

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins.) No. 1745 of 2026

(Arising out of the Order dated 23.07.2026 passed by the National Company Law Tribunal, Mumbai Bench, in IA (I.B.C)/3054(MB)2026 in C.P. (IB)/414(MB)2025

IN THE MATTER OF:

1. Phoenix ARC Limited (formerly known as Phoenix ARC Private Limited), Trustee of Phoenix Trust FY 22-16

3rd Floor, Wallace Towers, 139- 140/B/I,
Crossing of Sahar Road and Western Express
Highway, Vile Parle (East), Mumbai,
Maharashtra, India – 400057

...Appellant

Versus

1. Rajesh Jhunjhunwala, Erstwhile Resolution Professional of Supreme Best Value Kolhapur (Shiroli) Sangli Tollways Private Limited

A51, Aashit CHS, Azad Road,
H B Gawde Marg, Stanburg Estate,
Juhu Koliwada, Mumbai - 400049

...Respondent No. 1

2. Supreme Best Value Kolhapur (Shiroli) Sangli Tollways Private Limited, Represented through its Liquidator, Mr. Shailesh Pranal Bhuta

901, Regent Chambers, Nariman Point,
Mumbai – 400021

...Respondent No. 2

Present

For Appellant: Mr. Gaurav Mitra, Sr. Adv. along with Ms. Chitra Rentala, Mr. Khyati Mehrotra, Mr. Treenok Guha & Ms. Shravani Madirrala.

For Respondents: Mr. Rajesh Jhunjunwala, for R-1 (in person).
Mr. Rudra Deosthali, for R-2.

J U D G E M E N T

(06.10.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e., Phoenix ARC Limited (formerly known as Phoenix ARC Private Limited), acting in its capacity as trustee of Phoenix Trust FY 22-16, who is the Financial Creditor, herein, under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('Code') against the Order dated 23.07.2026 ("**Impugned Order**") passed by the National Company Law Tribunal, Mumbai Bench ("**Adjudicating Authority**") in IA (I.B.C)/3054(MB)2026 in C.P. (IB)/414(MB)2025.

Rajesh Jhunjunwala, who is the erstwhile Resolution Professional of Supreme Best Value Kolhapur (Shiroli) Sangli Tollways Private Limited, is the Respondent No.1 herein.

Supreme Best Value Kolhapur (Shiroli) Sangli Tollways Private Limited, represented through its Liquidator, Mr. Shailesh Pranal Bhuta, who is the Corporate Debtor, is Respondent No. 2, herein.

2. The Appellant submitted that as per the Impugned Order dated 23.07.2026, the application under Section 33(1A) of the Code, was rejected and liquidation of the Corporate Debtor was directed, which proceeds on an erroneous construction of Section 33(1A) of the code, according to the Appellant. The Appellant contended that the statutory conditions contemplated under the said provision stood satisfied in the present case, as no resolution plan had been approved within the CIRP period and the Committee of Creditors (“CoC”) had, by a unanimous voting share of 100%, resolved to seek restoration of the CIRP.

3. The Appellant submitted that Section 33(1A), brought into force with effect from 26.05.2026, enables the Adjudicating Authority, before passing an order of liquidation, to consider an application approved by not less than 66% of the voting share of the CoC for restoration of the CIRP for a period not exceeding 120 days. The Explanation to the provision also extends its application to CIRPs which had commenced prior to the amendment, where no liquidation order had been passed. In the present case, the CoC’s resolution dated 02.07.2026 was therefore squarely within the statutory framework introduced by Section 33(1A).

4. It is submitted that the CoC did not merely satisfy the statutory threshold of 66%. The proposal for restoration of the CIRP, together with exclusion of 120 days, was approved unanimously by 100% voting share, while the proposal for liquidation was unanimously rejected. The Appellant, holding 17.17% voting share in the CoC, itself voted in favour of restoration and against liquidation. The Appellant therefore contended that the Impugned Order effectively nullifies a

statutory mechanism by which the CoC was expressly permitted to seek a further opportunity for resolution.

5. The Appellant submitted that the Adjudicating Authority itself recorded in paragraph 10 of the Impugned Order that the CoC's resolution for restoration had been approved unanimously by 100% voting share and that the statutory threshold of 66% had been "comfortably exceeded". There was, therefore, no finding of any procedural infirmity in the decision-making process of the CoC or any allegation of mala fides in the decision to seek restoration.

6. In such circumstances, the Appellant contended that the Adjudicating Authority could not substitute its own assessment as to whether restoration was commercially justified for the unanimous commercial decision of the CoC. The Appellant submitted that the CoC had considered the available alternatives, namely restoration of CIRP, recovery of the dues arising from the Arbitral Award, and liquidation, and had thereafter consciously and unanimously chosen restoration while rejecting liquidation.

