

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**PRINCIPAL BENCH, NEW DELHI**

**Comp. App. (AT) (Ins) No. 1297 of 2026**

**(Arising out of the Order dated 03.07.2026 passed by the National Company Law Tribunal, Mumbi Bench I, in IA No. 2697 (MB) of 2026 in C.P. (IB) No. 3962/MB/2018)**

**IN THE MATTER OF:**

**Debashis Nanda**

**Liquidator Of Chamber Constructions Private Limited**

Having Residence At C-304,  
Paradise Apartments, Plot No.40,  
IP Extension, New Delhi-110092

**...Appellant**

**Versus**

**1. Gokul Anil Kumar, the Suspended Director  
of the Corporate Debtor**

**.... Intervenor**

**2. Stakeholders' Consultation Committee**

**...Respondent No. 1**

**Present**

**For Appellant:**

Mr. Sumant Batra, Adv. along with Mr. Sarthak Bhandri, Ms. Ruja Kaur & Mr. Aditya Jain.

**For Respondents:**

Mr. Abhishek Anand for Mr. Aniruth Purusothaman, Intervenor SBOD.

Mr. Karan Valecha & Ms. Shivangi Khandelwal, for Stakeholders' Consultation Committee (SCC).

**J U D G E M E N T**

**(07.10.2026)**

**NARESH SALECHA, MEMBER (TECHNICAL)**

1. The present appeal has been filed by the Appellant i.e., Debashis Nanda, who is the Liquidator of Chamber Constructions Private Limited ("**Corporate Debtor**"), herein, under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('**Code**') against the Order dated 03.07.2026 ("**Impugned Order**") passed by the National Company Law Tribunal, Mumbai Bench-I ("**Adjudicating Authority**") in I.A. (I.B.C.) No. 2697 (MB) of 2026 in C.P. (IB) No. 3962 (MB) of 2018.

Stakeholders' Consultation Committee (SCC) is the Respondent No. 1 herein.

Gokul Anil Kumar, who is the Suspended Director of the Corporate Debtor, is the Intervenor, herein.

2. The present Appeal arises from the Impugned Order, whereby the application filed by the Appellant/Liquidator seeking extension of time and appropriate directions for undertaking and completing the sale of the Corporate Debtor as a going concern, pursuant to the liquidation order dated 21.02.2024, came to be dismissed.

3. The controversy in the present Appeal essentially concerns the legal effect of the Committee of Creditors' ('**CoC**') decision under Regulation 39C of the CIRP Regulations, the subsequent liquidation order dated 21.02.2024 expressly

directing the Liquidator to endeavour to sell the Corporate Debtor as a going concern, the steps undertaken pursuant thereto, and the subsequent amendment to the Liquidation Regulations notified on 14.10.2025.

4. The Appellant submitted that the issue arising in the present Appeal is not res integra. The Appellant elaborated that significantly, when the present Appeal came before this Appellate Tribunal on 23.07.2026, this Appellate Tribunal expressly recorded that an "identical issue" was under consideration in Company Appeal (AT) (Ins) Nos. 1138 of 2026 and 1145 of 2026 and directed that the record of the present Appeal be placed before the Hon'ble Officiating Chairperson so that all three appeals could be heard by one and the same Bench. The relevant order dated 23.07.2026 records:

*"an identical issue is under consideration before Bench No. I  
in the CA (AT) (Ins) No. 1138 of 2026 and CA (AT) (Ins) No.  
1145 of 2026."*

The Appellant highlighted that the aforesaid observation is of particular significance because the issue subsequently adjudicated in Company Appeal (AT) (Ins) Nos. 1138 and 1145 of 2026, concerns the commencement of liquidation by sale as a going concern and the applicability of the amendment dated 14.10.2025.

5. The Appellant submitted that the said issue has since been considered and decided by the coordinate bench of this Appellate Tribunal by its judgment dated 10.09.2026 in Company Appeal (AT) (Ins) Nos. 1138 and 1145 of 2026. The

judgment examined, inter alia, whether a subsequent amendment dated 14.10.2025 could govern a liquidation process which had already commenced pursuant to an earlier liquidation order under Section 33 of the Code, where the CoC had already resolved to explore sale of the Corporate Debtor as a going concern and such decision had been expressly noticed in the liquidation order.

