NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1247 of 2025

[Arising out of the common order dated 12.06.2025 passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi Bench-IV) in I.A. No. 4286/ND/2024 in CP (IB) No. 18 of 2023]

IN THE MATTER OF:

Intarvo Technologies Private Limited
55, 2nd Floor, Lane 2 Westend Marg,
Saidullajab, Near Saket Metro Station
New Delhi **...Appellant**

Versus

1. **Vivek Jairath**
   Proprietor of M/s Jairath Constructions
   6/197 Chiranjeev Vihar Ghaziabad,
   Uttar Pradesh – 201002 **... Respondent No.1**

2. **Vinay Kumar Singhal**
   Erstwhile Resolution Professional of
   Intarvo Technologies Private Limited
   411, Fourth Floor, Essel House,
   Asaf Ali Road, Near Turkman Gate,
   New Delhi – 110002 **... Respondent No.2**

Present:

For Appellant : Mr. Krishnendu Datta, Sr. Advocate with Ms. Aditi Sharma and Ms. Navya Sharma, Advocates.

For Respondents : Mr. Vipin Garg, Ms. Anshita Girdhar and Mr. Abhishek Aggarwal, Advocates for R-1.

Mr. Suraj Sharma, Advocate for R-2 (RP).

With
Company Appeal (AT) (Insolvency) No. 1277 of 2025
&
I.A. No. 5002 of 2025

IN THE MATTER OF:

Sonoma Management Partners Private Limited
Plot No-819, Sindh Housing Society,
Aundh, Pune, Maharashtra – 411007 **...Appellant**

Versus

1. **Intarvo Technologies Private Limited**
   55, 2nd Floor, Lane 2 Westend Marg
   Saidullajab, Near Saket Metro Station,
   New Delhi **... Respondent No. 1**

2. **Vivek Jairath**
   Proprietor of M/s Jairath Constructions
   6/197 Chiranjeev Vihar Ghaziabad,
   Uttar Pradesh – 201002 **... Respondent No. 2**

3. **Vinay Kumar Singhal**
   Erstwhile Resolution Professional of
   Intarvo Technologies Private Limited
   411, Fourth Floor, Essel House,
   Asaf Ali Road, Near Turkman Gate,
   New Delhi – 110002 **... Respondent No. 3**

Present:

For Appellant : Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha and Ms. Katyayani, Advocates.

For Respondents : Mr. Krishnendu Datta, Sr. Advocate with Ms. Aditi Sharma, Ms. Navya Sharma, Advocates for R-1.

Mr. Vipin Garg, Ms. Anshita Girdhar and Mr. Abhishek Aggarwal, Advocates for R-2.

Mr. Suraj Sharma, Advocate for R-3 (RP).

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

These two Appeals arise out of the common order dated 12.06.2025 passed by the Learned National Company Law Tribunal, New Delhi Bench-IV ("Adjudicating Authority") in I.A. No. 4286/ND/2024 in CP (IB) No. 18 of 2023. By the impugned order, the Adjudicating Authority allowed an application

under Section 65 of the Insolvency and Bankruptcy Code, 2016 ("the Code") and recalled the order dated 16.10.2023 by which the Corporate Insolvency Resolution Process ("CIRP") of Intarvo Technologies Private Limited had been initiated under Section 10 of the Code. The Adjudicating Authority also imposed a penalty of ₹5,00,000 on the Corporate Applicant for fraudulent and malicious initiation of proceedings under Section 65(1) of the Code.

2. Company Appeal (AT) (Ins.) No. 1247 of 2025 has been filed by Intarvo Technologies Private Limited, the Corporate Applicant, through its authorised director, Mr. Amit Gautam, under Section 61(1) of the Code read with Rule 11 of the National Company Law Appellate Tribunal Rules, 2016. Company Appeal (AT) (Ins.) No. 1277 of 2025, has been filed by Sonoma Management Partners Private Limited, the Successful Resolution Applicant, whose resolution plan was approved by the Committee of Creditors on 23.07.2024 with 71.32% votes, while the application for approval of the plan was pending before the Adjudicating Authority.

Brief facts

3. Intarvo Technologies Private Limited filed an application under Section 10 of the Code, acknowledging default in payment of an aggregate debt of ₹2,29,10,842. The claimed debt was bifurcated as operational debt of ₹1,61,45,354, including statutory liabilities towards ESIC, GST and Service Tax, and financial debt of ₹67,65,488 towards related parties. The application was admitted on 16.10.2023 and CIRP commenced against the Corporate Debtor.

(In Rs.)

Sr.No.	Operational creditor	Amount
1.	ESIC unpaid	12,21,055
2.	GST unpaid	35,53,157
3.	Penalty and Interest on delayed payment of PF	33,86,898
4.	Service Tax Interest on delayed payment	71,99,005
5.	Interest on delayed payment of GST	7,45,239
	Total	**1,61,45,354**

Sr.No.	Unsecured Financial Creditors	Amount
1.	Kailash Vahan Udyog Limited	1,10,000
2.	SONOMA Management Partners Private Limited	63,80,488
3.	Pravin Jain	2,74,725
	Total	**67,65,488**

4. The following claims were received during the CIRP:

Particulars	Amount Claimed (Rs.)	Amount Admitted (Rs.)
Financial Creditors	73,13,695	73,13,695
Operational Creditors (Statutory Dues)	2,16,82,947	2,15,35,197
Operational Creditors (Others)	2,45,375	33,708
Total	2,92,42,017	2,88,82,600

Sr. No	Name of Creditor	Claim Admitted (Amount in Rs.)
1.	Employees State Insurance Corporation	1,00,56,509/-
2.	Mr. Anshuman Thukral Excise & Taxation Officer cum Assessing Authority, Ward No. 2, Gurugram (East)	3,861/-
3.	Assistant Commissioner Division Hauz Khas, CGST South Commissionerate New Delhi	53,26,570/-
4.	Regional Provident Fund Commissioner Regional Office, RO Delhi (East)	61,48,257/-
5.	Central Depository Service (India) Limited	33,708/-
6.	**Total**	**2,15,68,905**

5. During CIRP, the Resolution Professional published Form G on 28.01.2024 inviting expressions of interest. Two resolution plans were received. The resolution plan submitted by Sonoma Management Partners

Private Limited was approved by the Committee of Creditors in its seventh meeting held on 23.07.2024 by 71.32% votes. The Resolution Professional thereafter filed I.A. (IBC) (Plan) 39/2024 on 06.08.2024 seeking approval of the resolution plan, which remained pending.