7. The Appellant further submitted that the commercial decision was not taken in isolation. It was preceded by the rejection of four resolution plans after multiple rounds of negotiations and by consideration of the Corporate Debtor's principal asset, the Arbitral Award, the market response to the earlier Form G, and the possibility of a fresh resolution process. The decision was consequently the result of a deliberative commercial process and not an unexplained or mechanical exercise of voting.

8. The Appellant contended that once the statutory threshold had been satisfied and the CoC had unanimously determined that a further resolution process was commercially viable, the Adjudicating Authority could not effectively sit in appeal over that commercial determination by concluding that liquidation was preferable. Such an approach, according to the Appellant, amounts to judicial substitution of commercial wisdom in a field entrusted by the Code to the CoC.

9. The Appellant submitted that the principal reason assigned in the Impugned Order for declining restoration was that the Arbitral Award could also be pursued during liquidation. It is contended that this reasoning proceeds on an erroneous premise, because the mere availability of liquidation as an alternative mechanism for realisation of an asset cannot, by itself, defeat an otherwise statutorily permissible application for restoration under Section 33(1A).

10. The Appellant submitted that the Corporate Debtor's principal asset is the Arbitral Award for approximately Rs. 318,94,70,738/-, inclusive of litigation costs of Rs. 3,00,00,000/-, together with interest at 12.50% per annum from 20.09.2016 until actual payment. The Award was passed in favour of the Corporate Debtor against the Public Works Department, Government of Maharashtra. The challenge to the Award under Section 34 of the Arbitration and Conciliation Act, 1996 remains pending before the Hon'ble Bombay High Court, with no stay having been granted, while execution proceedings are also pending.

11. It is further submitted that the Corporate Debtor's total claim, including accrued interest, was approximately Rs. 800 crores, and settlement discussions with the PWD under the Vivad Se Vishwas Scheme had included a figure of approximately Rs. 363.60 crores, although no final settlement had been arrived at and further time was indicated to be required for obtaining cabinet approval. Thus, the asset was not a merely speculative or extinguished claim but represented substantial value which remained capable of realisation.

12. The Appellant contended that if the reasoning adopted in the Impugned Order were accepted, every corporate debtor whose principal asset is a monetary or actionable claim could be denied restoration merely because such claim could technically be pursued in liquidation. Such an interpretation would create an exclusion from Section 33(1A) which is not contained in the statutory text and would materially restrict the operation of a provision specifically introduced to enable a further attempt at resolution before liquidation.

13. The Appellant submitted that Section 33(1A) would be rendered substantially ineffective if the existence of an alternative liquidation route were itself treated as sufficient reason to refuse restoration. Liquidation is precisely the consequence which Section 33(1A) permits the CoC to seek to avoid where it considers that a further time-bound resolution process may maximise value.

14. The Appellant contended that the finding that restoration was not justified failed to give due consideration to the material demonstrating continued market interest. Pursuant to the Form G published on 24.10.2025, as many as 11 EOIs

were received, from which four resolution plans were ultimately submitted by SMS Limited, Viceroy Hotels Limited, Shanti G.D. Ispat and Power, and Agra Gwalior Pathways Private Limited. Although all four plans were eventually rejected after negotiations and voting, the earlier participation itself demonstrated that the Corporate Debtor had attracted prospective resolution applicants.

15. The Appellant further submitted that the fresh process approved by the CoC was not merely prospective or hypothetical. Pursuant to the CoC's resolution dated 02.07.2026, a fresh Form G was republished on 13.07.2026. By the notice dated 30.07.2026 for the 13th CoC meeting, seven EOIs had already been received, of which five were accompanied by earnest money deposits. In addition, an eighth EOI accompanied by an earnest money deposit of Rs. 1,00,00,000/- was received on 29.07.2026 from SMS Limited, an earlier prospective resolution applicant.

16. It is submitted that these developments occurred immediately after the CoC had resolved to restore the CIRP and before the liquidation process had meaningfully progressed. According to the Appellant, the subsequent market response materially corroborated the CoC's assessment that a fresh resolution process remained commercially viable. The Appellant also submitted that the fresh EOI process was structured to invite resolution plans on three alternative bases: the Corporate Debtor as a whole on a going-concern basis, the Corporate Debtor excluding the Arbitral Award, and the Arbitral Award alone. Thus, the fresh process was designed to explore resolution of the Corporate Debtor in

different commercial configurations and was not confined merely to monetisation of the Arbitral Award.

