



IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH I

IA No. 4520/2025

In

C.P (IB) No. 2096/2019

Interlocutory Application under Section 60(5) of the IBC,2016 r/w Rule 11 of the NCLT Rules, 2016;

In the matter of

Kohinoor City Office Towers

Industrial Estate & Premises Co-op.

Society Ltd.

..... Applicant

Versus

Mr. Santanu T. Ray, the Liquidator of

Firestar Diamond International

Private Limited and Anr.

.... Respondents

And in the matter of

Corporation Bank

..... Financial Creditors

Versus

Firestar Diamond International Pvt.

Ltd.

.... Corporate Debtor

Order Pronounced on 02.04.2026

Coram:

Sanjiv Dutt

Hon'ble Member (Technical)

Sushil Mahadeorao Kochey

Hon'ble Member (Judicial)

Appearances:

For the Applicant:

Nausher Kohli a/w Chandragupta
Patil & Ashutosh Agarwal,
Advocates

For the Respondent No.1:

Rohit Gupta a/w Abha Patel,
Advocates

ORDER

1. The Applicant, Kohinoor City Office Towers Industrial Estate & Premises Co-operative Society Limited, is a cooperative society registered under the Maharashtra Co-operative Societies Act, 1960. The Corporate Debtor was the registered owner of three commercial units situated within the premises of the Applicant Society, being Unit No. 2-G on the Ground Floor of Tower II, Unit No. 23 on the Third Floor of Tower II, and Unit No. 24 on the Fourth Floor of Tower II (collectively referred to as "the said Units").
2. The said Units were attached by the Directorate of Enforcement ("ED") under Provisional Attachment Orders bearing No. 02/2018 dated 24th February 2018, No. 06/2018 dated 21st May



2018, and No. 05/2019 dated 25th February 2019, all of which were subsequently confirmed by the Adjudicating Authority under the PMLA on 6th August 2018, 12th November 2018, and 15th July 2019 respectively. The said Units remained in the custody of the ED from February 2018 until 5th May 2022, when they were handed over to the Liquidator pursuant to the order of this Tribunal dated 13th August 2021 directing release of the attached assets.

3. This Tribunal, in CP (IB) No. 2096 of 2019, admitted the application filed by Corporation Bank under Section 7 of the Code against the Corporate Debtor on 25th September 2019, thereby declaring the commencement of the Corporate Insolvency Resolution Process (“CIRP”) and appointing Mr. Ram Ratan Kanoongo as the Interim Resolution Professional. Upon the CoC resolving to proceed with liquidation by a majority vote of 98.25% in its meeting held on 16th November 2019, primarily on account of the majority of the Corporate Debtor's assets being under ED attachment. This Tribunal *vide* order dated 26th February 2020 directed the initiation of liquidation proceedings and appointed Mr. Santanu T. Ray (Respondent No. 1) as the Liquidator.
4. The Applicant Society submitted its claim before the Liquidator on 20th March 2020 for a total amount of Rs. 1,85,77,934/-, comprising maintenance bills for the period January 2018 to March 2020 and BTU Chiller usage charges for the period December 2017 to February 2018. The Liquidator, *vide* Final Admission of Claim Certificate dated 12th August 2020, admitted Rs. 1,85,61,456.79/- of the claimed amount as operational debt



under Section 5(21) of the Code. The Applicant Society thereafter filed a supplementary claim on 15th September 2021 for Rs. 1,34,99,913/- towards maintenance charges for the period April 2020 to December 2021, which was neither acknowledged, admitted, nor rejected by Respondent No. 1.

5. On 29th August 2023, the Applicant Society, at the Liquidator's request, submitted a consolidated statement of outstanding dues categorized as under:

5.1.Maintenance charges for January 2018 to April 2022- Rs. 3,05,14,091/-

5.2.Maintenance charges for May 2022 to September 2023- Rs. 99,85,651/-

5.3.BTU Chiller usage charges for December 2017 to February 2018- Rs. 8,73,762/-

5.4.Property Tax payable to MCGM for April 2017 to March 2023- Rs. 2,88,58,278/-

6. Respondent No. 1 completed the sale of the said Units through two separate transactions: Units 23 and 24 were sold to M/s. Ashoka Sthapathya Private Limited for Rs. 31,19,37,955/- on 5th April 2024, and Unit 2-G was sold to M/s. Vishyam Estates Private Limited for Rs. 13,02,76,455/- on 16th April 2024. The sale certificates issued by the Liquidator expressly warranted that the properties were sold free of all encumbrances and liabilities.

