Ld. Counsels for the Respondent would submit that the present application is not maintainable as the Applicant has no locus to file the instant petition.
- 6.2. It is submitted that the role of the suspended BOD is very restricted after the CIRP commences and he is required to provide all the information, documents to the RP and is required to assist the RP in any way in the CIRP, and apart from this the suspended member of the CD does not have any other locus in the CIRP of the CD.
- 6.3. It is further submitted that the order dated 30.09.2025 was passed in the absence of the COC, and the order provides that “*COC members may provide funds accordingly*” to mean that the funds which are approved by the COC shall be paid to the new incoming RP after his appointment, and therefore denied that there was any ‘specific direction’ on COC to make the payments.
- 6.4. It is submitted further that the COC needs details of the statements/accounts on the income and expenditure of the funds of the CD during the CIRP period and also of the funds available as on the CIRP admission date. The justified costs shall be approved and paid by the CoC to the Resolution Professional (RP), and not the costs merely based on the statement of the suspended Board.

I.A. (IB) No. 1446/KB/2025

7. The IA (IB) 1446/KB/2025 under Section 60(5) of the I&B Code has been preferred by Mr. Chandra Kant Khemka, one of the Directors of the suspended Board of Directors of Nandini Impex Private Limited (CD), which is currently undergoing CIRP to seek the following reliefs:

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- “a. Declaration that the Corporate Insolvency Resolution Process has depleted the value of the Corporate Debtor by causing loss calculated at Rs. 500 Crores on and from September, 2022 till date,*
- b. Direction be passed on the Resolution Professional to forthwith file an affidavit, inter-alia, disclosing the present status of the steps taken by him to visit the sites of the Corporate Debtor where the assets and equipment are lying;*
- c. Direction be passed on the Resolution Professional to forthwith file an affidavit, inter-alia, disclosing the steps taken by him in resolving the issues with the IOCL;*
- d. Direction be passed on the Resolution Professional to forthwith provide a copy of the Information Memorandum to the Applicant;*
- e. Stay of the CIRP pending disposal of the present application;*
- f. Such further or other order or orders and/or direction or directions be passed as this Hon'ble Tribunal may deem fit and proper.”*

8. Submissions of the Applicant:

- 8.1. It is submitted that the R2 belatedly sprang into action for the first time on or about February, 2025 by appointing the R1, Pratim Bayal, as the RP, upon apprehending that the prayers made in the IA No. 2029 of 2025 would be allowed and a Special Officer would be appointed to oversee the CIRP.
- 8.2. It is submitted that at the 16th COC meeting held on 06.03.2025, the RP assured the Applicant that he would prioritize the payment of the staff's wages, but the payments were made in a whimsical and arbitrary manner as on July, 2025, a sum of Rs. 48,26,102/- was due towards unpaid salaries and wages.

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- 8.3. It is further submitted that the RP has failed to take control and custody of the CD's machinery and equipment lying at several locations despite repeated requests and reminders by the Applicant.
- 8.4. It is further submitted that the Applicant has urged the RP in several COC meetings to take possession of the assets of the CD or at least conduct an inspection of the said assets, as the last valuation was done in early 2023, but all such requests went in vain.
- 8.5. It is further submitted that the RP has not taken control and custody of the Najafgarh and Panchkula sites, wherein several plants and machinery of the CD are lying.
- 8.6. It is further submitted that the RP and the COC have proceeded to approve a resolution plan based on a valuation which does not take into account the present value of the CD's assets, particularly the sites wherein the RP is yet to take control or custody, and thus failed to take measures to preserve the CD's status as a going concern or maximization of the assets of the CD.
- 8.7. It is further submitted that the RP conducted a desktop valuation of the said sites due to its inability to access them, without seeking police assistance from this Hon'ble Tribunal for taking control and custody of the sites at an earlier stage of CIRP.
- 8.8. It is further submitted that the COC's refusal to disburse funds to enable the RP to clear the outstanding rent has led to constant

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depletion and deterioration of the CD's assets. Further, several assets have been stolen from the Haryana site as well.