17. The Appellant submitted that the Impugned Order further proceeded on the observation that continuation of the CIRP could permit monetisation of unabsorbed losses available to the Corporate Debtor at the cost of the Government exchequer. It is contended that this consideration did not arise from the application under Section 33(1A), nor did the Impugned Order identify any material establishing that restoration would operate to the detriment of the public exchequer.

18. The Appellant submitted that the Corporate Debtor had carried-forward losses of approximately Rs. 397 crores, accumulated over the preceding four years. It was specifically submitted that a major part of these losses comprised interest payable on debt raised for construction of the asset and depreciation thereof, and that such amounts had been and would be treated in accordance with applicable law, including the applicable accounting and taxation treatment. The Appellant contended that such lawful treatment of losses cannot, without more, be characterised as a benefit accruing at the cost of the Government exchequer.

19. It is further submitted that the object of the code is value maximisation and resolution, and any treatment of losses in accordance with law which facilitates maximisation of the value of the Corporate Debtor and consequent recovery of creditors cannot, merely on account of its tax consequences, constitute a ground to reject a statutory application for restoration. The Appellant therefore contended

that the reasoning concerning carried-forward losses was vague, unsupported by any demonstrated prejudice to the exchequer, and unrelated to the statutory considerations governing restoration under Section 33(1A).

20. The Appellant submitted that the Impugned Order is also materially inconsistent with the earlier order dated 02.06.2026 passed by the very same Adjudicating Authority in the same CIRP. By that order, a further extension of 60 days was granted up to 21.07.2026, and the Adjudicating Authority expressly recorded the existence of “exceptional circumstances” warranting such extension so as to avoid liquidation, which could be considered a last resort, and to enable successful resolution of the Corporate Debtor in accordance with the objectives of the Code.

21. The Appellant contended that the material circumstances which formed the basis of the earlier order substantially continued when the application under Section 33(1A) came to be considered. The Arbitral Award remained the principal asset; settlement efforts with PWD continued; and, importantly, the CoC had thereafter unanimously rejected liquidation and approved restoration with 100% voting share.

22. It is submitted that, within approximately six weeks, the Adjudicating Authority adopted a contrary approach and directed liquidation, without adequately explaining the basis for such departure. According to the Appellant, the subsequent factual developments did not diminish the case for resolution; rather, the CoC had undertaken a fresh commercial assessment and the

subsequent EOI process had generated further market participation. The Appellant therefore contended that the departure from the earlier approach, particularly in relation to liquidation being treated as a last resort, required cogent reasons, which are absent from the Impugned Order.

23. The Appellant submitted that the CIRP had commenced on 25.08.2025 and, after an initial period of 180 days, had been extended by 90 days up to 22.05.2026 and thereafter by a further 60 days up to 21.07.2026, resulting in a total CIRP period of 330 days.

24. Following rejection of all four resolution plans on 29.06.2026, the CoC met on 02.07.2026 and considered restoration under Section 33(1A). The application seeking restoration and exclusion of 120 days was filed on 16.07.2026, before expiry of the CIRP period on 21.07.2026. The restoration sought would extend the CIRP period up to 18.11.2026. The Appellant submitted that the sequence of events demonstrates that the CoC acted within the statutory framework and before liquidation had been ordered. The statutory mechanism was therefore invoked at the stage and in the circumstances for which Section 33(1A) had been enacted.

25. The Appellant submitted that the record discloses a case where the CoC, by 100% voting share, rejected liquidation and resolved to pursue restoration for a further 120 days, while the fresh resolution process had already generated further market participation, including eight EOIs, with five of the first seven EOIs accompanied by earnest money deposits and a further EOI from SMS Limited accompanied by an earnest money deposit of Rs. 1,00,00,000/-.

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

27. Per contra, during the pleadings, the Respondents have submitted that they do not wish to file any reply to the IAs or the Appeal, which has also been considered by us in our order dated 16.09.2026, which reads as under:

The notice on behalf of the Respondent No. 2 is received by Mr. Rudra Deosthali who is appearing through VC. However, he submits that he will not file any reply to the aforesaid I.A.'s i.e., for delay condonation application as well as for stay application moved by the Appellant.

However, in the interest of justice, we provide five days time to Respondent No. 2 to bring on record the reply/ response vis-à-vis the aforesaid delay condonation application as well as the stay application with an advance copy to Learned Counsel for the Appellant who in turn if so wish may file the rejoinder, within one week, thereafter.

Mr. Rajesh Jhunjhunwala, Erstwhile RP in person is also present through VC. He submits that he will not file any objection to the aforesaid I.A.'s i.e., for delay condonation application as well as for stay application moved by the Appellant.