7. On 14th May 2024, the Liquidator informed the Applicant Society that society dues and municipal charges would be paid only from the date of handover of the assets by the ED to the Liquidator, i.e., from 5th May 2022 until the issuance of the sale certificates. Accordingly, Respondent No. 1 made payments on 15th May 2024



by way of demand drafts aggregating to Rs. 97,11,815/- towards property tax comprising Rs. 33,57,503/- for Unit 2-G and Rs. 32,27,156/- each for Units 23 and 24, and Rs. 1,70,93,034/- towards maintenance dues for the period May 2022 to April 2024. By communication dated 28th May 2024, the Liquidator informed the Applicant Society that all dues from 5th May 2022 to the date of issuance of the sale certificates stood settled. The Applicant Society thereafter issued a legal notice dated 28th March 2025 calling upon the Liquidator to discharge the outstanding dues for the period preceding the asset handover by the ED.

8. In view of the aforesaid, the Applicant respectfully prays:

8.1. That this Hon'ble Tribunal be pleased direct the Respondent No. 1, i.e., the Liquidator, to make priority payments of Rs. 33,42,836/- being maintenance dues for the period from 25th September 2019 to 26th February 2020, being the insolvency resolution costs, along with the interest thereon at the rate of 18% per annum, or any such rate that the Hon'ble Tribunal may deem fit, from the due date till the date of realization;

8.2. That this Hon'ble Tribunal be pleased direct the Respondent No. 1, i.e., the Liquidator, to make priority payments of Rs.1,44,85,623/- being maintenance dues for the period 27th February 2020 to April 2022, being the Liquidation Costs, along with the interest thereon at the rate of 18% per annum, or any such rate that the Hon'ble Tribunal may deem fit, from the due date till the date Hon'ble Tribunal may deem fit, from the due date till the date of realization;

8.3. That this Hon'ble Tribunal be pleased to direct the Respondent No. 1, i.e., the Liquidator, to make priority



payments of being property tax dues for the period from 1st April 2017 to 15th May 2022 directly to Respondent No. 2, i.e., the Municipal Corporation of Greater Mumbai, along with the interest thereon at the stipulated/appropriate rate;

8.4. That this Hon'ble Tribunal be pleased to direct the Respondent No. 1, i.e., the Liquidator, to disclose on oath the following:

8.4.1. The list of stakeholders;

8.4.2. The asset memorandum filed by you with the adjudicating authority;

8.4.3. The list of all assets of Corporate Debtor and their present status; and

8.4.4. The realized amount from the liquidation estate.

8.5. That pending the hearing and final disposal of this Application, this Hon'ble Tribunal be pleased to stay any distribution of the assets of the Corporate Debtor;

Submissions by the Applicant:

1. Ld. Counsel for the Applicant Society submits that the Applicant Society submitted its claim on 20th March 2020 for a total amount of Rs. 1,85,77,934/-, supported by documentary evidence comprising maintenance bills for the period January 2018 to March 2020 and BTU Chiller usage bills for the period December 2017 to February 2018. The Liquidator, *vide* Final Admission of Claim Certificate dated 12th August 2020, admitted Rs. 1,85,61,456.79/- of the total claimed amount as operational debt under Section 5(21) of the Code. It is submitted that the Liquidator erroneously classified the dues pertaining to the CIRP




