IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.302

IA/1068(AHM)2022 in CP(IB) 5 of 2018

Under Section 60(5) & 17(1)(a) & (b) and 68 IBC r.w Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

Rajendra sanghi Liquidator For Nagaur Water Supply Company Pvt Ltd **.....Applicant**

V/s

Rakshit Dhirajlal Doshi & Ors **.....Respondents**

Order delivered on: 11/09/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

O R D E R
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

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SANJEEV SHARMA
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT–I, AHMEDABAD

I.A. No. 1068 of 2022
IN
CP(IB) No. 05/AHM/2018

(Application under Section 60(5) r/w Section 17(1)(a) and (b) and 68 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016)

In the Matter of:

RAJENDRA SANGHI LIQUIDATOR OF
M/s Nagpur Water Supply Company Pvt. Ltd.
2D, B Tower, Siddh Chhakra Apartment,
Near Sargam Shopping Center,
Park Point, Surat, Gujarat-395007

... Applicant

VERSUS

1. **RAKSHIT DHIRAJLAL DOSHI 27,**
   Ramila Baug, Basant Bahar-III,
   Opp. Homeopathic Medical College, Parul University, Bopal-Ghuma Road, Bopal, Ahmedabad-380058

2. **KUNJIT PATEL**
   Chartered Accountant
   702, Silicon Tower,
   Law Garden, Ahmedabad-380006.

3. **REGISTRAR OF COMPANIES**
   ROC Bhavan, Opp Rupal Park Society,
   Behind Ankur Bus Stop, Naranpura,
   Ahmedabad-380013, Gujarat

... Respondents

Order Pronounced On: 11.09.2026

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E:

For the Applicant : Mr. Dhananjay Sud, Advocate
For the Respondent : Ms. Vaishnavi Viswanathan, Advocate For R-1
: None for R-2 & R-3

O R D E R
(*Per:* Bench)

1. This application has been filed by Rajendra Sanghi, Liquidator of M/s. Nagaur Water Supply Company Private Limited under Section 60(5) read with 17(1)(a) and (b) and 68 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking following reliefs: -

a) *Allow the present Application;*
b) *Declare that the suspended management has violated provisions of section 17(1)(b) of the Insolvency and Bankruptcy Code, 2016 and consequently be pleased to declare that Form No. INC- 22 filed with the Respondent No. 3 i.e., Registrar of Companies is null and void and thereby set aside and quash the same;*
c) *Pass appropriate orders punishing respondent no. 1 and 2 as per the penal provisions of the Insolvency and*

Bankruptcy Code, 2016 including section 68 of the Insolvency and Bankruptcy Code, 2016;

d) Such other and further relief(s) as may deem fit in the interest of justice.

2. The Applicant has placed the facts through the I.A. and documents in the following manner: -

2.1. It is stated that CP (IB) No. 5 of 2018 was filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by Phoenix ARC Pvt. Ltd. (Trustee of Phoenix Trust FY 14-9) against Nagaur Water Supply Company Pvt. Ltd. The said Company Petition was dismissed by this Adjudicating Authority vide order dated 27.05.2020, against which an appeal was preferred before the Hon'ble NCLAT, New Delhi.

2.2. It is stated that the Hon'ble NCLAT, New Delhi, vide order dated 01.04.2021 passed in Company Appeal (AT) (Ins.) No. 690 of 2020, was pleased to set aside the said order and directed this Adjudicating Authority to admit the Application and issue further directions and orders as required under the provisions of the Code, in case the parties failed to settle the matter. A copy of the order dated 01.04.2021 passed by the Hon'ble NCLAT, New Delhi, is annexed and marked as **Annexure-A.**

2.3. It is stated that, on the basis of the order dated 01.04.2021 passed by the Hon'ble NCLAT, New Delhi,

the matter was remanded back to this Adjudicating Authority. Thereafter, this Adjudicating Authority, vide order dated 17.08.2021 passed in CP(IB) No. 5 of 2018, was pleased to admit the Corporate Debtor into Corporate Insolvency Resolution Process ("CIRP"). A copy of the CIRP admission order dated 17.08.2021 passed by this Adjudicating Authority is annexed and marked as **Annexure-B.**