Since, Respondents have chosen not to file any objection w.r.t, the aforesaid I.A.'s we heard Learned Senior Counsel appearing for the Appellant w.r.t. the IA No. 6629 of 2026 i.e., Delay Condonation Application as well as Shri Rajesh Jhunjhunwala, Erstwhile RP in person.

Findings

28. At the outset, we take into consideration that Section 33(1A) of the Code was inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2026, with effect from 26.05.2026. The relevant provision, reads as under:

"(1A) Notwithstanding anything contained in sub-section (1), where the Adjudicating Authority is satisfied that the grounds mentioned in clause (a) or clause (b) of sub-section (1) of this section exist, it shall, before passing the liquidation order, consider an application made by the committee of creditors, in such manner and subject to such conditions as may be specified, by not less than sixty-six per cent. of the voting share, for restoring the corporate insolvency resolution process, and, upon considering such application, may, by order, restore the corporate insolvency resolution process for such period, not exceeding one hundred and twenty days, as it deems fit.

Explanation. — For the removal of doubts, it is hereby clarified that the provisions of this sub-section shall also apply in relation to a corporate insolvency resolution process commenced before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2026, where no order of liquidation under sub-section (1) has been passed."

29. Having noted pleadings of the all parties noted earlier, which we will not repeat for sake of brevity, we find that in order to decide the present appeal, we need to frame following issues: -

ISSUE I- What is the nature and extent of the Adjudicating Authority's power, under Section 33(1A) of the Code, over a restoration application approved by the CoC with the requisite majority - is the CoC's commercial decision immune from interference in the same manner as its decision approving or rejecting a resolution plan under Sections 30 and 31 of the

Code, or does the Adjudicating Authority retain an independent discretion, and if so, of what character and subject to what constraints?

ISSUE II- Whether the finding in the Impugned Order that continuation of the CIRP would enable the Corporate Debtor's creditors to "monetise unabsorbed losses...at the cost of the Government exchequer" is sustainable, having regard to (a) whether it is founded on any material or submission on the record; (b) whether it comports with the principles of natural justice; and (c) whether, even taken at its highest, it is legally capable of outweighing a unanimous, threshold-exceeding CoC decision?

ISSUE III- Whether the reasoning that the Corporate Debtor's arbitral claim "can further proceed in the liquidation process also", and that restoration would therefore serve no independent purpose, furnishes a legally sound basis, on the facts of this case, for declining restoration under Section 33(1A)?

ISSUE IV- Whether, and to what extent, the Impugned Order's departure, without reference or explanation, from the Adjudicating Authority's own Extension Order dated 02.06.2026, passed in the very same proceeding, bears upon the sustainability of the Impugned Order?

ISSUE V- Whether the Impugned Order satisfies the standard of a reasoned, speaking order, particularly where it overrides a unanimous commercial decision of the CoC taken pursuant to a specific statutory mechanism?

ISSUE VI- What relief follows?

30. ISSUE I- What is the nature and extent of the Adjudicating Authority's power, under Section 33(1A) of the Code, over a restoration application approved by the CoC with the requisite majority - is the CoC's commercial decision immune from interference in the same manner as its decision approving or rejecting a resolution plan under Sections 30 and 31 of the Code, or does the Adjudicating Authority retain an independent discretion, and if so, of what character and subject to what constraints?

31. We note that it is by now settled beyond controversy that the commercial wisdom of the CoC, in matters entrusted to it under the scheme of the Code principally, the approval or rejection of a resolution plan under Sections 30(4) and 31, is not open to judicial review on merits, and that the jurisdiction of the Adjudicating Authority, is confined to examining whether the decision-making process prescribed by the Code has been observed. This position stands authoritatively laid down in *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150; reaffirmed and elaborated in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531, holding that the commercial wisdom of the CoC has been given paramountcy without any judicial intervention, and that the Adjudicating Authority and the Appellate Tribunal cannot substitute their views for the collective business decision of the financial creditors.

32. We take into consideration the fact that Section 33(1A), however, is not framed in the same terms as Sections 30(2) and 31. Under the latter, once the

Adjudicating Authority is satisfied that a resolution plan approved by the CoC meets the requirements of Section 30(2), it has no discretion to withhold approval; its role is confined to a check on compliance. Section 33(1A), by contrast, on the material before us, casts on the Adjudicating Authority a duty to consider the CoC's application, and confers upon it a power, cast in terms of discretion ("may... restore"), to allow or decline restoration, subject to the outer time-limit of 120 days. The provision does not, in terms, replicate the closed, compliance-only architecture of Section 30(2)/31; nor, on the other hand, does it purport to hand the Adjudicating Authority an unconfined power to reject a compliant application on any ground it thinks fit.