6. The Appellant stated further that the ratio of the aforesaid judgment directly bears upon the controversy in the present Appeal. In that matter, this Appellate Tribunal held that where the CoC had resolved under Regulation 39C to first explore sale of the Corporate Debtor as a going concern, and such decision was placed before and recorded by the Adjudicating Authority while passing the liquidation order, the subsequent steps undertaken by the Liquidator were steps in implementation of an already existing liquidation order and CoC decision. The Appellant submitted that this Appellate Tribunal specifically held that the auction process could not be viewed in isolation from the liquidation order and that the auction was not the commencement of liquidation but a subsequent step in the liquidation process.

7. It is the case of the Appellant that the principle applies with equal, and in the facts of the present case, direct relevance. In the present case, the CoC, in its 7th Meeting held on 31.08.2020, unanimously resolved with 100% voting share to liquidate the Corporate Debtor and simultaneously recommended, in terms of Regulation 39C, that upon commencement of liquidation, the Liquidator should first explore sale of the Corporate Debtor as a going concern. The

recommendation was therefore not an afterthought or an independent decision subsequently taken during the liquidation process. It was a part of the liquidation decision itself.

The Appellant elaborated that thus, the direction to explore sale of the Corporate Debtor as a going concern was not merely an internal decision of the CoC. It became an express part of the judicial liquidation order dated 21.02.2024.

**8.** The Appellant pleaded that this aspect assumes significance in view of the subsequent judgment in Company Appeal (AT) (Ins) Nos. 1138 and 1145 of 2026. There also, this Appellate Tribunal treated the CoC's decision under Regulation 39C, once noticed and accepted in the liquidation order, as forming part of the liquidation process. It was held that with the Adjudicating Authority taking on record the CoC decision to sell the Corporate Debtor as a going concern and passing the liquidation order, the sale of the Corporate Debtor as a going concern commenced with the liquidation order itself.

**9.** The Appellant urged that the present case is therefore required to be examined in the context of the liquidation order dated 21.02.2024 and not by artificially isolating the subsequent procedural steps undertaken by the Liquidator as the liquidation order itself directed the Liquidator to endeavour to sell the Corporate Debtor as a going concern. The subsequent constitution of the Stakeholders' Consultation Committee ('SCC'), deliberations regarding assets and liabilities, consideration of reserve price, marketing strategy, auction

methodology and draft sale notice were all steps undertaken in furtherance of that judicial direction.

**10.** The Appellant stated that the fact that an auction notice could not ultimately be issued does not alter the character of the process already commenced. The inability of the Appellant to proceed to the stage of issuance of an auction notice was not attributable to any abandonment of the process or failure to act on the part of the Liquidator. Rather, by order dated 28.05.2024 in Company Appeal (AT) (Insolvency) No. 1047 of 2024, this Appellate Tribunal specifically directed that, in the meantime, the Liquidator shall not issue any auction notice. The Appellant was therefore judicially restrained from proceeding further.

**11.** The Appellant submitted that a party cannot be prejudiced on account of its compliance with an order of this Appellate Tribunal. The fact that the auction notice was not issued during the period of restraint cannot, therefore, be treated as evidence that the process of sale as a going concern had not commenced. The process had already been set in motion pursuant to the liquidation order dated 21.02.2024, but further steps were rendered incapable of being undertaken by operation of the interim judicial order. It is the case of the Appellant that this aspect is also material because the Adjudicating Authority itself appears to have recognised the effect of the judicial restraint by excluding the period during which the Appellant was prevented from proceeding with the liquidation process. Having acknowledged that the Appellant was restrained by an order of this

Appellate Tribunal, the same period could not simultaneously be treated as a period demonstrating that no process of sale as a going concern had commenced. The Appellant stated that the subsequent dismissal of Company Appeal (AT) (Insolvency) No. 1047 of 2024 on 11.05.2026 merely permitted the liquidation proceedings to continue. It did not erase the liquidation order dated 21.02.2024, the CoC's recommendation under Regulation 39C, or the steps already undertaken pursuant thereto.