2.4. It is stated that, in compliance with Sections 13, 15 and other relevant provisions of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a public announcement dated 25.08.2021 was published in the Economic Times (English) and Divya Bhaskar (Gujarati), Ahmedabad editions, and a public announcement dated 26.08.2021 was published in The Times of India (English), Jaipur edition, regarding the initiation of the CIRP against the Corporate Debtor and thereby inviting claims from the creditors of the Corporate Debtor Company. A copy of the public announcements dated 25.08.2021 and 26.08.2021 inviting claims from the creditors of the Corporate Debtor is annexed and marked as **Annexure-C.**

2.5. It is stated that, as per Section 17(1)(a) and (b) of the Code, the management of the affairs of the Corporate Debtor shall vest in the Interim Resolution

Professional, and the powers of the Board of Directors or the partners of the Corporate Debtor, as the case may be, shall stand suspended and be exercised by the Interim Resolution Professional from the date of his appointment. Section 17(1)(a) and (b) is reproduced herein below for ready reference:

> *"17. Management of affairs of corporate debtor by interim resolution professional. –*
>
> *(1) From the date of appointment of the interim resolution professional, -*
>
> *(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;*
>
> *(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;"*

2.6. It is stated that, during the subsistence of the CIRP period, the Applicant was shocked to learn that Respondent No. 1 had filed a form with the Registrar of Companies on 27.08.2021 for changing the registered office address of the Corporate Debtor with effect from 19.08.2021, i.e., after the initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor, and the same had been certified by Respondent No. 2. A copy of Form No. INC-22 filed

before Respondent No. 3 is annexed and marked as **Annexure-D.**

2.7. It is stated that the Applicant constituted the Committee of Creditors ("CoC") and submitted the Report on Constitution of the CoC dated 18.09.2021 before this Adjudicating Authority. The CoC of the Corporate Debtor comprises two Financial Creditors, namely: (1) Phoenix ARC Pvt. Ltd.; and (2) IDBI Bank Ltd.

1st Meeting of the Committee of Creditors held on 22.09.2021

2.8. It is stated that the First Meeting of the Committee of Creditors was held by the Applicant on 22.09.2021, and the notice and agenda for the 1st CoC meeting were sent by the Applicant to the CoC and the Suspended Management vide email dated 18.09.2021.

2.9. It is stated that Respondent No. 1, vide email dated 21.09.2021, had commented upon and clarified certain agendas which were to be discussed in the 1st CoC meeting. Respondent No. 1 stated and clarified the reasons for changing the registered office of the Corporate Debtor after initiation of the CIRP. A copy of the email dated 21.09.2021 issued by Respondent No. 1 to the Applicant and the CoC members is annexed and marked as **Annexure-E.**

2.10. It is stated that the 1st CoC meeting of the Corporate Debtor was held on 22.09.2021, wherein Agenda No. 6(a) with regard to the change of the registered office of the Corporate Debtor by the Suspended Board of Directors from "Building No. 9, Sigma Corporate, Behind Rajpath Club, Off. S.G. Road, Bodakdev, Ahmedabad-380054" to "A-806, Sankalp Iconic Tower, Iscon-Ambli Road, Ahmedabad-380054", after initiation of the CIRP and public announcement, was also discussed.

2.11. It is stated that, in the said CoC meeting, the Applicant apprised the CoC members that the Suspended Board of Directors had changed the registered office of the Corporate Debtor after the initiation of the CIRP and public announcement. The discussion with regard to the same was held in the 1st CoC meeting, wherein it was decided and resolved to change the address of the registered office back to the earlier premises. A copy of the minutes of the 1st CoC meeting dated 22.09.2021 is annexed and marked as Annexure-F.

