**IN THE NATIONAL COMPANY LAW TRIBUNAL,**

**MUMBAI COURT- I**

**I.A. No. 4475 of 2023**

*[Under Section 43 of the Insolvency and Bankruptcy Code, 2016]*

**AND**

**I.A. No. 4830 of 2023**

*[Under Section 66 of the Insolvency and Bankruptcy Code, 2016]*

**IN**

**C.P. (IB) No. 1140/MB/2020**

**Rupa Infotech and Infrastructure Pvt. Ltd.**

…Applicant

*V/s*

**Mr. Hiren Bharani & Ors.**
Suspended Board of Directors,
Shankheshwar Properties Private Limited

… Respondents

**<u>IN THE MATTER OF</u>:**

***Rupa Infotech and Infrastructure Private Limited*** *…Financial Creditor*

*V/s*

***Shankheshwar Properties Private Limited*** *…Corporate Debtor*

**Pronounced: 16.07.2026**

***CORAM:***

Sushil Kumar Kochey

HON'BLE MEMBER (JUDICIAL)

***Appearances***

| | | |
|---|---|---|
| For Applicant | : | Adv. Shyam Kapadia |
| For Respondent | : | Adv. Kunal Kanungo, Adv. Tanushree Sogani, Adv. Atishay Jain |

Per [Sushil Kumar Kochey, (JM)]

**Brief Facts:**

1. The Interlocutory Applications, being I.A. No. 4475 of 2023 and I.A. No. 4830 of 2023, were taken up together, as the Applicant had filed separate Withdrawal Memos in both the Applications along with the respective Consent Terms. The Applicants submitted that the disputes forming the subject matter of the Applications filed under Sections 43 and 66 of the Insolvency and Bankruptcy Code, 2016 ("IBC"/"Code") have been amicably settled between the parties and therefore prayed that the Consent Terms be taken on record and the Applications be permitted to be withdrawn.
2. The Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor, *Shankheshwar Properties Private Limited*, was initiated by the Adjudicating Authority vide order dated 03.02.2023 passed in C.P. (IB) No. 1140 of 2020 on an application filed under Section 7 of the Code by *Rupa Infotech and Infrastructure Private Limited*, the Financial Creditor, for default of Rs.4,80,80,000/-.
3. During the CIRP, the Committee of Creditors ("CoC") was constituted with the Financial Creditor as its sole member having 100% voting share. The Financial Creditor submitted a Resolution Plan was approved by the CoC in its meeting held on 10.08.2023.
4. During the CIRP, the Resolution Professional filed I.A. No.4475 of 2023 under Section 43 of the Code alleging preferential transactions and I.A. No.4830 of 2023 under Section 66 of the Code alleging fraudulent trading by the erstwhile directors and other Respondents.
5. The Resolution Plan submitted by the Financial Creditor came to be approved by the Adjudicating Authority vide order dated 19.12.2023. Under the approved Resolution Plan, it was provided that, all applications filed by the Resolution Professional under

Sections 43 to 51 and Section 66 of the Code would be pursued by the Successful Resolution Applicant and that all costs and benefits arising therefrom would accrue to the Successful Resolution Applicant. The relevant portion of the order reads as under:

> *"9. In view of the pending proceedings u/s 66(1) r/w 43(1) and 44(1) of the Code the Resolution Plan states out that "Any monies received pursuant to exercise of powers and obligations by the Resolution Professional under Sections 43 to 51 (both inclusive) and Section 66 of the IBC, shall vest with the Resolution Applicants. It is clarified that upon successful implementation of Resolution Plan and discharge of the Resolution Professional any application filed by the Resolution Professional under Section 43 to 51 & 66 of the Code shall be pursued by the Resolution Applicants directly and all cost and benefits to this account shall accrue to Resolution Applicants. After the approval of Plan, the Resolution Applicant shall be entitled to adopt any further legal action on behalf of the Corporate Debtor"*

6. In view of the above, the Applicant, as the Successful Resolution Applicant, was substituted for the Resolution Professional in I.A. No. 4475 of 2023 and I.A. No. 4830 of 2023 for prosecuting the Applications.
7. In I.A. No.4475 of 2023, it is alleged that the Suspended Board of Directors had entered into preferential transactions within the meaning of Section 43 of the Code. The Resolution Professional, inter alia, sought a declaration that the transactions were preferential, a direction against the Respondents to contribute Rs.9,49,95,861/- to the Corporate Debtor, consequential reliefs under Section 44 of the Code, investigation by the Serious Fraud Investigation Office ("SFIO"), action against the Registered Valuer and other consequential reliefs.
8. In I.A. No.4830 of 2023, it is alleged that the Respondents carried out fraudulent trading and round-tripping of funds. The Resolution Professional sought cancellation of the Assignment Agreement and Home Buyers Agreements, or alternatively, payment of Rs.25,00,00,000/- and Rs.20,00,00,000/- respectively to the Corporate Debtor, besides seeking investigation by the SFIO and other consequential reliefs.