**12.** The Appellant elaborated that in the interregnum, the IBBI notified the Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2025 on 14.10.2025, whereby Regulation 32A was omitted and clauses (e) and (f) of Regulation 32 were also omitted. The subsequent amendment, however, cannot be applied so as to retrospectively extinguish the legal effect of a liquidation process and judicial direction which had originated substantially prior to the amendment.

**13.** The Appellant brought out to our notice that the judgment in Company Appeal (AT) (Ins) Nos. 1138 and 1145 of 2026 also expressly relies upon the principle that the Regulations applicable to a liquidation process are to be examined as they stood on the date of the liquidation order. Referring to the decision in ***Ashok Kumar Gulla v. State Bank of India & Ors., Company Appeal (AT) (Ins) No. 786 of 2023***, this Appellate Tribunal observed that while deciding an issue arising in liquidation, the Regulations as they stood on the date when the liquidation order was issued are required to be considered, and subsequent

amendments cannot be applied so as to alter rights and obligations arising from the liquidation process.

**14.** The Appellant requested this Appellate Tribunal to apply the aforesaid principle, the rights and obligations arising from the liquidation order dated 21.02.2024 must necessarily be examined with reference to the statutory and regulatory framework then governing the liquidation process. The Appellant had acted pursuant to the CoC's decision under Regulation 39C and, more importantly, pursuant to the express judicial direction requiring the Liquidator to endeavour to sell the Corporate Debtor as a going concern.

**15.** The Appellant assailed the Impugned Order since, the Adjudicating Authority, erred in treating finalisation of an Asset Sale Process Document or issuance of an auction notice as the determinative point for commencement of liquidation by sale as a going concern. It is the case of the Appellant that neither the liquidation order dated 21.02.2024 nor the subsequent amendment can be read as prescribing either of these events as the exclusive legal test for commencement.

**16.** The Appellant tried to impress up to that the approach adopted by the Adjudicating Authority effectively compartmentalises the liquidation process into isolated stages and treats the absence of an auction notice as conclusive, while disregarding the preceding CoC decision, the liquidation order, the constitution of the SCC and the deliberations undertaken pursuant to that order. Such an approach overlooks the continuous chain of events commencing with the

CoC's decision under Regulation 39C and culminating in the steps taken by the Liquidator in implementation of the liquidation order.

**17.** It is further submitted that the subsequent amendment cannot be permitted to render the express direction contained in the liquidation order dated 21.02.2024 otiose. The liquidation order constituted a judicial determination under Section 33 of the Code and expressly directed the Liquidator to endeavour to sell the Corporate Debtor as a going concern. The Appellant acted upon the said direction and undertook the process accordingly.

**18.** The Appellant submitted that the subsequent consideration by the SCC in its 11th Meeting dated 26.05.2026 further demonstrates that the issue was treated as continuation of the course of action originating from the liquidation order. The SCC was apprised of the original direction for sale as a going concern, the steps already undertaken, the effect of the judicial restraint and the subsequent regulatory amendment, and thereafter resolved that the Liquidator should approach the Adjudicating Authority for appropriate directions. Thus, the application filed by the Appellant was consequently not an attempt to initiate an altogether new mode of sale after 14.10.2025. It was an application seeking continuation and completion of the course of action already contemplated by and expressly directed under the liquidation order dated 21.02.2024.

**19.** Concluding arguments, the Appellants requested this Appellate Tribunal to set aside the Impugned Order and allow this appeal.

## **Findings**

20. We note that by the Impugned Order, the Adjudicating Authority dismissed the Liquidator's application seeking extension of time and permission to undertake and complete the sale of the Corporate Debtor as a going concern, holding that the process of such sale had not commenced before the Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2025 ("**Amendment Regulations**") came into force on 14.10.2025.