2.12. It is stated that the comments of the Suspended Board of Directors were also received on the minutes of the 1st CoC meeting, wherein the reasons for the change in the registered office of the Corporate Debtor were also mentioned. A copy of the comments of the

Suspended Board of Directors/Corporate Debtor is annexed and marked as **Annexure-G.**

2.13. It is stated that, meanwhile, before any action could be taken by the Applicant, an appeal was filed before the Hon'ble Supreme Court by Doshion Private Limited, i.e., the Holding Company of the Corporate Debtor, along with the shareholder and director of the Corporate Debtor, challenging the Judgment and Final Order dated 01.04.2021 passed by the Hon'ble NCLAT, New Delhi, in Company Appeal (AT) (Ins.) No. 690 of 2020, whereby the Hon'ble NCLAT had allowed the appeal filed by Phoenix ARC Pvt. Ltd. (Trustee of Phoenix Trust FY 14-9) against the Corporate Debtor for initiation of CIRP.

2.14. It is stated that the Hon'ble Supreme Court of India vide order dated 29.10.2021 in Civil Appeal Diary No. 23031/2021 (Now Civil Appeal No. 6555 of 2021) had passed the following order:

> *"Permission to file the appeal is granted.*
>
> *Issue notice.*
>
> *Let the appeal be listed for hearing on 30th November, 2021. In the meanwhile, for a period five weeks from date or until further orders, whichever is earlier, status quo, as on today, shall be maintained."*

Copy of the order dated 29.10.2021 passed by Hon'ble Supreme Court of India in Civil Appeal Diary No.

23031/2021 (Now Civil Appeal No. 6555 of 2021) is annexed and marked as **Annexure-H.**

2.15. It is stated that the aforesaid order was forwarded by the Appellants of the said Appeal to the Applicant herein on 30.10.2021, informing the Applicant about the status quo to be maintained. A copy of the email dated 30.10.2021 issued by the Appellants of the said Appeal to the Applicant herein is annexed and marked as **Annexure-I.**

2.16. It is stated that Civil Appeal No. 6555 of 2021 was listed on 28.02.2022, and the Hon'ble Supreme Court, on the said date of hearing, passed an order stating, inter alia, **"Interim order, if any, shall continue."** A copy of the order dated 28.02.2022 passed by the Hon'ble Supreme Court of India in Civil Appeal No. 6555 of 2021 is annexed and marked as **Annexure-J.**

2.17. It is stated that, thereafter, the said Civil Appeal was listed on 31.03.2022, wherein the Hon'ble Supreme Court of India passed an order directing that the said Civil Appeal be listed on 28.04.2022. A copy of the order dated 31.03.2022 passed in Civil Appeal No. 6555 of 2021 is annexed and marked as **Annexure-K.**

2.18. It is stated that the Hon'ble Supreme Court, vide order dated 12.10.2022 passed in Civil Appeal No. 6555 of 2021, dismissed the said Civil Appeal. A copy of the

order dated 12.10.2022 passed in Civil Appeal No. 6555 of 2021 is annexed and marked as **Annexure-L.**

2nd Meeting of the Committee of Creditors held on 02.11.2022.

2.19. It is stated that, after the dismissal order dated 12.10.2022 passed by the Hon'ble Supreme Court in Civil Appeal No. 6555 of 2021, the Applicant held the 2nd CoC meeting on 02.11.2022.

2.20. It is stated that the discussion with regard to the steps to be taken against the actions of the Corporate Debtor and its Promoters for changing the registered office address of the Corporate Debtor after initiation of the CIRP was also held in the 2nd CoC meeting. The CoC, in the said meeting, resolved to make a suitable application before this Adjudicating Authority, intimating the changes made in the registered office of the Corporate Debtor, and also authorised the Applicant herein to appoint an Advocate to file a suitable application. A copy of the minutes of the 2nd CoC meeting held on 02.11.2022 is annexed and marked as **Annexure-M.**

2.21. It is stated that Respondent Nos. 1 and 2 have wilfully changed the registered office of the Corporate Debtor, and such act of Respondent Nos. 1 and 2 falls under Section 68(1)(e) read with Section 68(2) of the Code.