33. In our considered view, the correct position lies between these two poles. Where the CoC's application satisfies the twin statutory conditions, namely, that a ground under Section 33(1)(a) or (b) exists, and that the application carries the approval of not less than 66% of the voting share, the residual discretion vested in the Adjudicating Authority is a real one. However, the discretion vested must accordingly be exercised judicially on relevant considerations in accordance to the object of the provision i.e., whether a further time-bound attempt at resolution is likely to serve, rather than defeat, the value-maximisation and resolution-first objectives enshrined in the Code and not on considerations extraneous to the record, or mere preference for a different commercial outcome than the one the CoC, exercising its own commercial wisdom, has arrived at. This Appellate Tribunal and the Adjudicating Authority ordinarily accord to the CoC's

commercial wisdom under Sections 30-31, even though it is not, the case of complete ouster of the discretion of the Adjudicating Authority. In the other words the considered CoC's decision, which is unanimous or comfortably exceeds the statutory threshold, and is the request of deliberation across successive meetings rather than a single meeting, then more cogent and specific reasons must exist for declining the request of the CoC by the Adjudicating Authority.

34. Tested against this standard, we note that the Impugned Order itself records, that the resolution for restoration was approved unanimously by 100% voting share, comfortably exceeding the statutory threshold of 66%, and does not anywhere suggest that the CoC's decision-making process suffered from any procedural infirmity, or that it was tainted by mala fides or arrived at without due deliberation. It is noted that indeed, the record (12th CoC Minutes) shows the contrary as liquidation was commercial decision of the CoC member, against liquidation and in favour of restoration. We find that in these circumstances, the threshold conditions under Section 33(1A) stood not merely met but substantially exceeded, and the burden was squarely on the Adjudicating Authority, if it were to decline restoration after restoring specific and cogent, reasons capable of displacing so considered and unanimous a commercial decision of the CoC. Therefore, we find merit in the contentions of the Appellant on this issue, based on the specific facts of the present case.

35. ISSUE II- Whether the finding in the Impugned Order that continuation of the CIRP would enable the Corporate Debtor's creditors to "monetise unabsorbed losses...at the cost of the Government exchequer" is sustainable, having regard to (a) whether it is founded on any material or submission on the record; (b) whether it comports with the principles of natural justice; and (c) whether, even taken at its highest, it is legally capable of outweighing a unanimous, threshold-exceeding CoC decision?

36. The Impugned Order records, that the Adjudicating Authority was conscious that if CIRP is continued, the Creditors may be able to monetize unabsorbed losses available to the Corporate Debtor at the cost of the Government exchequer, and holds that the resolution of corporate debtor only with objective of such monetization would not be in accordance with the spirit and intent of IBC.

Based on the record before us, this consideration does not appear to have been raised by any party or canvassed in the IA, or put to the Resolution Professional or the CoC for an explanation before being relied upon by the Adjudicating Authority before rejecting the application. We may infer that perhaps the only reference to accumulated losses on this record is disclosure made by the Resolution Professional in the ordinary course of his overview of the Corporate Debtor's financial position at the 12th CoC meeting that the Corporate Debtor carried forward losses of approximately Rs. 397 crores over the preceding four years. It seems that such disclosure are made in insolvency proceedings and not

accompanied by, or connected to, any suggestion that such losses were intended to be, or were capable of being, unlawfully monetised. We also note that the findings in the Impugned order, does not identify the mechanism by which such monetisation was apprehended to occur. The impugned order also does not explain how it would operate at the cost of the Government exchequer, and does not engage with the fact that the treatment of carried-forward business losses of a corporate debtor is, in the first instance, governed by the provisions of the Income-tax Act, 1961 and administered by the income-tax authorities, not by the Adjudicating Authority under the Code. We are of opinion that the issue as to whether, and to what extent, an incoming resolution applicant may set off or carry forward such losses is a matter of substantive tax law and falls to be examined, by the tax authorities in accordance with the relevant law. We also do not find any specific and reasoned finding in the impugned order that the CoC's or the RP's conduct involved fraud, or an abuse of the resolution process for an object extraneous to the Code. It may be stated that the availability of such losses on the Corporate Debtor's books is result of its financial history and cannot, be converted into a disqualifying feature of a CoC approved restoration application without any specific reasons. No such finding of fraud or abuse is recorded in the Impugned Order.

37. We also note that the finding is based on apprehension and possibility that creditors may be able to monetise such losses, rather than as a definite finding. We are of considered view that a conjectural apprehension of this nature,

unaccompanied by any supporting material, reasoning, or opportunity to the affected party to respond, is an insufficient basis on which to override a unanimous, commercial decision of the CoC, taken pursuant to a specific statutory mechanism enacted for precisely such situations.