21. The facts material to the decision are largely undisputed, and are taken from the record as placed before us. On an application under Section 7 of the Code by a Financial Creditor, the Adjudicating Authority by order dated 16.07.2019 admitted the Corporate Debtor into the Corporate Insolvency Resolution Process (CIRP). Separately, on an application by Bank of India, the CIRP of the Principal Borrower was commenced by order dated 26.11.2019. The appeal of the erstwhile management of the Principal Borrower (Company Appeal (AT) (Ins) No. 1504 of 2019) was dismissed by this Appellate Tribunal on 07.02.2020, and a Review Application (R.A. No. 15 of 2020) against that order was dismissed on 07.12.2020. The erstwhile management carried the matter to the Hon'ble Supreme Court in Civil Appeal Nos. 827-828 of 2021, raising the question whether simultaneous CIRPs against a principal borrower and a corporate guarantor are maintainable. By order dated 12.04.2021, the Hon'ble

Supreme Court directed the parties to maintain the status quo. The Civil Appeals were ultimately dismissed on 26.02.2026.

22. In the context of the background of the case, we note that the Corporate Debtor is the Corporate Guarantor of the liabilities of RNA Corp Private Limited (“Principal Borrower”). We further note that no viable and compliant resolution plan was received in the CIRP of the Corporate Debtor. In its 7th meeting held on 31.08.2020, the CoC resolved, with 100% voting share, to liquidate the Corporate Debtor under Section 33(2) of the Code. By Resolution No. 5, adopted with the same voting share and expressly in terms of Regulation 39C of the CIRP Regulations, the CoC recommended that, upon an order of liquidation, the Liquidator may first explore the sale of the Corporate Debtor as a going concern under clause (e) of Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016 (“Liquidation Regulations”), or the sale of its business as a going concern under clause (f) thereof.

23. We note that on I.A. No. 2471 of 2020, the Adjudicating Authority by order dated 21.02.2024 (“Liquidation Order”) directed liquidation of the Corporate Debtor under Section 33 of the Code and appointed the Appellant as Liquidator. Giving effect to the CoC’s recommendation, the Adjudicating Authority directed in clause (f) of the operative part:

*“The Liquidator shall endeavour to sale the Company as a going concern during the liquidation in terms of Regulation*

*32A of the Liquidation Process Regulations. In case he is not able to do so within a period of 90 days from this date, he shall proceed in accordance with clauses (a) to (d) of Regulation 32 of the Liquidation Process Regulations.”*

24. It has been brought to our notice by the appellant. that pursuant to the Liquidation Order, the Liquidator constituted the SCC and in its First Meeting on 01.03.2024, the CoC’s recommendation for sale as a going concern was placed before the SCC, and the assets and liabilities proposed to be included in the sale were discussed. In the Second Meeting of SCC held on 09.05.2024, the Liquidator placed before the SCC the proposed reserve price, marketing strategy, auction process and the draft sale notice, which were deliberated upon.

25. We also take into consideration that before the auction notice could be issued, the erstwhile management assailed the Liquidation Order in Company Appeal (AT) (Insolvency) No. 1047 of 2024 and by order dated 28.05.2024, this Appellate Tribunal, while issuing notice, directed that “in pursuance of the impugned order, liquidator shall not issue any auction notice.” This restraint continued throughout the pendency of the appeal, which itself remained pending in view of the status quo order of the Hon’ble Supreme Court in the matter of the Principal Borrower. After the Civil Appeals were dismissed on 26.02.2026, Company Appeal (AT) (Insolvency) No. 1047 of 2024 was heard on 09.03.2026

and, by judgment dated 11.05.2026, the Appeal of Ex Management was dismissed, permitting the liquidation to continue.

**26.** It is significant to note that in the meanwhile, on 14.10.2025, the Amendment Regulations were notified, omitting Regulation 32A and clauses (e) and (f) of Regulation 32 of the Liquidation Regulations, which governed sale as a going concern. The omission was stated to apply where liquidation by sale as a going concern has not commenced.

**27.** It is observed that after the dismissal of Company Appeal (AT) (Insolvency) No. 1047 of 2024, the matter was placed before the SCC at its 11th Meeting on 26.05.2026, where the SCC resolved that the Liquidator should approach the Adjudicating Authority for directions and permission to carry the going-concern sale to completion. The Liquidator accordingly filed I.A. No. 2697 (MB) of 2026 seeking extension of time and permission in terms of the Liquidation Order. The Adjudicating Authority dismissed that application by the Impugned Order.