6. Respondent No. 1, Vivek Jairath, proprietor of M/s Jairath Constructions, had obtained a decree dated 05.11.2022 from the Court of the learned Additional District Judge, Saket, New Delhi, in CS No. 7495 of 2016, for ₹47,09,737 along with interest. He filed his claim before the Resolution Professional on 08.08.2024, after approval of the resolution plan by the Committee of Creditors. The claim was rejected on 10.08.2024 as belated.

7. Instead of pursuing the statutory remedy relating to admission of its claim, Respondent No. 1 filed I.A. No. 4286/ND/2024 under Section 65 of the Code. He alleged that the Corporate Applicant had deliberately initiated CIRP after the decree, excluded his name from the list of Operational Creditors in Part-III of Form 6, and thereby sought to defeat his lawful claim. He also filed I.A. No. 4400/2024 under Section 60(5) of the Code seeking, inter alia, admission of his claim and reconstitution of the Committee of Creditors.

8. The Adjudicating Authority, by the impugned order, held that the Section 10 application was vitiated by fraudulent and malicious intent. It recalled the admission order dated 16.10.2023, terminated CIRP, restored the Corporate Debtor to its pre-CIRP position, discharged the Resolution Professional, and imposed a penalty of ₹5,00,000 on the Corporate Applicant under Section 65(1) of the Code.

The Impugned Order

9. The Ld. Adjudicating Authority decided I.A. No. 4286 of 2024 alone. By the impugned order dated 12.06.2025, it recalled the order dated 16.10.2023 initiating the CIRP, with the following findings:

(a) The Corporate Debtor failed to consider/disclose the legitimate claims of Respondent no.1 (Vivek Jairath).

(b) Board of directors consisted of only two additional directors wef 29.03.2019 and their term expired on 30.09.2019, in the absence of any director on board no EGM could be convened for 05.12.2022 and no special resolution authorizing to initiate CIRP u/s 10 could be passed.

(c) In the audited balance sheet for FY 2019-20 corporate debtor has written off a substantial amount of ₹ 7.05 crores in receivables from related parties.

(d) The purported liability of ₹ 1.61 crore towards operational debt basis which application to initiated CIRP was filed appears inflated.

(e) Application filed u/s 10 of the Code is vitiated by fraudulent and malicious intent.

10. The Ld. Adjudicating Authority issued the following order:

(A) The application under Section 65 i.e IA/4286/ND/2024 in C.P. IB-18/ND/2023 of the Code is hereby allowed.

(B) As a result, the order dated 16.10.2023 passed by this Adjudicating Authority in C.P. IB-18/ND/2023 is hereby recalled. Consequently, Company Petition No. (IB) 174 (ND) of 2021 stands disposed of and is hereby closed. We further impose a penalty of 5,00,000/- (Rupees Five Lakh) against the Corporate Applicant i.e. Intarvo Technologies Private Limited for fraudulent and malicious initiation of proceedings as per Section 65(1) of the Code, to be deposited with the Insolvency and Bankruptcy Board of India (IBBI) within 30 days from the date of this order.

(C) As a natural corollary to the recall of the admission order, the Corporate Debtor is hereby restored to its legal status as it existed immediately prior to the commencement of the Corporate Insolvency Resolution Process (CIRP).

(D) In view of the foregoing, the services of Mr. Vinay Kumar Singhal, Resolution Professional, are no longer required, and he stands discharged of all duties and responsibilities with immediate effect. He is further directed to forthwith hand over the custody and possession of all documents, records, files, books of account, digital data, and any other property or material pertaining to the Corporate Applicant, to its Board of Directors or such authorized representative(s) as may be duly nominated by the Corporate Applicant. He shall also ensure that the control and management of the Corporate Debtor is effectively and seamlessly reverted to its erstwhile management without any delay. Additionally, the

Resolution Professional shall take all necessary steps to facilitate the restoration of banking operations to the Corporate Debtor, including but not limited to, ensuring that the authorized signatories to the Corporate Applicant's bank accounts are appropriately modified and restored to the pre-CIRP position. A compliance report confirming the completion of the aforesaid actions shall be filed before this Adjudicating Authority within two weeks from the date of this order.

(E) The Registry is further directed to forward a copy of this order to the IBBI for its records and necessary action.

Submissions of the Corporate Debtor in CA (AT) (Ins.) No. 1247 of 2025

11. The Corporate Debtor says it was non-functional from 2021 onwards. Due to losses and financial crunch, it could not pursue the civil suit CS No. 7495 of 2016 filed by Vivek Jairath. The orders in that suit from February 2022 onwards show that the matter was posted for appearance of the defendant, that court notice could not be served on it, and that no one appeared for it on several dates. The Corporate Debtor adds that the orders reflect no appearance on its behalf from 24.03.2021 onwards. The trial court then heard Vivek Jairath alone and passed the final judgment in his favour, and the counter claims of the Corporate Debtor were dismissed. The Corporate Debtor therefore says that the finding of non-disclosure of legitimate claims is wrong. Since it had itself admitted its default, there was no reason to exclude his claim deliberately. It had no knowledge of the decree dated 05.11.2022, and that is the only reason the claim was not admitted at the first instance.