38. For these reasons, we find that the Impugned Order's reliance on the possibility of monetisation of unabsorbed losses...at the cost of the Government exchequer is unsustainable, both as a matter of procedural fairness and on its own merits, and cannot furnish a valid ground for declining restoration under Section 33(1A).

39. **ISSUE III- Whether the reasoning that the Corporate Debtor's arbitral claim "can further proceed in the liquidation process also", and that restoration would therefore serve no independent purpose, furnishes a legally sound basis, on the facts of this case, for declining restoration under Section 33(1A)?**

40. The Impugned Order's other reasoning is that since the Corporate Debtor's only asset is, in substance, the arbitral claim against the Public Works Department, Government of Maharashtra, valued, as recorded before the Adjudicating Authority, at approximately Rs. 318.94 crore inclusive of litigation costs, with interest accruing at 12.5% per annum. This was subject of a settlement discussion pegged at approximately Rs. 363 crores before the Amicable Settlement Committee constituted under the Vivad Se Vishwas Scheme of the government. We are unable to sustain this reasoning, for various reasons. First, it

proceeds on a premise that is only partially accurate. It has been brought to our notice that the Preliminary Report of the Liquidator dated 21.08.2026 (filed under Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016) itself records that the Corporate Debtor's assets, valued in aggregate at approximately Rs. 390.48 crore of which the arbitral claim/receivable, carried as an intangible asset, accounts for approximately Rs. 386.69 crore. This stand against aggregate liabilities of approximately Rs. 913.82 crore. In this background whether the claim is pursued through a resolution applicant who acquires the Corporate Debtor or is instead realised by a liquidator through sale of the entity's remaining assets under Section 33(5) and the Liquidation Process Regulations, the underlying claim remain the same claim. The Impugned Order does not undertake the process, timeline, and value likely to be realised through either route of restoration and possible resolution of the Corporate Debtor vis-à-vis straight liquidation of the Corporate Debtor.

41. We must emphasise that it is well settled now that resolution and not liquidation is the primary object of the Code, the liquidation is intended to operate as a measure of last resort and not a default outcome to be preferred over a genuine, credible prospect of resolution. This very principle was applied by the Adjudicating Authority itself, on materially the same facts, in its own Extension Order dated 02.06.2026. We also note that Section 33(1A) of the code is the Legislature's own, express instantiation of this principle for the cases, like the present case, where the CIRP period has run its full course without an approved

plan. In case of the liquidation, the creditors alone bear the ultimate economic consequences of that choice. During the hearing, the appellant emphatically pleaded that given a chance they will be able to achieve better outcomes rather than the liquidation which has got its own limitations. We note that on the facts of this case, the record discloses more than a bare, generalised hope of a better outcome. Eleven EOIs were received against the original Form G, of which four converted into resolution plans that were the subject of extensive negotiation over several months. We also note the submissions made by the Appellants that since then, seven fresh EOIs had already been received against the republished Form G within a fortnight, five of them with the requisite EMD, and an eighth (also with EMD) followed a day later from one of the original resolution applicants. Although we also notice consciously that the fresh bids were received subsequent to passing of the impugned order, and therefore the adjudicating authority did not have benefit of the details, however since we are considering the appeal based on the facts and the pleadings made by the appellants before us, to justify their case, we take into consideration of these facts. In view of this, in our assessment, the CoC's optimism about the prospect of an improved resolution outcome did not rest on speculation. Nor, in our view, can it be said that a liquidator's realisation of the same claim would necessarily yield comparable value. A sale of a disputed, sub judice arbitral receivable in liquidation, necessarily discounted for litigation risk, and further uncertain enforcement timeline. The very fact that the CoC structured its fresh Form G to invite plans on a going-concern basis (and not

merely for assignment of the bare receivable) reflects a considered commercial judgment, one this Appellate Tribunal will not to discount merely because, in the abstract, a claim can be pursued either way.

42. We would only add, that we do not read Section 33(1A) as requiring the Adjudicating Authority, in every case, to restore the CIRP wherever the CoC applies nor do we suggest that the mere theoretical possibility of an improved outcome will always suffice. What we hold is that a bare, undifferentiated statement that a monetary claim can proceed in liquidation also, without any comparative assessment of realisable value, timelines, cost, and the market response cannot, without more, constitute a sufficient reason to override a unanimous, statutorily compliant CoC decision. We do not consider that Parliament, in enacting Section 33(1A) with retrospective application to pending CIRPs by way of the Explanation, intended the provision to be so readily rendered nugatory.