**28.** We note that the Adjudicating Authority held that the process of sale of the Corporate Debtor as a going concern had not commenced before the Amendment Regulations came into force, as no auction notice had been issued and the Asset Sale Process Document had not been finalised. The Impugned Order further held that the steps taken by the Liquidator after the Liquidation Order, including the deliberations of the SCC, did not amount to commencement of the sale process, and therefore declined permission.

We take into consideration that by a separate order in I.A. No. 2682 of 2026, the Adjudicating Authority excluded, from the period of liquidation, the period during which the Liquidator remained restrained by judicial orders.

**29.** We note the arguments of the Appellant that the CoC's decision under Regulation 39C was a commercial decision taken after every attempt at resolution had failed, and that it stood incorporated into the Liquidation Order, which thereby became a binding judicial mandate to first endeavour a going-concern sale. According to the Appellant, liquidation by sale as a going concern commenced with the Liquidation Order itself, the liquidation commencement date under Section 5(17) of the Code being the date on which proceedings for liquidation commence under Section 33 of the code.

**30.** It is noted that neither the Code, the Liquidation Regulations nor the Amendment Regulations prescribe that such commencement occurs only on issuance of an auction notice or finalisation of an Asset Sale Process Document. It has been pleaded before us that the Adjudicating Authority, by so holding, imported a requirement not found in the law and gave retrospective operation to a prospective amendment. It was further submitted that the Liquidator constituted the SCC immediately, placed the CoC's recommendation before it, and had the reserve price, marketing strategy, auction process and draft sale notice deliberated upon, and that the only reason the auction notice could not issue was the restraint order of this Appellate Tribunal dated 28.05.2024.

31. The Appellant urged that the Impugned Order is self-contradictory, having excluded the period of judicial restraint from the liquidation period in I.A. No. 2682 of 2026, the Adjudicating Authority could not hold in the same breath that the Liquidator had failed to commence the sale during that very period, and that a party cannot be penalised for what an order of court rendered impossible. Reliance was placed on the judgment of this Appellate Tribunal dated 10.09.2026 in Company Appeal (AT) (Ins) Nos. 1138 and 1145 of 2026 (***State Bank of India v. Garden Court Distilleries Pvt. Ltd.***) (“Garden Court”).

32. We would like to record that while reserving the order on 16 September 2026, Shri Abhishek Anand appeared and submitted that he would be representing Gokul Anil Kumar, the suspended director of the corporate debtor, who has filed an intervention application. We allowed the intervention application, since no objection was raised. by any parties except by the appellant, who submitted that the intervenor is not having any interest in these proceedings. However, this Appellate Tribunal permitted the intervenor to intervene and provided him an opportunity to address us on the legal issues. We heard the Intervenor who supported the impugned order and opposed the present appeal. The intervenor further submitted that the impugned order records the correct appreciation of the facts and law and does not require any interference by this Appellate Tribunal.

33. On the other hand, the SCC fully supported the appeal.

**34.** Based on the pleadings and submissions as noted above, we find that only one issue needs to be determined and decided by us. The issue is, Whether, for the purposes of the saving clause in the IBBI (Liquidation Process) (Second Amendment) Regulations, 2025 (effective 14.10.2025), liquidation by sale of the Corporate Debtor as a going concern had commenced on 21.02.2024, when the Adjudicating Authority passed the Liquidation Order incorporating the CoC's recommendation under Regulation 39C of the CIRP Regulations and directing the Liquidator to endeavour a going-concern sale, or whether it commences only upon issuance of an auction notice or finalisation of an Asset Sale Process Document; and consequently whether the Impugned Order dated 03.07.2026 can be sustained.

**35.** We take into consideration that Section 33(2) of the Code empowers the CoC, at any time during the CIRP before confirmation of a resolution plan, to decide by a vote of not less than sixty-six per cent of its voting share to liquidate the corporate debtor. Section 5(17) of the Code defines the "liquidation commencement date" as the date on which proceedings for liquidation commence in accordance with Section 33 or Section 59 of the code, as the case may be. Before the Amendment Regulations, Regulation 39C of the CIRP Regulations provided that, while deciding to liquidate the corporate debtor under Section 33, the CoC may recommend that the liquidator first explore the sale of the corporate debtor as a going concern under clause (e) of Regulation 32 of the Liquidation Regulations, or sale of the business as a going concern under clause (f) thereof.