12. The ‘debt’ and ‘default’ were fully established as required under the Code, and the Ld. Adjudicating Authority admitted the petition on that basis. That order, it says, attained finality, and the extendable period of limitation has already been crossed. It cannot be reopened indirectly through what it calls frivolous assertions in I.A. No. 4286 of 2024. It further says that including the decree debt would only have raised the threshold for admission of the Section 10 application. It would not have changed the basic nature of the petition or of the debt. The claims received during the CIRP were more than the amount originally admitted as default.

13. The CIRP was initiated on 16.10.2023. All creditors were served on the direction of the Ld. Adjudicating Authority dated 04.01.2023, and the public announcement was made on 24.10.2023. Vivek Jairath filed his claim only on 08.08.2024. According to the Corporate Debtor, such a claim could not have been admitted in light of the judgment passed in **RPS Infrastructure vs Mukul Kumar, 2023 INSC 816.** It also says that instead of seeking condonation of delay for admission of his claim, Vivek Jairath filed an application under Section 65 to set aside the CIRP and, at the same time, another application under Section 60(5) seeking admission of his claim. In its view, these two applications seek contrary reliefs.

14. The Corporate Debtor says that the Ld. Adjudicating Authority ignored I.A. No. 4400 of 2024 and the alternative prayer for admission of the claim and reconstitution of the CoC. It says the Ld. Adjudicating Authority decided I.A. No. 4286 of 2024 alone, did not consider the facts pleaded in its written submissions, and acted with a predetermined and prejudiced mind.

15. On the authority to file the Section 10 application, the Corporate Debtor says that Mr. Amit Gautam and Mr. Sudarshan Kumar were appointed as additional directors on 29.03.2019. They were confirmed as directors in the board meeting held on 04.09.2019 and by the shareholders in the AGM held on 30.09.2019. The company merely failed to file Form DIR 12 and make other compliances due to financial crunch. In its submission, the EGM held on 05.12.2022 authorising Mr. Amit Gautam to file the Section 10 application is therefore valid. Procedural errors cannot defeat substantive rights, particularly when they are curable. Non-reporting of the appointment of directors to the ROC can, at best, attract a penalty (Section 172 of the Companies Act, 2013). The actions of the director are protected by Section 176 of the Companies Act, 2013, which states that defects in appointment of directors do not invalidate actions taken by them. It adds that, in any case, there is no defect in the appointment of the directors. It therefore says the Ld. Adjudicating Authority wrongly held that the special resolution dated 05.12.2022 authorising the director to file the Section 10 application is illegal.

16. On the write-off of ₹ 7.05 crore, the Corporate Debtor says that its statutory auditors had recommended, in the audit report for F.Y. 2011-12, making provisions against loans and advances given to its wholly owned subsidiaries, whose net worth had gone negative. The same suggestion was made in the audit reports for F.Y. 2012 to 2019. The board, in its financial prudence, finally decided on 30.05.2019 to write off the debt of ₹ 7.05 crore of the subsidiary company, as per law. It adds that the RP has filed an

application under Section 66 of the Code reporting this transaction, which is pending consideration.

17. On the operational debt, the Corporate Debtor says that its balance sheet for F.Y. 2021-2022 showed current liabilities of ₹ 48,14,212 and short-term provisions of ₹ 1,13,31,142, in total ₹ 1,61,45,354. The provision of ₹1,13,31,142 included penalty and interest on delayed payment of PF of ₹33,86,898, Service Tax interest on delayed payment of ₹ 71,99,005 and interest on delayed payment of GST of ₹ 7,45,239. It says the Section 10 application was filed on the basis of this operational debt, including the amount of ₹ 1,13,31,100 towards statutory dues accounted for as 'provision'. The Ld. Adjudicating Authority wrongly called this an inflated debt, because the mere recording of a debt as a provision does not mean it is not a debt.

18. The Corporate Debtor explains the provision as follows. The EPFO, by letter dated 04.01.2019, demanded ₹ 38,86,898 towards interest and damages. An appeal was preferred against it and a stay was granted, so the demand was provided for in the books. During the CIRP, the EPFO filed a claim of ₹ 61,48,257, which was admitted. Delay in depositing service tax for the years 2014-15 to 2017-18 led to accumulated interest of ₹ 74,42,436. The Office of the Commissioner, CGST, Audit II, Delhi confirmed this interest by audit report dated 10.08.2021. The company had applied under the amnesty scheme for waiver of interest and, expecting a waiver, provided for the amount in its books. A claim of ₹ 53,26,570/- was filed by GST authorities. On this basis, the Corporate Debtor says the claims were final and crystallised, and

not inflated. In fact, the claims admitted by the RP during the CIRP were more than the claim it had acknowledged.

19. On intent, the Corporate Debtor relies on the judgment of this Appellate Tribunal in **Getz Cables Private Limited vs State Bank of India CA (AT)(INS) No. 1953 of 2024.** It was noted there that, for proving a malicious intent, two elements are required to be proved:

(i) To commit a wrongful act with absence of any justification

(ii) Intent of causing a particular harm

20. The Corporate Debtor says that neither element is present or can be shown against it for filing the Section 10 application. It says that the reliance of the Ld. Adjudicating Authority, in para 16, on the judgment of **West Bengal State of Electricity Board vs Dilip Kumar Ray, (2007) 14 SCC 568 is** also erroneous. According to it, the non-admission of the claim of Vivek Jairath was neither intentional nor with any wrongful motive. The Section 10 application was not filed with an ulterior motive, but only to exercise a statutory right under the Code. The Corporate Debtor also relies on the judgment in **Unigreen Global Pvt Ltd vs PNB & Ors 2017 SCC OnLine NCLAT 566 (CA (AT) (Ins.) No. 81 of 2017)**.

21. Lastly, the Corporate Debtor says that the resolution plan of Sonoma was approved by a CoC made up solely of statutory authorities. If the CIRP is reinitiated, they will recover their dues as proposed in the plan, which is more than the liquidation value of the company. The interest of Vivek Jairath can also be protected if the CoC considers a revised resolution plan including his

claim. It therefore suggests that a consent order may be passed to decide this appeal along with CA (AT) (Ins.) No. 1277 of 2025.