43. For these reasons, we find that the logic of the Adjudicating Authority that the arbitral claim can further proceed in the liquidation process also does not, on the facts of this case, furnish a legally sound or sufficient basis for declining restoration under Section 33(1A). We, however, would like to make it clear that we are not laying any general law that the Adjudicating authority can never order for liquidation despite the COC contrary recommendations. We reiterate that all this will depend upon the facts of each case and prevailing circumstances. In the

present case, we find sufficient reasoning as submitted by the appellant to be convincing to support their case in the present appeal

44. ISSUE IV- Whether, and to what extent, the Impugned Order's departure, without reference or explanation, from the Adjudicating Authority's own Extension Order dated 02.06.2026, passed in the very same proceeding, bears upon the sustainability of the Impugned Order?

45. We note that on 02.06.2026, in this very proceeding, the Adjudicating Authority allowed a 60-day extension of the CIRP period, recording in terms that there exist exceptional circumstances warranting for the extension as prayed for by the Applicant in this Application so as to avoid Liquidation, which can be considered as last resort and enable the Successful Resolution of the Corporate Debtor in line with the objectives of the Code. That finding rested on the same arbitral award, the same ongoing settlement engagement with PWD, and the same underlying commercial rationale namely, that a genuine, live prospect of resolution justified a further extension in preference to allowing the process to lapse into liquidation.

46. In this background, it is taken into consideration that in around seven weeks later, on materially the same factual matrix, save that the facts had, if anything, moved further in favour of continued resolution, in that the CoC had by then, unanimously, rejected liquidation and approved restoration The Impugned Order reached the opposite conclusion, without any reference whatsoever to the

Extension Order or to the last resort principle it had itself applied few weeks earlier.

47. We do not suggest that an Adjudicating Authority is bound, as a matter of res judicata or issue estoppel, to reach the same conclusion at a later stage of the same CIRP merely because it reached a particular conclusion earlier. We do not overlook that the Extension Order was passed under Section 12(2) of the Code, in the context of an ongoing process with resolution plans still under consideration, whereas the Impugned Order arose under Section 33(1A), after the CIRP period had fully run its course. It is also noted that the fresh restoration was being sought at a materially different statutory stage, entailing a materially different statutory test. To that extent, the two orders cannot be compared. What is nonetheless required, as a matter of the reasoned, consistent exercise, is that where an authority departs from a considered assessment it had itself earlier recorded on substantially the same underlying facts, the value of the arbitral award, the state of settlement discussions, and the applicability of the "liquidation as last resort" principle, it should, at a minimum, advert to that earlier assessment and explain why the same underlying facts no longer justify the same approach. The complete silence of the Impugned Order on this score is not, by itself, an independent ground for setting it aside but it is a significant indicator, when read together with our findings on Points (II) and (III) above, of the absence of the considered engagement with the record that the magnitude of the decision,

overriding a unanimous CoC vote and consigning the Corporate Debtor to liquidation, is called for.

48. ISSUE V- Whether the Impugned Order satisfies the standard of a reasoned, speaking order, particularly where it overrides a unanimous commercial decision of the CoC taken pursuant to a specific statutory mechanism?

49. It is well settled that the Adjudicating Authority is required to record reasons that are intelligible and demonstrate due application of mind to the material on record as reasons are the heartbeats of every conclusion, and their absence renders an order vulnerable. Measured against this standard, the entirety of the Adjudicating Authority's reasoning for overriding the CoC's unanimous resolution is contained within two paragraphs of the Impugned Order (paragraphs 15 and 16), which reads as under:

15. On perusal of the aforesaid Minutes it is further noted that the Corporate Debtor, indubitably, has only one asset in the form of an Arbitration Claim which is stated to be for an approx. amount of Rs. 800 Crores, and a settlement has been offered for a sum of Rs. 363 CR by Amicable Settlement Committee of Public Works Department, Government of Maharashtra. Except this, neither there is any business nor any business asset for resolution. In our considered view, and the restoration of the CIRP process for the purpose of realization of arbitration claim only does not justify the restoration of CIRP, as the proceeding in relation to arbitration claim can further proceed in the liquidation process also and the interest of the Corporate Debtor as well as its stakeholders shall not be prejudice in any manner. We are conscious that if CIRP is continued, the Creditors may be able to monetize unabsorbed losses available to the Corporate Debtor at the cost of Government exchequer. However, in our considered view, the resolution of corporate debtor only with objective of such monetization would not be in accordance with the spirit and intent of IBC. Accordingly, we do not find any merit in the present application and the same is liable to be rejected.