Where such a recommendation was made, the CoC was to identify and group the assets and liabilities to be sold, and the resolution professional was required to submit the recommendation to the Adjudicating Authority while filing the decision of the CoC under Section 33 of the Code. The recommendation thus did not remain a private resolution of the CoC; it was statutorily routed into the liquidation proceeding before the Adjudicating Authority.

**36.** It is relevant to note that the Amendment Regulations, notified on 14.10.2025, omitted Regulation 32A and clauses (e) and (f) of Regulation 32. By their own terms, the omission was not to affect cases in which liquidation by sale as a going concern had already commenced. The entire controversy is thus reduced to the construction of the expression “commenced” in that saving clause.

**37.** The coordinate bench of this Appellate Tribunal, in Garden Court (**supra**) decided on 10.09.2026, was confronted with the very question raised here. There the Adjudicating Authority, by order dated 10.10.2025, had admitted the corporate debtor into liquidation under Section 33(2), recording the CoC’s Resolution under Regulation 39C and directing that the liquidation shall be effective from the date of this order. The Amendment Regulations followed four days later, on 14.10.2025, and the Adjudicating Authority, dealing with consequential reliefs for the successful auction purchaser, held that sale as a going concern had not commenced before the amendment. The coordinate bench of this Appellate Tribunal set aside that Impugned order. The reasoning of the Appellate Tribunal in Garden Court (**supra**) may be summarised that the CoC’s decision

under Regulation 39C was taken pursuant to a duty cast by the regulation, was placed before the Adjudicating Authority, and formed part of the liquidation order as contemplated by Section 33 read with Regulation 39C with the Adjudicating Authority taking that decision on record and passing the liquidation order, the sale of the corporate debtor as a going concern commenced on the date of the liquidation order. The subsequent steps of the liquidator, including the auction, were steps in implementation of an existing liquidation order and not the commencement of a fresh process and applying Section 5(17), liquidation by sale as a going concern commenced on the date of the liquidation order and in determining rights and obligations arising from a liquidation, the Regulations must be examined as they stood on the date of the liquidation order, as held in ***Ashok Kumar Gulla v. State Bank of India***, Company Appeal (AT) (Ins) No. 786 of 2023.

**38.** It is very pertinent and significant to note that the Garden Court (*supra*) is a decision of a Bench of three Members of this Appellate Tribunal. Judicial discipline and the need for certainty in the administration of insolvency law require that a co-ordinate Bench follow it, unless it can be shown to be distinguishable on facts or per incuriam. We are conscious, however, that a decision is an authority for what it decides and not for what may logically be deduced from it. We therefore examine, on first principles and on the facts of this case, whether the ratio of Garden Court (***supra***) governs, before recording our conclusion.

**39.** We consider it useful to reproduce the operative passages of Garden Court (**supra**) on which the Appellant relies, since it answers the question before us directly. This Appellate Tribunal held there:

*“...with Adjudicating Authority taking on record the decision of the Committee of Creditors under Regulation 39C to sell the Corporate Debtor as a going concern, and passing an order of liquidation; the sale of Corporate Debtor as a going concern commenced on the date when liquidation order was passed by the Adjudicating Authority.”*

*“The auction was not the commencement of liquidation; rather, it constituted a subsequent step in the liquidation process, undertaken pursuant to the Committee of Creditors’s decision and the express recognition thereof in the liquidation order.”*

In conclusion, it was held that liquidation by sale as a going concern commenced on the date on which the Adjudicating Authority passed the liquidation order in terms of Section 33 of the Code, relying on the definition in Section 5(17). Those findings are not obiter; these findings are the ratio of the decision, and formed the very basis on which, the order of the Adjudicating Authority was set aside.

**40.** We are of the considered opinion that saving clause must be given its natural meaning, and there is no need to add words to it. The expression that determines the reach of the saving, here “commenced”, is to be understood in the context of the statutory scheme in which it appears. We are of the view that in the

present case where a rule of subordinate legislation is silent on retrospective operation, the presumption is that it is prospective and that it does not take away rights and obligations that have accrued or become crystallised under the law as it stood. The principle finds statutory expression in Section 6 of the General Clauses Act, 1897, in relation to the effect of repeal, which preserves rights, privileges, obligations and liabilities accrued, and any proceeding commenced, under the repealed provision. It needs to be appreciated that in a statute of the nature of the Code, which is a beneficial and time-bound legislation, a saving clause must be read so as to advance and not defeat its object, namely timely resolution, maximisation of value of the Corporate Debtor and balancing of stakeholder interests. A reading of “commenced” which confines the saving to processes that had reached the stage of public advertisement would frustrate that object.