Therefore, Respondent Nos. 1 and 2 are liable to be punished under Section 68 of the Code. The relevant extract of Section 68 of the Code is reproduced hereinbelow for ready reference:

"68. Punishment for concealment of property.-

Where any officer of the corporate debtor has, -

(i) within the twelve months immediately preceding the insolvency commencement date, -

(a)....

(b)....

(c)....

(d)....

(e) fraudulently parted with, altered or made any omission in any document affecting or relating to the property of the corporate debtor or its affairs, or

(f).....

(g).....

(ii) at any time after the insolvency commencement date, committed any of the acts mentioned in sub-clause (a) to (f) of clause (i) or has the knowledge of the doing by others of any of the things mentioned in sub-clauses (c) to (e) of clause (i); or

(iii) ....

such officer shall be punishable with imprisonment for a term which shall not be less than three years but which

may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both:

Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to defraud or to conceal the state of affairs of the corporate debtor."

3. In response to the above averments, **Respondent 1** has filed an **Affidavit-in-Reply** on 04.09.2023 vide Inward No. D- 2873, making following submissions: -

3.1. It is stated that the change of the registered office was not intended to conceal any property of the Corporate Debtor, and neither the old nor the new registered office premises is owned by the Corporate Debtor.

3.2. It is stated that the registered office of the Corporate Debtor was shifted as the earlier office did not have sufficient space for keeping the bulky documents and records of the Corporate Debtor and for the smooth functioning of its operations. Further, the Corporate Debtor had received communications from the owner of the premises where the old registered office was situated, requiring it to vacate the office due to space constraints.

3.3. It is stated that the Suspended Directors did not conceal any facts or property of the Corporate Debtor. The Suspended Directors, suo motu, vide email dated

21.09.2021, i.e., prior to the 1st CoC meeting held on 22.09.2021, provided information and clarification to the Resolution Professional and the CoC members regarding the change of the registered office and did not conceal any facts. A copy of the email dated 21.09.2021 is annexed and marked as **Annexure-A.**

3.4. It is further stated that the new registered office is situated within 3 km of the old registered office of the Corporate Debtor. The Suspended Directors have no objection if the registered office of the Corporate Debtor is shifted back to the old address, i.e., Building No. 9, Sigma Corporate, Behind Rajpath Club, Off S.G. Road, Bodakdev, Ahmedabad, subject to obtaining the permission of the owner of the said premises.

3.5. It is further stated that the registered office of the Corporate Debtor was changed with effect from 19.08.2021, and a copy of the order of admission of CIRP of the Corporate Debtor was downloaded by the IRP, who took charge of the Corporate Debtor with effect from 23.08.2021. However, without going into the merits/facts of the matter, the Suspended Directors have no objection if the registered office of the Corporate Debtor is shifted back to the old address, i.e., Building No. 9, Sigma Corporate, Behind Rajpath Club, Off S.G. Road, Bodakdev, Ahmedabad,

subject to obtaining the permission of the owner of the said premises.

3.6. It is stated that, as far as the penalty under Section 68 of the IBC, 2016, is concerned, the Suspended Directors have not violated any provisions of Section 68 for the following reasons: -

a. The provisions of Section 68 relating to concealment of property and the change of the registered office of the Corporate Debtor do not result in concealment of any property, as neither the old nor the new registered office premises is the property of the Corporate Debtor.

b. The Suspended Directors, suo motu, provided information and clarification regarding the change of the registered office vide email dated 21.09.2021, as well as in the 1st and 2nd CoC meetings.

c. The Suspended Directors have no objection if the registered office of the Corporate Debtor is shifted back to the old address, i.e., Building No. 9, Sigma Corporate, Behind Rajpath Club, Off S.G. Road, Bodakdev, Ahmedabad, subject to obtaining the permission of the owner of the said premises.

d. The Corporate Debtor had received communications from the owner of the premises where the old registered office was situated, requiring it to vacate the office due to space constraints.

e. Therefore, the Suspended Directors did not wilfully conceal any facts and did not fraudulently part with, alter, or make any omission in any document affecting or relating to the property of the Corporate Debtor or its affairs.