16. Since, the extended CIRP period in the present case has already expired on 21.07.2026 and there is no resolution plan before us, we consider it

appropriate to pass an order for liquidation of Corporate Debtor in terms of Section 33 (1)(a) of IBC. Accordingly, the following order is passed:-

ORDER

- a) The Corporate Debtor, **Supreme Best Value Kolhapur (Shiroli) Sangli Tollways Private Limited**, shall be liquidated in the manner as laid down in Chapter-III of the Code.
- b) **Mr. Shailesh Pranal Bhuta** having Registration No. **IBBI/TPA-001/IP-P00853/2017-2018/11436** is appointed as Liquidator of **Supreme Best Value Kolhapur (Shiroli) Sangli Tollways Private Limited**.
- c) **The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations.**
- d) That the Liquidator for conduct of the Liquidation proceedings would be entitled to the fees as provided in Regulation 4 (2) (b) of the IBBI (Liquidation Process Regulations), 2016.
- e) The Order of Moratorium declared under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to operate here from. Further, subject to the provisions of [section 52](#), there shall commence a moratorium for the purposes referred to in clauses (a) and (c) of sub-section (1) read with sub-section (3) of [section 14](#) from the date of this Order.

- f) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation.
- g) Subject to Section 52 of the Code, no suit or other legal proceeding shall be commenced, or if pending at the date of the liquidation order, shall be proceeded with by the liquidator, on behalf of the corporate debtor, except with the leave of the Adjudicating Authority and subject to such terms as the Adjudicating Authority may impose. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- h) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- i) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code read with the Liquidation Process Regulations.
- j) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- k) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

- l) The Liquidator shall submit progress reports as per Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
 - m) The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.
 - n) Registry shall furnish a copy of this Order to the **Insolvency and Bankruptcy Board of India, New Delhi; Regional Director (Western Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Maharashtra; the Registered Office of the Corporate Debtor;** and the Liquidator, **Mr. Shailesh Pranlal Bhuta,** having address 901, Regent Chambers, Nariman Point, Mumbai City, Maharashtra ,400021, having E-mail ID shaileshbhuta.cirp@gmail.com .
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50. In our considered view, these 2 paragraphs do not advert to the eleven EOIs received against the original Form G, or what they demonstrate about the Corporate Debtor's standing as a going-concern proposition independent of the bare arbitral receivable; The fact, and manner, of the CoC's deliberation across separate meetings over several months, including that liquidation was placed was rejected by the CoC. The Adjudicating Authority's own Extension Order was not discussed in the Impugned Order and no comparative assessment of realisable value between the resolution and liquidation routes was done. The Impugned Order rests instead on the proposition that the claim can proceed in either i.e. Resolution or Liquidation. We find, accordingly, that the reasoning recorded in the Impugned Order is disproportionately brief and insufficiently engaged with

the record, having regard to the magnitude of what it overrides, and does not meet the standard of a reasoned order expected of a quasi-judicial authority in the circumstances of this case.

51. ISSUE VI- What relief follows?

52. On a cumulative consideration of the foregoing, we find that the Impugned Order cannot be sustained which it overrides a unanimous, CoC decision without any cogent reasons and merely on a consideration that the monetisation of unabsorbed losses which was unpleaded, unexplained, and insufficiently supported on the record, could perhaps be misutilised. On a further consideration that the claim can equally be pursued in liquidation that does not engage with the comparative value-maximisation inquiry central to the object of Section 33(1A).

53. Before concluding, we would like to reiterate that each case is required to be dealt based on its own facts and circumstances. It is also reiterated that liquidation is the last resort as it results in the corporate death of the corporate entity. However, we need to keep in mind that prolonged CIRP extensions or restoration, as the case may be, without any likely resolution of the corporate debtor, does not also do any good to the creditors and it in this background, the parliament has passed 2026 amendment, giving sufficient discretionary powers to the adjudicating authority to decide on the issue of liquidation. If the facts of any particular case warrants that liquidation is the only remedy or the whole process seem to be vitiated based on the circumstance of the particular case, the adjudicating authority will be within rights to determine and order for liquidation

of the corporate debtor, despite any contrary recommendations of the COC, using discretion provided in the recently amendments, we discussed earlier. However, we find sufficient merit in the submissions of the appellant in the present case and simultaneously, we do not find sufficient reasoning in the impugned order justifying liquidation in the present case at this stage

54. We find sufficient merit in the appeal. The Appeal accordingly succeeds, and the Impugned Order dated 23.07.2026 is set aside. All the parties are directed to appear before the Adjudicating Authority on 26th October, 2026. The Adjudicating Authority shall process the original petition in accordance with law.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

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Chinmayee Sinha