**41.** The expression “liquidation by sale as a going concern” in the saving clause does not describe a separate proceeding. It describes the mode in which a liquidation is to be conducted. Liquidation itself commences on the liquidation commencement date under Section 5(17), that is, when proceedings for liquidation commence under Section 33. Once the liquidation order is passed, the corporate debtor is in liquidation, the Liquidator is in office, and the mode of realisation is to be governed by the order and the Regulations then in force. Where that order itself directs that the going-concern route be first explored, the liquidation has commenced by that mode from the same date. We find that it is

exactly the position here. By the Liquidation Order, the Adjudicating Authority did not merely record a stray recommendation; it directed, in express terms, that the Liquidator shall endeavour to sell the Corporate Debtor as a going concern in terms of Regulation 32A, and prescribed the fall-back course to be followed only if he was unable to do so in ninety days. The going-concern sale was thus the primary, judicially ordered mode of liquidation from 21.02.2024. The case before us is, if anything, stronger than Garden Court (**supra**), because the direction here is not only recorded but operative.

**42.** We however find that the Adjudicating Authority adopted a different view that the commencement occurs only when the auction notice is issued or the Asset Sale Process Document is finalised. We find no basis for it. Neither the Code nor the Liquidation Regulations nor the Amendment Regulations says so. We reiterate that a saving clause in delegated legislation must be read according to its language and the scheme it serves and there was no need to add to it a condition which the Parliament chose not to impose. The issuance of an auction notice is a step in the execution of a sale process that has already commenced, and not the event which brings that process into being. Treating the last stage as the date of commencement would make the saving clause almost meaningless, since it would protect only those cases in which the sale was already at the point of public advertisement, and would expose every liquidator in mid-process to the vagaries of timing.

43. We have noted that the recommendation under Regulation 39C was made by the CoC in the exercise of its commercial wisdom, by a 100% vote, upon failure of all attempts at resolution. The Hon'ble Supreme Court has repeatedly held that the commercial wisdom of the CoC is non-justiciable and that the Adjudicating Authority and this Appellate Tribunal do not sit in appeal over it in terms of the ratio of the Hon'ble Supreme Court in cases of ***K. Sashidhar v. Indian Overseas Bank***, (2019) 12 SCC 150; ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta***, (2020) 8 SCC 531. The decision to attempt a going-concern sale is a commercial judgment aimed at value maximisation and preservation of the enterprise.

44. We note that even for arguments' sake, if contrary to the above, some overt acts of the Liquidator were required to show commencement, such acts are present on the record. Immediately after the Liquidation Order, the Liquidator constituted the SCC, convened its first meeting on 01.03.2024 and placed the CoC's recommendation before it, discussed the assets and liabilities to be included in the sale and at the second meeting on 09.05.2024 placed before the SCC the proposed reserve price, marketing strategy, auction process and draft sale notice. The Impugned Order, as pleaded in the Appeal, does not deny that these steps were taken but treats them as preparatory. The distinction between preparatory and commencement is, in our view, artificial and unsupported by statute. The process of a going-concern sale is continuous: recommendation of the CoC, liquidation order, constitution of the SCC, fixation of reserve price and

of the marketing and auction strategy, publication of the notice, conduct of the auction and declaration of the successful bidder. They are links in one chain and cannot be split so as to locate the commencement only at the penultimate link. The process of sale as a going concern had therefore commenced well before 14.10.2025 on any view of the matter.