- period, i.e., from 25th September 2019 to 26th February 2020, as operational debt instead of insolvency resolution process costs.
2. The Ld. Counsel further submits that following the communication dated 28th May 2024 received from the Liquidator, the Applicant Society issued a legal notice dated 28th March 2025 recording that the Liquidator had failed to fully discharge the outstanding liabilities, particularly in respect of the period preceding the handover of assets by the ED on 5th May 2022, and had erroneously classified Rs. 33,42,836/- of dues pertaining to the CIRP period as operational debt instead of insolvency resolution process costs. The said notice called upon the Liquidator to make immediate payment of these dues in priority.
 3. It is submitted that the Liquidator's attempt to disclaim liability for dues accruing during the period of ED attachment, i.e., from February 2018 to May 2022, is legally unsustainable. The maintenance charges of Rs. 1,78,28,457/- and property tax dues of Rs. 2,40,47,375/- pertaining to the period of ED attachment constitute liquidation costs under Section 53(1)(a) of the Code and must be discharged before any distribution to other stakeholders. The Liquidator's refusal to honour these priority payments amounts to a serious dereliction of statutory duty.
 4. It is further submitted that the classification of maintenance dues amounting to Rs. 33,42,836/- pertaining to the CIRP period from 25th September 2019 to 26th February 2020 as operational debt by the Liquidator is contrary to the provisions of the Code. The Applicant Society was not initially aware that the said dues constituted insolvency resolution process costs under Section



5(13) read with Section 53(1)(a) of the Code, and had, acting in good faith, relied upon the categorization made by the Liquidator in the Final Admission of Claim Certificate dated 12th August 2020. It is submitted that the Applicant Society became aware of the correct statutory position only upon seeking legal advice, whereupon it became evident that dues arising during the CIRP period qualify as insolvency resolution process costs and are entitled to priority discharge.


Submissions by the Respondent:

1. Ld. Counsel for Respondent No. 1 submits that the claim filed with the Liquidator for maintenance charges pertains to the period from 01st January 2018 to 31st March 2020, which predominantly falls within the CIRP period from 25th September 2019 to 26th February 2020. The said claim therefore also comprises pre-CIRP dues, in respect of which the Applicant Society failed to file any claim before the Resolution Professional or Interim Resolution Professional. Similarly, the outstanding BTU (Chiller) usage charges for the period December 2017 to February 2018 are pre-CIRP dues, and no claim in respect thereof was submitted by the Applicant Society before the Resolution Professional or Interim Resolution Professional.
2. Ld. Counsel submits that the claim in the present case has been filed during the liquidation process, and the contention that the dues ought to be treated as CIRP costs has been raised for the first time after the commencement of the liquidation process. Since the CoC stands dissolved upon commencement of liquidation, no approval of the CoC could have been obtained for such costs. In



the absence of the CoC, no rectification is possible, and the claim cannot be sustained as a CIRP cost.

3. Ld. Counsel further submits that the Corporate Debtor was not a going concern and that the subject units of the Applicant Society were in the custody of the ED from 24th February 2018 onwards, and were neither used nor occupied during the relevant period. It is therefore submitted that the Applicant is not entitled to claim either CIRP costs or liquidation costs in priority under Section 53(1)(a) of the Code, since maintenance dues and property tax dues cannot be treated as priority costs in respect of units that were not in occupation or use. It is further submitted that Respondent No. 1 has paid the dues from the date of handover of the said units by the ED, i.e., from 05th May 2022, until the date of sale of the respective units: Unit 23 and Unit 24 having been sold on 05th April 2024, and Unit 2-G having been sold on 16th April 2024.
4. Ld. Counsel further submits that the Applicant Society is also seeking property tax dues on behalf of Respondent No. 2, the Municipal Corporation of Greater Mumbai, which is neither tenable nor permissible in law. The Applicant Society has no locus to claim property tax dues on behalf of Respondent No. 2. It is further submitted that Respondent No. 2 has, as of date, not filed any claim before Respondent No. 1 for its property tax dues, and no such claim can be maintained by the Applicant on behalf of Respondent No. 2.
5. It is contended that the list of stakeholders is available in the public domain and is accessible to the Applicant Society and its legal advisers. With respect to the asset memorandum, the current



status of the assets, and the exact amount realised, Respondent No. 1 is neither liable nor obligated to disclose such information to the Applicant, as no provision under the Code mandates disclosure of such information to any third party. The Applicant has no right to access such confidential information pertaining to the Corporate Debtor.