- 8.9. It is further submitted that although the RP was duty-bound to ensure that the CD is run as a going concern, no steps have been taken by the RP to achieve the same or to ensure that fresh EPC contracts are awarded to the CD. In fact, the existing business relationship with IOCL has been jeopardised, and the CD has been holiday-listed by IOCL for a period of two years.
- 8.10. It is further submitted that though the RP in his reply affidavit has admitted that the resolution plan is yet to be approved by this Hon'ble Tribunal, the RP has already delegated the resolution of disputes with IOCL to the SRA's representative.
- 8.11. It is further submitted that the negligence and failure on the part of the COC and the RP have led to depletion and erosion of the CD's assets, and the CD has further incurred loss to the extent of Rs. 500 crores.
- 8.12. It is further submitted that the Applicant's liability *qua* the purported personal guarantor will substantially increase due to approval of a resolution plan, which is based on a valuation conducted in 2023, due to non-accessibility of the Najafgarh and Panchkula sites.

9. Submissions of the Respondents:

9.1. Submission of Respondent No. 1:

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9.1.1. Per contra, the ld. Counsel for the Respondent 1 would submit

that upon his appointment, he undertook a detailed assessment of the financial and operational condition of the CD, reviewed the records of the CD that included a salary liability register, and found out that a significant portion of the workforce, constituting nearly 70% of the employee base as unutilised and not engaged in any productive or revenue generating functions.

9.1.2. That the R1 initiated several corrective measures, including rationalisation of employee strength, reduction of salary expenditure, and efforts to secure access to certain storage sites where machinery of the CD was locked and remained inaccessible.

9.1.3. It is submitted that the COC had also deliberated upon reduction of employees, considering the fact that the CD was not carrying any active business operations, and the majority of employees were not rendering any meaningful services, and in the absence of any cash flow of the CD, such continuation would impose undue and avoidable financial burden on the COC by way of salary and related payments.

9.1.4. That after a detailed deliberation between the COC members and the RP, in the presence of the BOD, the salary structure of the employees/workmen was found to be disproportionately high and

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accordingly the COC resolved to reduce the salaries of certain employees to a reasonable level commensurate with limited operational requirements of the CD and in consonance with the principle of value maximisation enshrined under Section 20(2)(e) and Section 25 of the I&B Code, 2016.

9.1.5. It is submitted that non-payment of salary beyond 30.09.2024 is not attributable to any inaction on the part of the R1, but arises solely on account of absence of work and deliberate non-cooperation by certain employees.

9.1.6. It is further submitted that in compliance with the order dated 30.09.2024 passed by this Adjudicating Authority, the R1 has already disbursed sums towards employees' salaries and wages, and any inflated or unsubstantiated claims cannot be recognised as CIRP costs.

9.1.7. It is further contended that, though substantial rent has been paid, access to key asset sites at Najafgarh and Panchkula has been obstructed due to the non-cooperation and hostile conduct of landlords.

9.1.8. It is further submitted that to safeguard other assets, partial rent has been paid, and funding has been sought from the CoC.

9.1.9. Further that the corporate debtor was placed on a holiday list of IOCL due to pre-CIRP contractual breaches by the suspended

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BOD, and the RP conducted meetings with IOCL, which resulted in temporary relief and extension of time for completion of work.

9.1.10. That the delays and disputes between IOCL and the CD arose due to mismanagement and unauthorized subcontracting by the suspended Board of Directors, and not due to any lapse on the part of the RP.

9.1.11. That the IM has been duly updated from time to time and the same has been duly shared with the prospective RA as required by the I&B Code, 2016.

9.1.12. It is therefore alleged that the present application is misconceived, mala fide, and an abuse of the process of law, and is motivated by extraneous and personal considerations with the intent to exert undue pressure on the Committee of Creditors (COC) and the RP by misrepresenting facts and inflating the cost structure with the sole objective of delaying and obstructing the CIRP.

9.2. Submission of Respondent No. 2:

9.2.1. Ld. Counsels for the R2 submitted that the present application is not maintainable and challenged the locus standi of the Applicant/SBOD to file this instant application.

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9.2.2. It is submitted that the order dated 30.09.2024 was passed in the

absence of the COC, and the COC is not bound and will not pay whatever figures are stated by the Applicant as unpaid wages.

9.2.3. It is further submitted that there was no depletion of assets of the

CD as the CD did not have any contract and assets from the starting day of the CIRP.