4. Vide an order dated 15.10.2024 it is recorded that Ld. Counsel for the Applicant/Liquidator stated that there is no need to file any Rejoinder. Hence, both the sides were directed to file brief submissions within a period of 10 days not more than three pages by exchanging with each other well in advance before the next date of hearing.

5. The Applicant/Liquidator has filed its written submission on 20.02.2025 vide inward diary No.D-1000. The relevant portion of the same are reproduced as under: -

5.1. It is stated that, during the CIRP of the Corporate Debtor, it came as a shock to the Resolution Professional to learn that Respondent No. 1 had filed Form No. INC-22 with the Registrar of Companies on 27.08.2021, i.e., post initiation of the CIRP of the Corporate Debtor, for changing the address of the Registered Office of the Corporate Debtor with effect from 19.08.2021, i.e., after the initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor (refer to ANNEXURE – D of the captioned Application). It is further stated that the said Form was certified by Respondent No. 2, being the Chartered Accountant of the Corporate Debtor, who was hand in glove with the illegal acts of Respondent No. 1, in complete violation of the

provisions of the Insolvency and Bankruptcy Code, 2016, with an attempt to delay and frustrate the Corporate Insolvency Resolution Process of the Corporate Debtor.

5.2. It is stated that the purported issue was discussed in the 1st Meeting of the Committee of Creditors of the Corporate Debtor held on 22.09.2021 and, accordingly, upon the assent of the Committee of Creditors of the Corporate Debtor in its 2nd Meeting held on 02.11.2022, the captioned Application was filed by the Resolution Professional of the Corporate Debtor before this Adjudicating Authority on 23.11.2022.

5.3. It is stated that Respondent No. 1, in his Reply, has contended that the Registered Office of the Corporate Debtor was shifted for administrative convenience, to maintain the records of the Corporate Debtor in a proper manner and at a better place. It is further stated that the aforesaid contention of Respondent No. 1 is baseless, in view of Section 17 of the Insolvency and Bankruptcy Code, 2016, which envisages and stipulates that, upon the appointment of the Interim Resolution Professional of the Corporate Debtor, the management of the affairs of the Corporate Debtor, as well as the powers of the Board of Directors of the

Corporate Debtor, stand suspended and vest with the Interim Resolution Professional.

5.4. It is further stated that, on behalf of the Applicant, it is argued that the act of shifting the Registered Office of the Corporate Debtor had legal and operational implications and was done with the deliberate intent to disrupt the Corporate Insolvency Resolution Process of the Corporate Debtor, in violation of Section 14(1)(b) of the Insolvency and Bankruptcy Code, 2016, which prohibits the transfer by the Corporate Debtor of any of its assets.

5.5. It is further stated that Respondent No. 1, in his Reply, has contended that he had disclosed the change in the Registered Office of the Corporate Debtor vide email dated 21.09.2021, prior to the 1st Meeting of the Committee of Creditors of the Corporate Debtor. However, it is stated that such ex post facto disclosure by Respondent No. 1 does not validate or cure the illegal action undertaken by the suspended management of the Corporate Debtor in contravention of the provisions of the Insolvency and Bankruptcy Code, 2016.

5.6. It is further stated that Respondent No. 1, in his Reply, has contended that Section 68 of the Insolvency and Bankruptcy Code, 2016 is not applicable, as there was no concealment of any property. It is stated that,

to counter the aforesaid contention of Respondent No. 1, Section 68(1)(b) and (e) of the Insolvency and Bankruptcy Code, 2016 also covers the fraudulent parting with or alteration of any document affecting the affairs of the Corporate Debtor. It is further stated that the unauthorised shifting of the Registered Office of the Corporate Debtor constitutes an "alteration" of records relating to the Corporate Debtor, thereby attracting the penal provisions of Section 68 of the Insolvency and Bankruptcy Code, 2016.