Findings:

1. The Applicant Society has, by way of the present Interlocutory Application, sought the following reliefs against Respondent No. 1, the Liquidator of the Corporate Debtor:
 - 1.1. that the maintenance dues incurred during the CIRP period be reclassified and paid in priority as CIRP costs, on the ground that the same were erroneously treated as operational debt; and
 - 1.2. that the maintenance dues and property tax dues pertaining to the period during which the units of the Corporate Debtor stood attached by the ED be recognized and discharged in priority as liquidation costs.
2. The CIRP against the Corporate Debtor was initiated by this Tribunal vide order dated 25th September 2019. The Committee of Creditors was constituted on 01st November 2019. Since the majority of the Corporate Debtor's assets stood attached and seized by the ED under Provisional Attachment Orders dated 24th February 2018, 21st May 2018, and 25th February 2019, all of which were subsequently confirmed by the Adjudicating Authority under the Prevention of Money Laundering Act, 2002. The CoC, by a majority vote of 98.25% in its meeting held on 16th November 2019, resolved to proceed with liquidation.



Accordingly, this Tribunal vide order dated 26th February 2020 directed the initiation of liquidation proceedings and appointed Respondent No. 1 as the Liquidator. The units in respect of which maintenance dues are claimed by the Applicant Society are situated within the premises managed by the Applicant and form part of the assets attached by the ED.

3. In order to adjudicate upon the first limb of the Applicant's prayer, it is necessary to advert to the statutory definition of "insolvency resolution process costs" as provided under Section 5(13) of the Code, which reads as under:

“(13) insolvency resolution process costs means—
(a) the amount of any interim finance and the costs incurred in raising such finance;
(b) the fees payable to any person acting as a resolution professional;
(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;
(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and
(e) any other costs as may be specified by the Board;”

And the relevant Regulation governing CIRP costs is the Regulation 31 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which is extracted as follows:

“31. “Insolvency resolution process costs” under Section 5(13)(e) shall mean-



(a) amounts due to suppliers of essential goods and services under Regulation 32;

[(aa) fee payable to authorised representative under [sub regulation (8)] of regulation 16A;

(ab) out of pocket expenses of authorised representative for discharge of his functions under [section 25A];]

(b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);


[(ba) fee payable to the Board under regulation 31A;]

(c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;

(d) expenses incurred on or by the resolution professional fixed under Regulation 34; and

(e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.”

4. It is apparent from a reading of Regulation 31(e) that a cost would qualify as a CIRP cost only if it is directly related to the Corporate Insolvency Resolution Process and has been approved by the Committee of Creditors. In the present case, the CoC had not approved the maintenance dues to be treated as CIRP costs. The Applicant has itself admitted in its pleadings that the Applicant Society was initially unaware that the dues amounting to Rs. 33,42,836/- for the period from 25th September 2019 to 26th February 2020 constituted CIRP costs, and that it became aware of this position only after the liquidation process commenced. The Id. counsel for the Respondent has further submitted that the



Applicant Society failed to file or claim the said maintenance dues before the RP/IRP during the CIRP period.

5. This has also been held so in various decisions of the Hon'ble NCLAT. In *Avil Menezes (Liquidator) v. Abdul Quddus Khan and Anr, Company Appeal (AT) (Insolvency) No. 263 of 2024*, it was held that:

“It would be apparent from the highlighted portion of the Regulation that costs would be CIRP costs if they are directly related to the Corporate Insolvency Resolution Process and also approved by the Committee of Creditors (CoC). And in this case CoC had not approved for it to be treated as CIRP costs.”