9. During the pendency of the Applications, the Applicant and the erstwhile directors of the Corporate Debtor entered into separate Consent Terms for settlement of the disputes. Accordingly, separate Withdrawal Memos along with the Consent Terms were filed in both the Applications on 07.03.2026 seeking permission to withdraw the Applications.

10. As per the Consent Terms, the parties have agreed to settle all disputes arising out of the present Applications upon payment of a total sum of Rs.3,89,50,000/- in full and final settlement. Out of the said amount, Rs.2,00,00,000/- has been allocated towards settlement of I.A. No.4830 of 2023 and Rs.1,89,50,000/- towards settlement of I.A. No.4475 of 2023. The Consent Terms further record that the settlement is without admission of liability by the Respondents. The settlement amount has been deposited in an Escrow Account maintained with HDFC Bank and shall be released to the Applicant upon acceptance of the Consent Terms by this Adjudicating Authority and disposal of both the Applications.

11. The matter was heard by court-IV. However, the learned Members constituting the Bench, Shri Anil Raj Chellan, Member (Technical), and Shri K.R. Saji Kumar, Member (Judicial), delivered separate dissenting opinions vide common order dated 11.05.2026 The learned Technical Member held that, neither the Insolvency and Bankruptcy Code, 2016 nor the Rules framed thereunder contain any express provision permitting withdrawal of applications filed under Sections 43 and 66 of the Code and the consequences flowing from the said provisions are punitive in nature and, therefore, such proceedings ought not to be permitted to be withdrawn. The learned Judicial Member, however, has taken the view that the power to permit withdrawal of such applications is traceable to Rule 11 of the National Company Law Tribunal Rules, 2016, read with the principles underlying Order XXIII Rule 1 of the Code of Civil Procedure, 1908.

12. A reference was therefore made by the members on difference of opinion noting following points;

    **a.** Whether applications filed under Section 43 of Chapter III of Part II of the IBC to avoid certain transactions as well as those filed under Section 66 of Chapter VI of Part II of the IBC to declare certain transactions as fraudulent, can be withdrawn on a settlement with the beneficiary; and

**b.** If withdrawal is permissible under IBC, whether withdrawal of these Applications is justified in the facts and circumstances of the present case.

13. Accordingly, as per the directions of Honourable president, the matter is placed before the Third Member for resolving the difference of opinion. Hence this reference.

14. Heard learned counsels for the applicants. Both the learned counsels supported the view taken by learned Judicial Member and contended that withdrawal is permitted as the parties have settled the matter amicably. To fortify their contentions, they would submit;

15. That, the Learned Judicial Member has rightly held that the power to permit the withdrawal of the Application under Section 43 & 66 of the Insolvency and Bankruptcy Code, 2016 is traceable to Rule 11 of the NCLT, Rules, 2016 and that Order XXIII Rule 1(4) of the CPC permit such unconditional withdrawal. The Ld. Technical Member has taken a contrary view that, in the absence of an express provision permitting withdrawal of Applications under Section 43 and 66 of IBC, the same cannot be allowed.

That, the interpretation adopted by the Ld. Technical Member is contrary to law as laid down by the Hon'ble Supreme Court in the case of ***Sarguja Transport Service…VS… State Transport Appellate Tribunal, (1987) 1 SCC 5***, wherein it is held as under:

> *The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying rule 1 of Order XXIII of the Code is adopted in respect of writ petitions filed under Articles 226/227 of the Constitution of India also. It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the Court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel, to permit the petitioner to withdraw from the writ petition without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition. It is plain that when once a writ petition filed in a High Court is withdrawn by the petitioner*

*himself he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. He may as stated in Daryao and Ors. v. The State of U.P. and Ors., [1962] 2 S.C.R. 575 in a case involving the question of enforcement of fundamental rights file a petition before the Supreme Court under Article 32 of the Constitution of India because in such a case there has been no decision on the merits by the High Court. The relevant observation of this Court in Daryao's case (supra) is to be found at page 593 and it is as follows:*

> *"If the petition is dismissed as with-*
> *drawn it cannot be a bar to a subsequent petition under Art. 32, because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other."*

*The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance**. But we are of the view that the principle underlying rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics.*** *In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have* *been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was fight in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however. make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental fight guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We however leave this question open.*

That, the Hon'ble Supreme Court of India has extended the underlying principles of CPC permitting unconditional withdrawal even to writ jurisdiction.