6. Thereafter, the Respondent No.1 has also filed its written submission on 06.08.2025 vide inward diary No.D-54104.

The relevant portion of the same are reproduced as under:

6.1. It is stated that, at the outset, Respondent No. 1 submits that the allegations made by the Original Applicant (RP)/Liquidator in Interlocutory Application No. 1068 of 2022 are baseless, as the Applicant has failed to prove that the act of Respondent No. 1 was, in any manner, done with malicious intent or with an intention to disrupt the smooth conduct of the CIRP/Liquidation Process of the Corporate Debtor.

6.2. The provision of Section 68 of the IBC, 2016 reads: -

68. Punishment for concealment of property. —Where any officer of the corporate debtor has, —

(i) **within the twelve months immediately preceding** the insolvency commencement date, —

(a) wilfully concealed any property or part of such property of the corporate debtor or concealed any debt due to, or from, the corporate debtor, of the value of ten thousand rupees or more; or

(b) fraudulently removed any part of the property of the corporate debtor of the value of ten thousand rupees or more; or

(c) wilfully concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the property of the corporate debtor or its affairs, or

(d) wilfully made any false entry in any book or paper affecting or relating to the property of the corporate debtor or its affairs; or

(e) fraudulently parted with, altered or made any omission in any document affecting or relating to the property of the corporate debtor or its affairs; or

(f) wilfully created any security interest over, transferred or disposed of any property of the corporate debtor which has been obtained on credit and has not been paid for unless such creation, transfer or disposal was in the ordinary course of the business of the corporate debtor; or

(g) wilfully concealed the knowledge of the doing by others of any of the acts mentioned in clauses (c), (d) or clause (e); or

(ii) at any time after the insolvency commencement date, committed any of the acts mentioned in sub-clause (a) to (f) of clause (i) or has the knowledge of the doing by others of any of the things mentioned in sub-clauses (c) to (e) of clause (i); or

(iii) at any time after the insolvency commencement date, taken in pawn or pledge, or otherwise received the property knowing it to be so secured, transferred or disposed,

such officer shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both:

Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to defraud or to conceal the state of affairs of the corporate debtor.

6.3. Therefore, it is stated that the essential ingredients for the application of the aforesaid Section are: (i) an intent to defraud; or (ii) concealment of the state of affairs of the Corporate Debtor.

6.4. **Lack of Intent to Defraud:** It is stated that the Applicant has failed to establish that there was any criminal intent (mens rea) on the part of Respondent No. 1 in committing the alleged act of concealment of property, which is prima facie evident from the fact that Respondent No. 1 had himself, suo motu, informed the RP/Applicant and sought his consent for shifting the records of the Corporate Debtor vide email dated 21.09.2021. Hence, it is respectfully submitted that the essential requirements for holding Respondent No. 1 guilty under Section 68 of the IBC, 2016 are not fulfilled.

6.5. **No Concealment:** It is stated that:

i. Respondent No. 1, suo motu, informed the Resolution Professional and sought the consent of the Applicant/RP for shifting the Registered Office of the Corporate Debtor vide email dated 21.09.2021. A copy of the said email of Respondent No. 1 is annexed to the Reply of Respondent No. 1 as Annexure "A" at Page No. 8.

ii. It is equally pertinent to state that neither the old nor the new Registered Office premises was owned by the Corporate Debtor.

iii. It is respectfully submitted that the relocation of the Registered Office of the Corporate Debtor was undertaken for operational efficiency and practical necessity.

iv. It is stated that the previous office premises was insufficient in size to accommodate the voluminous documents pertaining to the operations of the Corporate Debtor.

v. It is further stated that the Corporate Debtor had received communications from the owner of the former premises requesting it to vacate the premises due to space constraints. This necessitated the relocation to a more suitable facility.

vi. It is respectfully submitted that shifting of the Registered Office of the Corporate Debtor does not constitute an "alteration" of records relating to the Corporate Debtor so as to attract the provisions of Section 68 of the Insolvency and Bankruptcy Code, 2016. Moreover, the Applicant has neither stated nor proved that any material or visible changes were made in the records of the Corporate Debtor pursuant to the shifting of the Registered Office.