6. We are therefore, inclined to agree that mere fact that the dues have arisen during the CIRP period would not be determinative of it to be classified as CIRP cost. Further, it is clear from Regulation 31 that unless the CoC has approved the dues and they directly relate to the CIRP, the dues cannot be classified as CIRP cost. And the maintenance dues were not claimed by the applicant society during the CIRP from the RP/IRP.
7. The Applicant further prayed that, this Tribunal direct the discharge, in priority, of the maintenance dues and property tax dues pertaining to the units belonging to the Corporate Debtor, dues that accrued during the period when the said units stood attached by the ED as "liquidation costs" within the meaning of the Insolvency and Bankruptcy Code, 2016 ("the Code") read with the applicable Regulations framed thereunder.
8. The question that therefore falls for consideration before this Adjudicating Authority is whether the maintenance dues and



property tax dues in respect of the units belonging to the Corporate Debtor, which were attached by the ED during the liquidation period, constitute "liquidation cost" within the meaning of Regulation 2(1)(ea) of the IBBI (Liquidation Process) Regulations, 2016 ("the Liquidation Regulations").

9. At the threshold, it is necessary to advert to the definition of "liquidation cost" as provided under Regulation 2(1)(ea) of the Liquidation Regulations. The said Regulation, insofar as relevant, provides that "liquidation cost" shall include:


"costs incurred by the Liquidator for preserving and protecting the assets, properties, effects and actionable claims, including secured assets, of the Corporate Debtor."

10. It further includes, by way of a residuary provision, any other cost incurred by the Liquidator that is essential for completing the liquidation process.

11. A plain reading of the aforesaid provision makes it clear that the definition of "liquidation cost" included within its ambit all costs directed towards the preservation and protection of the assets and properties of the Corporate Debtor.

12. This Tribunal is of the opinion that maintenance charges payable to a cooperative housing are, charges levied for the upkeep and maintenance of common infrastructure, including lifts, corridors, security arrangements, water supply, and electricity to common areas. These are indispensable to the continued functionality and marketability of the units forming part of the liquidation estate.

13. The consequences of non-payment of such dues are significant. Upon default, the Society is entitled to restrict access to common amenities, thereby rendering the units inaccessible and



commercially unviable. The resulting deterioration in the condition and value of the property would prejudice the interests of all stakeholders in the liquidation, by diminishing the realizable value of the asset and impairing the Liquidator's ability to present a clean and encumbrance-free asset for sale in the liquidation process.

14. It is, therefore, evident that the payment of maintenance dues and property tax dues is a necessary incident of the preservation and protection of the assets and properties of the Corporate Debtor.

15. This Tribunal notes that by order dated 13th August 2021, the Adjudicating Authority of PMLA case directed the release of the assets attached by the ED to the Liquidator. Pursuant to the said order, the attached assets were periodically released by the ED and handed over to the Liquidator.

16. Significantly, it is recorded in the said order that the subject properties had been exempted from confiscation vide confiscation order dated 08.06.2020 passed in Criminal Miscellaneous Application No. 998 of 2018. The relevant extract of the said order, reads as under:

"The present is an application on behalf of applicant-Punjab National Bank (for short 'PNB'), being interested person, under Section 8(8) and Section 8(7) of the Prevention of Money Laundering Act, 2002 (for short 'P.M.L.A. Act') read with Rule 3A-2 of the Prevention of Money Laundering (Restoration of Confiscated Property) Rules, 2016, claiming release of mortgaged/hypothecated/guarantor properties, which have been exempted from confiscation vide confiscation order dated



08.06.2020 passed in Criminal Miscellaneous Application No. 998 of 2018, as mentioned in Schedule-A to the application."

17. This tribunal further notes that, Since the subject properties were not confiscated by the ED under the Prevention of Money Laundering Act, 2002 ("PMLA"), the title to and ownership of the said properties continued to vest in the Corporate Debtor at all material times. We are of the view that a provisional or confirmed attachment order under the PMLA freezes the property but does not extinguish the title of the owner or transfer it to the government. Confiscation has the effect of vesting the property in the Union of India.