10. Analysis and Findings:

10.1. We heard the parties and perused the records.

10.2. Upon consideration of the pleadings, documents and rival submissions, the main issue that arises for determination is:

10.2.1. Whether the present application is maintainable at the instance of one of the erstwhile director who is part of the SBOD of the CD?

10.2.2. Whether there has been failure on the part of the Committee of Creditors (CoC) and the Resolution Professional (RP) in preserving and maximising the value of the assets of the CD?

I. Whether the present application is maintainable at the instance of one of the erstwhile director, who is part of the SBOD of the CD?

10.3. It is not in dispute that upon commencement of the Corporate Insolvency Resolution Process (CIRP), the powers of the Board of Directors stand suspended and vest in the Interim Resolution

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Professional/Resolution Professional in terms of Section 17 of the I&B Code, and the role of the suspended Board of Directors is limited to cooperation and assistance to the RP.

- 10.4. It is also well settled that a suspended Board of Directors is not rendered completely remediless and may invoke the jurisdiction of this Hon'ble Adjudicating Authority under Section 60(5) in appropriate cases, especially where the case is related to conduct of the CIRP, preservation of assets, or violation of statutory duties by the RP or CoC.
- 10.5. In the case of ***Vijay Kumar Jain vs. Standard Chartered Bank and Ors. (31.01.2019 - SC)*** the Hon'ble Supreme Court recognized the right of members of the suspended Board of Directors of a corporate debtor to receive insolvency resolution plans submitted before the Resolution Professional, in order to effectively participate in the meetings of Committee of Creditors (CoC).
- 10.6. Further in the case of ***Anand Kariwala v. Mr. Partha Pratim Ghosh RP, (2022) ibclaw.in 178 NCLT***, it was held that although the powers of the suspended Board of Directors of a Corporate Debtor are suspended under Section 17(1)(b) of the I&B Code and their function is limited to assisting and cooperating with the Resolution Professional (RP), but they are not barred from objecting to the acts

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of the RP if such acts are prejudicial to the Corporate Debtor or violate any law or procedural requirement.

10.7. Therefore, the objection of the Respondent that the SBOD does not have locus to maintain the Application is not sustainable in law.

II. Whether there has been failure on the part of the Committee of Creditors (CoC) and the Resolution Professional (RP) in preserving and maximising the value of the assets of the CD?

10.8. Section 20 and 25 of I&B Code, 2016 mandate that the RP shall preserve and protect the assets of the Corporate Debtor and manage its operations as a going concern.

10.9. The COC though guided by the commercial wisdom is expected to take decisions that further the objectives of value maximisation of the wealth of the CD.

10.10. It is observed that certain key asset locations, including Najafgarh and Panchkula, remained beyond the effective control and custody of the RP due to landlord obstruction and access-related disputes.

10.11. The RP is expected to act promptly and take necessary legal steps, such as approaching this Tribunal to seek police assistance and safeguard the assets of the CD.

10.12. It is observed that the record does not conclusively establish wilful negligence or mala fide conduct

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10.13. It is observed that the alleged depletion of value and erosion of assets of CD to the extent of Rs. 500 crores is not substantiated and involves complex factual and financial assessment, including valuation metrics, market conditions, operational viability and many others.

10.14. Further, the record does not conclusively establish wilful negligence or mala fide conduct on the part of the COC or the RP, and any diminution or depletion in value of assets of the CD cannot be attributed solely on account of delay or operational challenges.

11. Order:

11.1. In view of the foregoing discussions, the RP is directed to take steps within a period of 2 weeks, including taking police assistance if necessary, to secure access to all sites, where the assets of the CD are located and shall conduct a physical inspection of all accessible assets and prepare a comprehensive report on the same and furnish it to this Tribunal within a period of 4 weeks.

11.2. The RP shall place complete and verified details of outstanding wages/salaries, outstanding rents of assets of the CD before the COC and the COC shall consider and take a reasoned decision on this matter.

11.3. The IA (IB) No. 212/KB/2025 and IA (IB) 1446/KB/2025 thus stand partly allowed and disposed of.

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12. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
13. Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Siddharth Mishra
Member (Technical)

Bidisha Banerjee
Member (Judicial)

The Order signed on this, the 4th day of May, 2026.
Sagar M. (LRA)