Submissions of Sonoma in CA (AT) (Ins.) No. 1277 of 2025

22. Learned counsel for Sonoma submits that the resolution plan of Sonoma was approved by the CoC on 23.07.2024 with 71.32% votes. The application seeking approval of the plan, I.A. (IBC) (Plan) 39/2024, is pending adjudication before the Ld. Adjudicating Authority. Even so, the Ld. Adjudicating Authority, solely on the basis of the allegations in I.A. No. 4286 of 2024 filed by Vivek Jairath, recalled the CIRP admission order dated 16.10.2023 by the impugned order.

23. Sonoma says that, being the successful resolution applicant, it was a proper and necessary party. It was neither made a party to the Section 65 application nor given any opportunity of being heard.

24. Sonoma further says that Vivek Jairath had himself filed I.A. No. 4400 of 2024, seeking admission of his claim and reconstitution of the CoC. The Ld. Adjudicating Authority ignored this. In Sonoma's submission, the Ld. Adjudicating Authority should have seen that the CIRP already stood concluded on approval of the resolution plan. In keeping with the object of the Code, it could have considered the claim of Vivek Jairath on merits. If the claim were admitted, Sonoma could have provided for it in its resolution plan.

25. Sonoma says that it has invested time, value and effort in the resolution of the Corporate Debtor. It has suffered a fatal blow from the actions and

omissions of others, and has been left without any protection. It has therefore filed this appeal.

Stand of the Respondents

26. Vivek Jairath, who filed the Section 65 application before the Ld. Adjudicating Authority, has not filed a reply in these appeals. His counsel stated in open court that, since his claim is being considered, he does not intend to file any reply. Respondent No. 1 has stated, as recorded in the orders dated 18.09.2026 and 15.10.2026, that if his claim is considered by the Successful Resolution Applicant he has no objection to the appeal being allowed. Respondent No. 2, the erstwhile Resolution Professional, Mr. Vinay Kumar Singhal, has filed written submissions dated 22.10.2026.

Subsequent developments and further submissions

27. After the matter was heard, and pursuant to the orders dated 18.09.2026 and 15.10.2026, the Successful Resolution Applicant, the erstwhile Resolution Professional and the Corporate Applicant filed further written submissions dated 23.10.2026, 22.10.2026 and 26.10.2026 respectively. In compliance with the order dated 15.10.2026, the Corporate Applicant also filed an additional affidavit of its director, Mr. Amit Gautam, disclosing its creditors and the amounts outstanding against them, along with the master data of the Corporate Debtor as per the record of the Registrar of Companies on the portal of the Ministry of Corporate Affairs.

28. The Successful Resolution Applicant submits that its resolution plan, approved by the Committee of Creditors on 23.07.2024 with 71.32% votes, offers ₹ 50,00,000 (enhanced from ₹ 45,00,000 by addendum dated 27.06.2024 and 02.07.2024) against admitted claims of ₹ 2,88,82,600, a value

stated to exceed the liquidation value of the Corporate Debtor. It submits that its plan could not have provided for the claim of Respondent No. 1, as that claim was filed only on 05.08.2024, after the Committee of Creditors had approved the plan on 23.07.2024, was not reflected in the Information Memorandum, and was not within the knowledge of the Resolution Professional or the Successful Resolution Applicant when the plan was submitted.

29. On the scope of Section 65, the Successful Resolution Applicant relies on Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17, for the primacy of resolution and revival over liquidation; on Getz Cables Pvt. Ltd. v. State Bank of India, CA (AT) (Ins) No. 1953 of 2024, for the proposition that fraudulent or malicious intent must be specifically pleaded and proved, and that something more is required than the effect of the CIRP upon a creditor's recovery; and on Unigreen Global Pvt. Ltd. v. Punjab National Bank, CA (AT) (Ins) No. 81 of 2017, for the proposition that non-disclosure of facts not required by the Code or the prescribed form does not amount to suppression in a Section 10 application. It submits that the non-inclusion of the claim of Respondent No. 1 could not be a purpose other than for the resolution of insolvency within the meaning of Section 65, as the Corporate Debtor was itself admitting all its dues and inclusion of the claim would only have raised the threshold.

30. The Successful Resolution Applicant states that it is ready and willing to include the claim of Respondent No. 1 in a revised resolution plan, on the same terms as other creditors of its class, if upon restoration of the Corporate

Insolvency Resolution Process the claim is admitted on merits; and that Respondent No. 1 has, in the orders dated 18.09.2026 and 15.10.2026, stated that it has no objection to the appeal being allowed if its claim is so considered. It prays that a consent order be passed.

31. The erstwhile Resolution Professional states that, pursuant to the impugned order dated 12.06.2025, he handed over all files, records, data and banking control of the Corporate Debtor to its directors on 12.07.2025 and filed a compliance report, being I.A. No. 3733/ND/2025, which was taken on record on 04.08.2025; and that he filed Form INC-28 with the Registrar of Companies on 26.06.2026 in respect of the recall, which was approved, although the Master Data of the Ministry of Corporate Affairs continues to reflect the Corporate Debtor as being under the Corporate Insolvency Resolution Process.

32. He further states that, consequent upon the recall, the Adjudicating Authority on 10.09.2025 dismissed as infructuous I.A. No. 1110/ND/2025 (filed by Aramex India Pvt. Ltd. under Section 65), I.A. No. 2041/ND/2025 (filed by the Employees' State Insurance Corporation under Section 60(5)), I.A. (IBC) (Plan) No. 39/2024 (for approval of the resolution plan) and I.A. No. 2737/ND/2024 (his own application under Section 66 in respect of alleged fraudulent transactions of ₹ 10.07 crore); that, after approval of the plan, further claims and liabilities aggregating ₹ 4,87,78,115 were received, namely of M/s Jairath Constructions (₹ 1,19,95,892), Aramex India Pvt. Ltd. (₹77,92,648) and the Employees' State Insurance Corporation (₹ 2,89,89,575); and that, in the event the appeal is allowed and the Corporate Insolvency

Resolution Process is revived, directions may be issued for a fresh determination and verification of the claims and liabilities of the Corporate Debtor, having regard to the lapse of more than a year.