16. The Co-ordinate Bench of NCLT (Cuttack Bench) has also by its Order dt. 10.01.2024 in ***Imperial Refractories…vs…. Shrikripalu Steels Private Limited, Rest. App 4 of 2023*** has held that the provisions of Order XXIII of the CPC can be looked into while adjudicating issues arising under the IBC. A similar view has also been taken by the Hon'ble NCLT Kochi in its Order dt. 02.11.2022 in ***Avant Garde Clean Room & Engg Solutions Private Limited…vs…HLL Biotech Limited Restoration Application No. 2 of 2022***. Therefore, it is submitted that the Ld. Technical Member erred in arriving at the conclusion that no power exists to permit the withdrawal of Applications filed under Sections 43 and 66 of IBC. Further, the Ld. Technical Member has held that Section 43 & 66 of IBC have punitive consequences. It is submitted that the nature of the Orders which can be passed on an Application under Section 43 & 66 of the IBC is purely Civil in nature. None of the aforesaid provisions provide for any criminal consequences. As far as the power of referring a matter for prosecution to SFIO is concerned, the power to direct the same is not derived from Sections 43 & 66 of IBC, but, is an independent power which does not attach to these provisions. Therefore, the reasoning adopted by the Ld. Technical Member that the proceedings under Sections 43 & 66 of IBC are punitive in nature is contrary to the provisions of the Code.

17. That, even prior to this Application, other Applications under Sections 43 & 66 of IBC have routinely been permitted to be withdrawn, and this fact has also been noticed and recorded in one of the Orders passed by this Tribunal in the case of ***Bharti Airtel Ltd…vs…Credosync Infosoft Pvt. Ltd. [(IA (DIS) 2 of 2025)].***
18. It is therefore urged that this tribunal be pleased to hold that the applicant can be permitted to withdraw the captioned applications on the basis of the consent terms.
19. Ld. Counsel for the Respondent No. 1/ Mr. Hiren Bharani would submit;

    That, the benefits of recoveries in the PUFE Applications accrue solely to the Applicant/SRA. Thus, the decision whether to prosecute or not to prosecute these Applications lies within the commercial domain of the Applicant, both as SRA and as the sole CoC Member. The Applicant is the dominus litis (master of the suit) and the only economic beneficiary under the Resolution Plan. In such circumstances, the Applicant's decision to accept a lump-sum settlement towards the full and final resolution of the issues arising in the captioned applications, and to seek unconditional withdrawal, is squarely within its commercial prerogative. Reliance is also placed on the principles underlying Order XXIII Rule 1 of CPC as submitted by the Ld. Counsel for the Applicant. It is further submitted that the PUFE Applications are in essence civil recovery-oriented proceedings, intended to augment the asset pool of the Corporate Debtor and prevent unjust enrichment, and are not designed to fasten criminal guilt. Reliance is placed on the decision in ***Tata Steel BSL…VS…Venus Recruiters, (2023) ibclaw.in 09 HC passed by the Hon'ble High Court of Delhi***, to contend that avoidance applications are primarily civil and in nature and the provisions pertaining to suspect transactions exists specifically to benefit the creditors of the corporate debtor by enhancing the asset pool available for resolution of the corporate debtor. Further reliance is placed on ***Vivek Prakash…vs… Dinesh Kumar Gupta, (2024) ibclaw.in 532 NCLAT, passed by the Hon'ble National Company Law Appellate Tribunal***, to emphasise that this Hon'ble Tribunal does not exercise criminal jurisdiction and cannot, by its orders in such applications, automatically trigger criminal liability under the IBC.
20. Once it is accepted that these are civil, recovery-oriented proceedings, the primary concern is whether any stakeholder's pecuniary or legal interest is adversely affected by such withdrawal. In the instant case, the benefit of the avoidance applications has

been contractually structured to accrue exclusively to the SRA/Applicant under the Resolution Plan, therefore, the question of prejudice to other Stakeholders does not arise. Reliance has been placed on the decision of the Hon'ble Co-ordinate Bench of this Tribunal (Chennai Bench) in the case of ***Shri Anil Kumar Khicha…vs… Manmohan Singh Jain & Anr. (2024) ibclaw.in 751 NCLT,*** where withdrawal of a PUFE Applications was permitted on the basis of the CoC/Stakeholder's instructions.