18. This has also been held so in decisions of the Hon'ble NCLAT. In ***Vantage Point Asset Management (P) Ltd. v. Gaurav Misra, 2025 SCC OnLine NCLAT 1652***, it was held that:

"18. Sub-Section (4) of Section 5 thus clearly provides that provisional attachment under Section 5 shall not prevent the person interested in the enjoyment of the immovable property attached under sub-Section (1) from such enjoyment, thus, despite the attachment of assets of the corporate debtor, corporate debtor was fully entitled to enjoy the property. The scheme of Section 8 as noted above contemplate that it was only after conclusion of Trial & Special Court finds that offence of money laundering have been committed, it shall order confiscation of the property use in the offence. The present is the case where proceeding under Section 8 has not even commenced, no order of confiscation being there, the property has not vested, the rights of the corporate debtor has not been vested in the property under the PMLA Act. By the



attachment of the assets, the ownership rights of the corporate debtor are not divested, nor it can be said that the corporate debtor does not continue to be the owner of the asset. The scheme under the PMLA itself, clarifies that despite attachment the corporate debtor is entitled to enjoy the property.”

19. Since no confiscation took place in the present case, the properties retained their character as assets of the Corporate Debtor. Upon the passing of the liquidation order by this Tribunal on 26th February 2020, these properties became part of the liquidation estate of the Corporate Debtor in terms of Section 36 of the Code.
20. The Liquidator, being the custodian of all assets comprised within the liquidation estate, is therefore both empowered and obligated to take all measures necessary to preserve and protect such assets. This obligation is not extinguished, nor is it suspended merely by reason of a PMLA attachment, so long as the subject properties have not been confiscated and continue to vest in the Corporate Debtor. Since the properties in the present case were exempted from confiscation and formed part of the liquidation estate, the payment of maintenance dues and property tax dues in respect thereof was a necessary and legitimate exercise of the Liquidator's duty to preserve the liquidation estate. Maintenance dues and property tax dues arising during the liquidation period, even in respect of assets that stood attached by the ED, therefore directly serve the purpose of preservation and protection of the liquidation estate and bear the character of liquidation costs within the meaning of Regulation 2(1)(ea) of the Liquidation Regulations.



21. This Tribunal further takes note of the fact that Respondent No. 1, in discharge of his duties as Liquidator, made payments on 15th May 2024 by way of demand drafts aggregating to Rs. 97,11,815/- towards property tax, comprising Rs. 33,57,503/- for Unit 2-G and Rs. 32,27,156/- each for Units 23 and 24 and a further sum of Rs. 1,70,93,034/- towards maintenance dues for the period May 2022 to April 2024, being the period from which the properties were handed over by the ED to the Liquidator. These payments, having been made by the Liquidator from the liquidation estate towards the preservation of its assets, unambiguously bear the character of liquidation costs.

22. With respect to the prayer seeking priority payment of property tax dues for the period from 1st April 2017 to 15th May 2022, this tribunal is of the opinion that property tax dues accruing prior to the liquidation commencement date are entitled to priority discharge under Section 53 of the Code only if they qualify as CIRP costs. As held above, a cost qualifies as a CIRP cost only if it is directly related to the Corporate Insolvency Resolution Process and has been approved by the Committee of Creditors. In the present case, the CoC had not approved the property tax dues to be treated as CIRP costs. Accordingly, property tax dues accruing prior to the liquidation commencement date cannot be accorded priority treatment as CIRP costs. With respect to property tax dues accruing after the liquidation commencement date, the same reasoning as applied to maintenance dues above shall apply *mutatis mutandis*. It is further noted that, with respect to property tax, the Applicant society informed Respondent No. 2 that any outstanding dues should be pursued with the liquidator.



However, Respondent No. 2 has not submitted its claim to the liquidator in the prescribed claim form under the Code and its regulations.

23. The Liquidator is hereby directed to discharge the outstanding maintenance charges to the applicant and property tax arrears of the Corporate Debtor to Respondent No. 2, accrued from the liquidation commencement date i.e. 26th February 2020 until the period of attachment levied by the Enforcement Directorate, and the same shall be treated as and form part of the liquidation costs.

24. In terms of the above, IA No. 4520 of 2025 in CP (IB) No. 2096 of 2019 is **partly allowed** and **disposed of**.

Sd/-

Sanjiv Dutt

Member (Technical)

/AJ/

Sd/-

Sushil Mahadeorao Kochey

Member (Judicial)