33. In its additional affidavit, the Corporate Applicant sets out the creditors shown in Part III of its Section 10 application and the claims admitted by the Resolution Professional before approval of the resolution plan. It states that, after approval of the plan, the following claims were received by the Resolution Professional, or applications were filed by third parties, the amounts being unverified by the Resolution Professional: (i) M/s Jairath Constructions, through Respondent No. 1, for ₹ 1,24,87,382, comprising principal of ₹47,09,737, interest of ₹ 71,86,155 till the CIRP, interest of ₹ 4,91,490 after the CIRP till 05.08.2024, and litigation cost of ₹ 1,00,000; (ii) Aramex India Pvt. Ltd. for ₹ 77,92,648, which, as informed by the Resolution Professional by e-mail dated 21.10.2026, filed I.A. No. 1110/2025 before the Adjudicating Authority seeking admission of its claim, but filed no claim with the Resolution Professional; and (iii) the Employees' State Insurance Corporation for ₹ 2,89,89,575, which filed I.A. No. 2041/2025 seeking condonation of delay in filing its claim. It further discloses a decree for ₹ 8,28,394 with interest passed on 02.08.2021 in favour of M/s S2 Infotech International Ltd. in CS DJ No. 497/18 (Saket Court), and an order for ₹ 33,000 passed by the Labour Court on 22.05.2023 in favour of Mr. Rajesh Kumar (LC 858/2016), in respect of which no claims were filed during the CIRP. It states that the debts against which charges appear in the record of the Registrar of Companies stand satisfied, that there is no secured creditor, and that, having

acknowledged its debts in the Section 10 application, it had no reason to be discreet about any claim or debt had the same been within its knowledge. We note that the figure of ₹ 1,19,95,892 stated by the erstwhile Resolution Professional for M/s Jairath Constructions excludes the interest of ₹ 4,91,490 claimed for the period after the commencement of the CIRP.

34. In its written submissions dated 26.10.2026, the Corporate Applicant reiterates its earlier contentions. It adds that the Section 65 application dated 22.08.2024 alleged that the Section 10 application was filed with fraudulent intention to avoid the claim of Respondent No. 1 as soon as the decree dated 05.11.2022 was passed, and that his name was not included in the list of Operational Creditors in Part III; that the grounds of invalid authorisation, write-off of ₹ 7.05 crore and inflated acknowledgement of liability to reach the threshold were pleaded for the first time in the rejoinder dated 05.03.2025 and could not be dealt with in its reply; that it answered them in its written submissions, which the Adjudicating Authority did not consider; and that, for the same reason, the resolutions of the Board meeting held on 04.09.2019 and of the AGM held on 30.09.2019 could not be annexed to its reply. It also states that I.A. No. 4400 of 2024 was disposed of by the impugned order as having become infructuous. Lastly, it contends that the CIRP had reached an advanced stage, with the resolution plan approved by a Committee of Creditors consisting of statutory creditors, who would otherwise recover nothing; that at that stage the process was driven by the Committee of Creditors and the Resolution Professional, and not by the corporate applicant; and that, even where the original application is found to have been filed in

collusion, the CIRP can be continued if the further proceedings can be concluded with integrity and achieve the object of the Code, by permitting the Successful Resolution Applicant to submit a revised plan catering to the additional claims.

Analysis and Findings

35. We have heard the learned counsel for the parties and have carefully perused the record. We have also considered the impugned order, the pleadings in I.A. No. 4286/ND/2024, the written submissions, and the material placed before us.

36. The Corporate Applicant /Intarvo Technologies Private Limited contended that it had voluntarily initiated CIRP under Section 10 of the Code after admitting its default. It submitted that there was no occasion to conceal the claim of Respondent No. 1 because inclusion of that claim would only have increased the threshold for filing the Section 10 application. It further stated that the company was non-functional from 2021 onwards and had no knowledge of the decree dated 05.11.2022, as it could not pursue the civil litigation due to financial distress. The Corporate Applicant has also challenged the finding regarding the validity of the Board and the Extraordinary General Meeting held on 05.12.2022. It stated that Mr. Amit Gautam and Mr. Sudarshan Kumar were appointed as additional directors on 29.03.2019, were confirmed in the Board meeting held on 04.09.2019, and were further confirmed by shareholders in the Annual General Meeting held on 30.09.2019. It contended that the failure to file Form DIR-12 with the Registrar of Companies was a curable procedural lapse and did not invalidate the actions of the directors. The Corporate Applicant further contended that

the write-off of ₹7.05 crore towards receivables from related parties was a bona fide accounting decision taken on the advice of statutory auditors. It also contended that the operational liability of ₹1.61 crore was not inflated, as it comprised current liabilities of ₹48,14,212 and short-term provisions of ₹1,13,31,142, including interest and penalties towards EPFO, Service Tax and GST.

37. The Successful Resolution Applicant, Sonoma Management Partners Private Limited, contended that it was a necessary and proper party to I.A. No. 4286/ND/2024 but was neither impleaded nor heard before the impugned order was passed. It submitted that it had invested time, effort and value in the resolution process, and its plan had already been approved by the Committee of Creditors. It therefore challenged the recall of CIRP and the consequential deprivation of its rights under the approved resolution plan.

38. Respondent No. 1, Vivek Jairath, did not file a reply in these appeals. His learned counsel stated in open court that, since his claim was being considered by the SRA, he did not intend to file any reply. Respondent No. 2, the erstwhile Resolution Professional, has filed written submissions dated 22.10.2026.

39. The principal issue before us is whether the Adjudicating Authority was justified in holding that the Section 10 application was initiated fraudulently and maliciously, and in recalling the order admitting Intarvo into CIRP under Section 65 of the Code.