**45.** It is an undisputed fact that, by order dated 28.05.2024, this Appellate Tribunal restrained the Liquidator from issuing any auction notice pursuant to the Liquidation Order, and that restraint continued until Company Appeal (AT) (Insolvency) No. 1047 of 2024 was decided on 11.05.2026. The Liquidator was, during that entire period, legally disabled from taking the very step on which the Adjudicating Authority has relied to hold that the sale had not commenced. It is a settled principle that an act of the court cannot and should not prejudice any one and the law does not compel a person to do what is rendered impossible by an order of a competent court. To hold against the Liquidator, on the ground that he did not issue an auction notice in a period in which issuing itself, was forbidden by this Appellate Tribunal, would be to penalise him for compliance with a judicial order.

**46.** We are conscious that the ninety-day period mentioned in the Liquidation Order had elapsed by the time the restraint order was passed. The ninety days was a period set by the Adjudicating Authority in which the Liquidator was to “endeavour” the sale; it was a directory time-limit that the same Authority was competent to extend, and the application before it was precisely for such

extension. The Liquidator had, within that period, constituted the SCC and deliberated upon the reserve price, marketing strategy and draft sale notice. The real question was not whether the period had lapsed, but whether the Liquidator was at fault in not completing the sale. The record discloses no such fault. The failure to complete was due to the litigation initiated by the erstwhile management and to the orders passed in it.

47. We would like to mention that in case of **Ashok Kumar Gulla (supra)**, this Appellate Tribunal, while examining successive amendments introduced during the pendency of a liquidation, held that the Regulations were to be examined “as they stood on the date when the liquidation order was issued.” We have no reason to take a different view. The Regulations on 21.02.2024 included Regulation 32A and clauses (e) and (f) of Regulation 32. The Liquidation Order was passed under that framework, and the obligations and entitlements flowing from it, including the Liquidator’s duty to endeavour a going-concern sale, are to be tested by it.

48. We would like to take into consideration that the Hon’ble Supreme Court in **Swiss Ribbons Pvt. Ltd. v. Union of India**, (2019) 4 SCC 17 has recognised that the Code is aimed at resolution and maximisation of value of assets of the corporate debtor and balancing the interests of all stakeholders. A sale of an enterprise as a going concern preserves its value, employment and supply chains, in a manner that a piecemeal liquidation cannot. In **Garden Court (supra)**, the coordinate bench of this Appellate Tribunal recorded the serious consequences

that follow for employees and primary creditors if a going-concern sale is unsettled. The same considerations apply here, and the Impugned Order, by compelling a piecemeal sale, defeats the very objective that the CoC, the Adjudicating Authority and the Code seek to serve.

**49.** We would add that the Suspended Director, whose own appeal challenging the Liquidation Order was dismissed on 11.05.2026, is hardly in a position to profit from the delay caused by that appeal. A construction under which the pendency of unsuccessful litigation brought by the erstwhile management defeats the commercial decision of the CoC and the judicial direction of the Adjudicating Authority would reward obstruction and invite strategic litigation. It would be contrary to the scheme of the Code which seeks to discourage it.

**50.** We are of the view that since the going-concern sale had commenced on 21.02.2024, the regime under which the Liquidation Order was passed continues to govern it, and it is open to the Adjudicating Authority to extend the time originally fixed. The Liquidator was obstructed from 28.05.2024 to 11.05.2026 by judicial orders; that period stands excluded, as held by the Adjudicating Authority itself in I.A. No. 2682 of 2026. The prayer of the Liquidator for extension of time and permission to complete the sale, in terms of the Liquidation Order, was therefore well founded and the Adjudicating Authority was in error in rejecting it on the sole ground that the process had not commenced.

**51.** We are also conscious that two Benches of this Appellate Tribunal should not take divergent views on the same question within weeks of each other, since

that would only create uncertainty in the Adjudicating Authorities and before liquidators who must act on it. We have, for the reasons recorded above, independently reached the same conclusion as in Garden Court (supra), and we are in respectful agreement with it.

52. For the detailed reasons above, we find merit in the appeal. The Appeal succeeds. and the Impugned order is set aside. The parties will appear before the adjudicating authority on 26<sup>th</sup> October 2026 and the adjudicating authority shall take further course of action in accordance with law. There will be no order to cost. IA, if any, stand closed.

**[Justice Mohammad Faiz Alam Khan]  
Member (Judicial)**

**[Naresh Salecha]  
Member (Technical)**

**Sim  
Chinmayee Sinha**