6.6. In view of the above submissions, it is humbly submitted by Respondent No. 1 that the present Interlocutory Application No. 1068 of 2022, filed by the Original Applicant (RP)/Liquidator under Section 68 of the Insolvency and Bankruptcy Code, 2016, has been filed without any substantial evidence or concrete proof. In view of the above, Respondent No. 1 humbly prays before this Adjudicating Authority that:

6.7. This Hon'ble Tribunal may be pleased to dismiss the present Interlocutory Application No. 1068 of 2022; and b. Pass such further order(s) and/or grant such other relief(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

7. We have heard the learned Counsel for the Applicant/Liquidator and the learned Counsel for Respondent No.1 and have carefully perused the

pleadings, written submissions and material on record. We have also considered Annexures-A to-M, including Form INC-22 at Annexure-D, email dated 21.09.2021 at Annexure-E, and the minutes of the CoC meetings at Annexures-F and M.

8. The Corporate Debtor was admitted into CIRP on 17.08.2021 and, consequently, by virtue of Section 17(1)(a) and (b) of the Code, management vested in the IRP and the powers of the Board stood suspended. The filing of Form INC-22 on 27.08.2021 seeking change of registered office with effect from 19.08.2021 was, therefore, an act undertaken without authority of the IRP.

9. The subsequent disclosure made by Respondent No.1 through email dated 21.09.2021 and the explanation regarding inadequacy of the earlier premises may explain the circumstances, but cannot revive the powers statutorily suspended under Section 17 of the Code. The change of registered office during CIRP, without authority of the IRP/RP, was accordingly impermissible.

10. However, the material on record does not establish that Respondent No.1 or Respondent No.2 concealed, removed or dealt with any property of the Corporate Debtor, or fraudulently altered any book, paper or document relating to its property or affairs. It is also undisputed that neither the old nor the new premises belonged to the Corporate Debtor.

11. Section 68 of the Code being penal in character, its ingredients must be established strictly in accordance with the statutory provision. The mere unauthorised change of registered office, without proof of the specific fraudulent or wilful act contemplated by Section 68, cannot by itself attract penal liability thereunder. The statutory proviso further protects a person who establishes absence of intent to defraud or conceal the state of affairs of the Corporate Debtor.

12. In the present case, the Applicant has not placed sufficient material to establish that the filing of Form INC-22 was accompanied by an intent to defraud or to conceal the state of affairs of the Corporate Debtor. The

contemporaneous disclosure made by Respondent No.1 on 21.09.2021 and his stated willingness to restore the earlier address, subject to availability of the premises, also do not establish such fraudulent intent.

13. As regards the prayer for punishment under Section 68, this Adjudicating Authority has no jurisdiction to convict or impose punishment for an offence under Chapter VII of Part II of the Code. In ***Ajay Vij & Anr. v. Abhishek Dutta & Anr.,*** (2025) ibclaw.in 158 NCLAT, decided on 28.02.2025, the Hon'ble NCLAT held that offences under Section 68 are triable by the Special Court under Section 236 of the Code.

14. Consequently, the act of Respondent No.1 in effecting the change of registered office during CIRP without authority of the IRP/RP cannot be sustained and is held to be contrary to Section 17 of the Code. Nevertheless, the evidence presently available does not establish the ingredients necessary for invoking Section 68. The prayer for penal action under Section 68 is, therefore, liable to be rejected.

15. In view of the foregoing, I.A. No.1068 of 2022 is partly allowed to the extent that the change of registered office effected during CIRP without authority of the IRP/RP is held impermissible under Section 17 of the Code; however, the prayer for punishment under Section 68 is rejected. Respondent No.3/Registrar of Companies shall take consequential action in accordance with law in respect of Form INC-22.

16. Accordingly, **I.A. No.1068 of 2022** stands **disposed of.** No order as to costs.

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SANJEEV SHARMA
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)

VP