40. The Adjudicating Authority recorded the following findings:

- The Corporate Debtor failed to consider or disclose the legitimate claims of Respondent No. 1.

- The Board of Directors consisted only of two additional directors with effect from 29.03.2019, whose term expired on 30.09.2019; therefore, no valid Board existed to convene the EGM dated 05.12.2022 or pass a special resolution authorising initiation of CIRP under Section 10.

- In the audited balance sheet for FY 2019-20, the Corporate Debtor wrote off a substantial amount of ₹7.05 crore in receivables from related parties.

- The purported operational liability of ₹1.61 crore, on the basis of which the Section 10 application was filed, appeared inflated.

- The application filed under Section 10 of the Code was vitiated by fraudulent and malicious intent.

41. The Adjudicating Authority held as follows:

> "18. In light of the foregoing discussion, this Adjudicating Authority is of the considered view that the Corporate Debtor, under the guise of initiating proceedings under the Insolvency and Bankruptcy Code, has attempted to perpetrate a fraud upon its stakeholders. The framework of the IBC cannot be invoked to confer legitimacy upon actions that are otherwise illegal or tainted by malafide intent. Accordingly, it is concluded that the Application filed under Section 10 of the Code was initiated with malicious and fraudulent intent, with the objective of causing undue

prejudice and injury to the legitimate rights and interests of the stakeholders of the Corporate Debtor."

42. The Adjudicating Authority further observed:

"19. In light of the foregoing discussion and findings, this Adjudicating Authority is of the considered view that the Application filed under Section 10 of the Insolvency and Bankruptcy Code, 2016, was a clear attempt by the Corporate Applicant to abuse the process of law and to commit fraud upon its creditors, by initiating CIRP with a malicious and fraudulent intent."

43. The Adjudicating Authority also recorded:

"21. These facts obviously were never brought before the Adjudicating Authority during the proceedings which culminated in the order dated 16.10.2023 initiating the CIRP in the case of the Corporate Debtor. Thus, we find enough justification to adjudicate the allegation levelled by the Applicant in the present application on merits. As a sequel, we recall the order dated 16.10.2023 initiating CIRP of the Corporate Debtor, obtained fraudulently from the Tribunal."

44. Finally, the Adjudicating Authority concluded:

"22. Having regard to the conspectus of fact and circumstances of the present case and the material placed on record, this Adjudicating Authority is of the considered opinion that the application filed under Section 10 of the Code is vitiated by fraudulent and malicious intent. The initiation of CIRP is an abuse of the process of law and cannot be allowed to proceed…."

45. We observe that Section 65 of the Code deals with fraudulent or malicious initiation of proceedings. Relevant section is extracted as below:

"65-Fraudulent or malicious initiation of proceedings.

(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any

purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

(3) If, any person initiates the pre-packaged insolvency resolution process-pre-packaged insolvency resolution process or creditor-initiated insolvency resolution process-

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or

(b) with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees."

46. We observe that it enables the Adjudicating Authority to impose a penalty where a proceeding has been initiated fraudulently or with malicious intent, or for any purpose other than the bona fide resolution of insolvency or liquidation. The provision is intended to prevent misuse of the insolvency process as a shield against creditors or as a device to obtain an undeserved moratorium.

47. In the present case, the Corporate Applicant filed the Section 10 application on 15.12.2022, shortly after the decree dated 05.11.2022 was

passed in favour of Respondent No. 1. The Corporate Applicant claimed an alleged operational debt of ₹1,61,45,354, but did not disclose the decretal liability of Respondent No. 1. The special resolution dated 05.12.2022 authorised initiation of proceedings under Section 10 of the Code. The sequence of events, namely the decree followed immediately by the Board resolution and the filing of the Section 10 application, is material.

48. We find that the Corporate Applicant concealed the decree passed in favour of Respondent No. 1. The decree was a direct and material liability of the Corporate Applicant. Its non-disclosure in the Section 10 application, despite the Corporate Applicant being the judgment debtor, cannot be treated as accidental or innocent. The concealment misled the Adjudicating Authority at the stage of admission and enabled the Corporate Applicant to obtain the protection of CIRP while excluding a known creditor from the process.

49. The contention of the Corporate Applicant that inclusion of Respondent No. 1's claim would only have increased the threshold does not answer the allegation of fraudulent intent. In a Section 10 application, the Corporate Applicant is required to make a full and truthful disclosure of its financial position and liabilities. The object is not merely to satisfy the minimum threshold, but to place before the Adjudicating Authority a complete and accurate picture of the debts and defaults of the Corporate Debtor. Deliberate omission of a subsisting decree debt is therefore material.

50. The Corporate Applicant's explanation that it had no knowledge of the decree is not convincing. The decree was passed on 05.11.2022 in a suit filed

in 2016. The Corporate Applicant filed its Section 10 application on 15.12.2022, within days of the decree. The close proximity between the decree, the EGM resolution dated 05.12.2022, and the filing of the Section 10 application supports the finding that the Corporate Applicant was aware of the decree and deliberately excluded it. The additional affidavit filed by the Corporate Applicant before us discloses a further decree dated 02.08.2021 in favour of M/s S2 Infotech International Ltd., passed more than a year before the Section 10 application. That decree also does not find a place in Part III of the application. The only explanation offered is that the Corporate Applicant would have had no reason to be discreet about any debt had it been within its knowledge.

51. We also agree with the Adjudicating Authority that the authorisation for filing the Section 10 application was doubtful. The Adjudicating Authority found that the Board consisted only of two additional directors appointed on 29.03.2019, whose term expired on 30.09.2019. In the absence of a validly constituted Board, the audited balance sheets for the years 31.03.2020 to 31.03.2023 could not have been validly signed, and no valid EGM could have been convened on 05.12.2022.