21. That, the consent terms record a global settlement between the Applicant group and the Respondent group, under which, inter alia, the parties have agreed to bring an end to all inter se disputes, including withdrawal of the Appeals and Writ Petition filed by the Respondent No. 2 before the Hon'ble National Company Law Appellate Tribunal, New Delhi and the Hon'ble High Court of Bombay, respectively as well as the complaint lodged by the Applicant before Economic Offences Wing, so that all the pending proceedings arising out of the underlying disputes stand comprehensively resolved. The settlement is more of a private nature between the Applicant group and the Respondent group wherein the only Financial Creditor in the CIRP was the Applicant. It is therefore, submitted that the view taken by the Ld. Judicial Member needs to be upheld.

**<u>Analysis and Findings</u>**

22. To answer the point under reference the provisions pertaining the same are required to be seen. There is no dispute that neither the Code (IBC) nor the NCLT Rules, 2016 contain any express provision permitting withdrawal of applications filed under Sections 43 and 66 of the Code. Equally, there is no provision prohibiting such withdrawal. The question, therefore, is whether, in the absence of an express provision under the Code, can the adjudicating authority invoke the principles embodied in the Code of Civil Procedure through Rule 11 of the NCLT Rules, or whether such omission should be construed as a legislative intent prohibiting withdrawal.

23. A gainful reference to Section 424 of the Companies Act, 2013 can be made which reads as under:

*Section 424. Procedure before Tribunal and Appellate Tribunal.*

*(1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act 1[or of the Insolvency and Bankruptcy Code, 2016 (31 of 2016)] and of any rules made hereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.*

*(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act 1[or under the Insolvency and Bankruptcy Code, 2016 (31 of 2016)], the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:--*

*(a) summoning and enforcing the attendance of any person and examining him on oath;*

*(b) requiring the discovery and production of documents;*

*(c) receiving evidence on affidavits;*

*(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act,1872 (1 of 1872), requisitioning any public record or document or a copy of such record or document from any office;*

*(e) issuing commissions for the examination of witnesses or documents;*

*(f) dismissing a representation for default or deciding it ex parte;*

*(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and*

*(h) any other matter which may be prescribed.*

*(3) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the*

*Tribunal or the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,--*

*(a) in the case of an order against a company, the registered office of the company is situate; or*

*(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.*

*(4) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).*

24. Sub-section (2) of Section 424 mentions that for discharge of functions by the Tribunal under the Companies Act, 2013 or under the Insolvency and Bankruptcy Code, 2016, the same powers that are vested under the Code of Civil Procedure, 1908, while trying suit can be exercised, in respect of matters: (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence on affidavits; (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act,1872 (1 of 1872), requisitioning any public record or document or a copy of such record or document from any office; (e) issuing commissions for the examination of witnesses or documents; (f) dismissing a representation for default or deciding it ex parte; (g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and specifically mentions; (h) any other matter which may be prescribed. Sub-section (3) of Section 424 prescribes that the orders made by the Tribunal be enforced in the same manner as if it were a decree made by the Court in the suit pending therein. Sub-section (4) of Section 424 makes the proceedings before the Tribunal to be Judicial Proceedings within the Section 193 and 228 and for the purpose of Section 196 of Indian Penal Code and Tribunal shall be deemed

to be a Civil Court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

25. Though the entire CPC as procedural law, would not be applicable to the proceedings before the Tribunal under the IBC, however, some of the provisions of CPC have been made applicable. Therefore, the Tribunals have been applying the principles of CPC in appropriate cases where there are no express provisions prescribed under the Code or under the NCLT Rules, 2016, **NCLT Cuttack Bench** in ***Imperial Refractories Vs. Shrikripalu Steels Private Limited, Rest. App 4 of 2023*** while dealing with the Restoration Application has applied the analogy of Order XXIII of CPC and restored the Application which was withdrawn on a settlement wherein it was observed as under: *"In the IBC, 2016 or in the NCLT Rules, 2016 there is no provision available to grant liberty to restore the finally disposed of petition as settled out of Court or as withdrawn. Not only in the IBC, 2016, there is no such provision available in any other Act. In this situation, it is better to see the provisions available in the Code of Civil Procedure, 1908. Of course, the CPC is not applicable to proceedings under the IBC, 2016, but the principles embodied therein can be applied by way of analogy. Order XXIII CPC deals with compromise and withdrawal of suits... Thus, the provisions of Order XXIII of the CPC can be looked into while adjudicating issues arising under the IBC."* A similar view has been taken by the **NCLT, Kochi Bench in *AVANT Garde Clean Room & Engineering Solutions Private Limited v. HLL Biotech Limited, Restoration Application No. 2 of 2022*.**