52. The Corporate Applicant relied on Sections 172 and 176 of the Companies Act, 2013 to contend that non-filing of Form DIR-12 was only a procedural default. However, the issue before the Adjudicating Authority was not merely non-filing of a form. The issue was whether the persons who convened the EGM and authorised the Section 10 application continued to hold office as directors. The Adjudicating Authority found that they had

ceased to hold office on 30.09.2019. In the absence of valid directors, the EGM dated 05.12.2022 and the special resolution authorising the Section 10 application were rightly held to be unauthorised, invalid and non est in law. The master data of the Corporate Debtor on the portal of the Ministry of Corporate Affairs, filed by the Corporate Applicant itself, shows Mr. Sudarshan Kumar as having ceased to be a director on 21.09.2022, before the EGM dated 05.12.2022. Mr. Amit Gautam continues to be shown as an additional director. The record also shows Mr. Raj Kumar Singh as an additional director from 10.02.2022; the Corporate Applicant has not relied on him in support of the EGM. The same record shows the last Annual General Meeting as held on 30.09.2019 and the last balance sheet as of 31.03.2019. While the record thus reflects an Annual General Meeting on 30.09.2019, it does not reflect the regularisation of the additional directors at that meeting. The resolutions of the Board meeting dated 04.09.2019 and of the Annual General Meeting dated 30.09.2019, on which the Corporate Applicant relies, were not annexed to its reply before the Adjudicating Authority. Nor does Section 176 of the Companies Act, 2013 assist the Corporate Applicant. Its proviso does not protect acts done after the company has noticed that the appointment has terminated, and the Corporate Applicant cannot claim to have been unaware of the status of its own directors.

53. The Adjudicating Authority also noted that the Corporate Applicant wrote off ₹7.05 crore of receivables from related parties in its audited balance sheet for FY 2019-20. No concrete steps or legal proceedings for recovery of

those dues were disclosed. This fact further supports the view that the financial position projected before the Adjudicating Authority was not a full and candid disclosure.

54. The Adjudicating Authority also found that the claimed operational liability of ₹1.61 crore appeared inflated. The Corporate Applicant explained that the amount included current liabilities of ₹48,14,212 and short-term provisions of ₹1,13,31,142 towards interest and penalties relating to EPFO, Service Tax and GST. Even if those amounts were provisions in the books, the Adjudicating Authority was entitled to examine whether they represented crystallised and admitted liabilities. The presence of disputed or contingent statutory amounts, coupled with the other material irregularities, supports the overall conclusion that the Section 10 application was not a bona fide invocation of the Code.

55. The Corporate Applicant objects that the grounds relating to authorisation, the write-off and the inflated debt were raised for the first time in the rejoinder. It answered these grounds in its written submissions before the Adjudicating Authority, and it has argued them fully before us, with the documents on which it relies. No prejudice has therefore been shown. In any event, the concealment of the decree of Respondent No. 1 is by itself sufficient to sustain the finding under Section 65 of the Code; the other circumstances only add to it.

56. The Corporate Applicant relied on **Getz Cables Private Limited v. State Bank of India, (supra)**, and submitted that malicious intent requires

proof of a wrongful act without justification and intent to cause particular harm. It also relied on **West Bengal State Electricity Board v. Dilip Kumar Ray and Unigreen Global Pvt. Ltd. v. PNB & Ors (supra)**. Those principles do not assist the Corporate Applicant on the facts of this case. The deliberate non-disclosure of a recent decree, the timing of the Section 10 application, the doubtful authorisation, and the unexplained write-off collectively establish fraudulent and malicious initiation of proceedings.

57. Section 65 of the Code addresses the fraudulent or malicious initiation of insolvency proceedings. The two essential conditions identified in the impugned order are: (i) an application has been initiated to trigger CIRP; and (ii) the application has been filed with malicious or fraudulent intent, for a purpose other than the bona fide resolution of insolvency or liquidation, as the case may be. The first condition is plainly satisfied. On the cumulative facts discussed above, we also agree with the Adjudicating Authority that the second condition is satisfied. We therefore find no infirmity in the conclusion of the Adjudicating Authority that both essential conditions under Section 65 of the Code were satisfied that there was an application initiated to trigger CIRP and that application was filed with fraudulent or malicious intent, for a purpose other than bona fide resolution of insolvency.

58. SRA/Sonoma says that it was a proper and necessary party and was not heard. We are unable to accept that this vitiates the impugned order. The plan of Sonoma was only approved by the CoC. The application for its approval, I.A. (IBC) (Plan) 39/2024, was still pending before the Ld. Adjudicating Authority. A resolution plan binds the parties only after it is

approved by the Adjudicating Authority. Sonoma therefore had no vested right in the plan. Its position depends entirely on the CIRP. Once the CIRP is found to have been initiated fraudulently, the steps taken in it, including the CoC approval, cannot survive. Sonoma has also been heard fully in this appeal, and all its grounds have been considered on merits. No prejudice remains.

59. Sonoma also complains that I.A. No. 4400 of 2024 was ignored. That application sought rejection of the resolution plan, admission of the claim of Respondent No. 1 with reconstitution of the CoC, and modification of the Information Memorandum. According to the Corporate Applicant, it was disposed of by the impugned order as having become infructuous. Once the admission order was recalled, these reliefs, all of which presupposed a continuing CIRP, did not survive. Vivek Jairath's counsel has also stated that his claim is being considered. Sonoma's concern that it would be left without protection does not give any ground to continue a process that was wrongly started. The losses it describes are the result of a CIRP that should not have been initiated.

60. Thus, we find that the appeal filed by the successful resolution applicant also cannot succeed. The resolution plan had been approved by the Committee of Creditors, but it had not yet been approved by the Adjudicating Authority under Section 31 of the Code. A resolution applicant does not acquire an indefeasible right to implementation of a plan merely because the Committee of Creditors has approved it. Once the admission order itself is recalled under Section 65 of the Code, the CIRP collapses and no resolution plan can be approved or implemented in that CIRP. The grievance of the

Successful Resolution Applicant that it was not heard in I.A. No. 4286/ND/2024 is noted. However, the fraud vitiating the initiation of CIRP goes to the root of the proceedings. The Adjudicating Authority was entitled to recall an admission order obtained by fraud and to terminate CIRP. The rights of a resolution applicant, however substantial, cannot be preserved at the cost of allowing a fraudulently initiated CIRP to continue.

61. The Adjudicating Authority was also justified in imposing a penalty of ₹5,00,000 on the Corporate Applicant under Section 65(1) of the Code. The fraudulent and malicious initiation of CIRP, the concealment of the decree, and the misuse of the insolvency process justify the penalty.

62. The reliance placed by the Corporate Applicant / Intarvo on **RPS Infrastructure vs Mukul Kumar (2023 10 SCC 718)** is misplaced. That judgment concerns the admission of belated claims in a running CIRP. The question here is different. It is whether the Section 10 application was obtained by concealing a known decree. The delay of the creditor in filing his claim cannot cure a concealment that led to the initiation of the process. The plea that Vivek Jairath should have pursued condonation of delay, rather than filing a Section 65 application, is also not a ground to deny relief. A fraud on the Tribunal can be raised by an affected creditor, and it does not depend on the admission of the claim. A party may also seek alternative reliefs. The filing of I.A. No. 4400 of 2024 therefore does not weaken the Section 65 application.

63. The Corporate Applicant / Intarvo also relies on **Getz Cables Private Limited vs State Bank of India, CA (AT) (Ins.) No. 1953 of 2024,** and argues that a wrongful act without justification and an intent to cause particular harm must be established. Even applying the elements as presented by the Corporate Applicant, the circumstances recorded by the Adjudicating Authority support its conclusion. The non-disclosure of a subsisting decree, the doubts surrounding the corporate authorisation, the write-off of substantial related-party receivables and the disputed operational-debt figure, taken together, support the finding that the process was not invoked solely for a bona fide insolvency resolution.

64. The reliance on **West Bengal State of Electricity Board vs Dilip Kumar Ray** and **Unigreen Global Pvt. Ltd. vs PNB & Ors**. does not assist the Corporate Applicant on the facts found in this case.

65. The Corporate Debtor has suggested that a revised resolution plan including the claim of Vivek Jairath could be placed before the CoC, and that a consent order may be passed. We are not able to accept this. A CIRP that was initiated by concealment and without valid authority cannot be continued by consent. The finding that the initiation was fraudulent goes to the jurisdiction to proceed at all. A party that has been found to have misused the Code cannot ask to keep the benefit of the process it started. We observe that further submission of the Corporate Applicant that, even where the original application is found to have been filed in collusion, the CIRP may be continued from the stage it had reached, cannot be accepted in the facts of

the case, particularly where the initiation itself has been found to be fraudulent.

66. The authorities relied upon by the Successful Resolution Applicant do not alter this conclusion. The primacy of resolution and revival recognised in Swiss Ribbons (P) Ltd. v. Union of India operates within a process lawfully initiated under the Code; that object cannot be invoked to sustain a process whose very initiation has been found to be fraudulent. The tests in Getz Cables Private Limited and Unigreen Global Pvt. Ltd. are, moreover, satisfied on the present facts. The something more that is required to establish malicious intent is furnished by the deliberate concealment of a subsisting decree, the doubtful authorisation for the Section 10 application and the unexplained write-off of related-party receivables, which together go beyond the mere effect of the Corporate Insolvency Resolution Process upon the recovery of a single creditor. The decree was a direct liability of the Corporate Applicant and was required to be disclosed; its omission is therefore not the non-disclosure of a fact lying outside the Code or the prescribed form.

67. Nor does the circumstance that the approved plan is said to offer a value exceeding the liquidation value assist the Successful Resolution Applicant. The commercial wisdom of the Committee of Creditors operates within a lawfully initiated process and cannot confer legitimacy upon one initiated by fraud; and a plan approved in such a process cannot be approved or implemented once the admission order is recalled under Section 65 of the Code.

68. The statement of Respondent No. 1 that it has no objection to the appeal being allowed if its claim is considered, and the willingness of the Successful Resolution Applicant to revise its plan, do not require a different result. A fraud upon the Tribunal goes to the very jurisdiction to entertain the process, and the subsequent consent of the parties can neither cure it nor revive a process that ought not to have been initiated. The developments since the impugned order, namely the restoration of the Corporate Debtor to its directors, the filing of Form INC-28, and the dismissal as infructuous of the connected applications, are the natural consequences of the recall and reinforce that conclusion. The claims of the Employees' State Insurance Corporation and of the other creditors who have since come forward, and the concern of the erstwhile Resolution Professional for a fresh verification of claims, are matters that may be pursued in accordance with law, but they furnish no ground to sustain a Corporate Insolvency Resolution Process that was fraudulently initiated.

Conclusions

69. In view of the above discussion, we hold that the Corporate Applicant fraudulently and maliciously initiated CIRP under Section 10 of the Code. The Adjudicating Authority rightly allowed I.A. No. 4286/ND/2024, recalled the admission order dated 16.10.2023, terminated CIRP, restored the Corporate Debtor to its pre-CIRP position, discharged the Resolution Professional, and imposed a penalty of ₹5,00,000 under Section 65(1) of the Code.

70. The appeal filed by Intarvo Technologies Private Limited, being Company Appeal (AT) (Ins.) No. 1247 of 2025, is without merit. The appeal filed by Sonoma Management Partners Private Limited, being Company

Appeal (AT) (Ins.) No. 1277 of 2025, along with I.A. No. 5002 of 2025, is also without merit.

Order

71. Company Appeal (AT) (Ins.) No. 1247 of 2025 is dismissed. Company Appeal (AT) (Ins.) No. 1277 of 2025 is also dismissed. All pending interlocutory applications, if any, are also dismissed and disposed of accordingly. No order as to costs at this stage.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
October 30, 2026.

pawan