26. In this regard, reference may be made to the order passed by the NCLT, Cuttack Bench in ***Imperial Refractories v. Shrikripalu Steels Private Limited*, Restoration Application No. 4 of 2023**, decided on 10.01.2024, wherein it was observed as under: *"In the IBC, 2016 or in the NCLT Rules, 2016 there is no provision available to grant liberty to restore the finally disposed of petition as settled out of Court or as withdrawn. Not only in the IBC, 2016, there is no such provision available in any other Act. In this situation, it is better to see the provisions available in the Code of Civil Procedure, 1908. Of course, the CPC is not applicable to proceedings under the IBC, 2016, but the principles embodied therein can be applied by way of analogy. Order XXIII CPC deals with compromise and withdrawal of suits... Thus, the*

*provisions of Order XXIII of the CPC can be looked into while adjudicating issues arising under the IBC."*

27. A similar view has been taken by the **NCLT, Kochi Bench in *AVANT Garde Clean Room & Engineering Solutions Private Limited v. HLL Biotech Limited*, Restoration Application No. 2 of 2022**, decided on 02.11.2022, wherein it was held that,

28. Useful reference may also be made to the judgment of the Hon'ble Supreme Court in ***Sarguja Transport Service v. State Transport Appellate Tribunal*, (1987) 1 SCC 5.** In this case, the Hon'ble Supreme Court with respect to the writ proceedings under Articles 226 and 227 of the Constitution observed that, *"The provisions of the Code of Civil Procedure, 1908 are not in terms applicable to the writ proceedings although the procedure prescribed therein, as far as it can be made applicable, is followed by the High Courts while disposing of writ petitions."*

29. The aforesaid judgment clearly recognises that even where the Code of Civil Procedure does not directly apply, the principles embodied therein can be invoked to fill procedural gaps. the observations of the Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India (2019) ibclaw.in 3 SC*** assume significance, wherein it was observed that *"Every legislation, particularly in economic matters is essentially empiric and is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses…."* Every legislation cannot be expected to provide for every procedural contingency. Where the statute is silent and no inconsistency arises, this Adjudicating Authority can legitimately draw guidance from well-settled procedural principles. It is for this purpose that inherent powers are bestowed by the Tribunal to exercise them in a given situation to meet the ends of justice with a caution that the exercise of the same should not amount to a legislation, however, can be used to fill in the gaps to meet ends of justice and to pass appropriate orders to relieve the Parties to the litigation of any hardships or causing injustice because of the absence of any specific provisions to that effect. Thus, different Benches of NCLT and even the constitutional courts have been applying the provisions of CPC in an appropriate case for meaningful application of the provisions under the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016.

30. I am conscious of the observations of the Hon'ble Supreme Court in ***Independent Sugar Corporation Ltd. v. Girish Sriram Juneja & Ors.*** **[(2025) ibclaw.in 37 SC],** wherein it has been held that Courts and Tribunals ought not to fill perceived gaps in the statutory framework by resorting to judicial legislation and must remain within the confines of legislative intent. There can be no quarrel with the said proposition. However, in my considered opinion, the present case does not involve supplying a casus omissus or creating a substantive right which the Legislature has consciously omitted. The issue before this Tribunal is merely whether, in the absence of an express procedural provision, the inherent powers under Rule 11 of the NCLT Rules can be exercised by drawing guidance from the well-established principles embodied in the Code of Civil Procedure. Such an exercise does not amount to judicial legislation but is only a legitimate exercise of procedural discretion.

31. Akin to Section 151 of Civil Procedure Code, Rule 11 of National Company Law Tribunal, Rules, 2016 has been framed, it has to be exercised only in the situation where there are no express provisions under the enactments; it is only in such exigencies that inherent powers are exercised to secure the ends of justice and prevents the abuse of legal process, even when the specific situation is not explicitly covered by the Code. If the provisions under the Code empowers certain acts to be done, it inherently implies the power to execute the same and also do all necessary acts to bring a logical end to that Act, and therefore if there is no express substantive provisions or alternate remedy available, inherent powers have to be exercised to meet the ends of justice, in the circumstances. Therefore, to say that there are no express provisions for withdrawal of Applications under Section 43 & 66 of the Insolvency and Bankruptcy Code, 2016, therefore, they cannot be allowed to be withdrawn, even by exercising inherent powers, is a mis-conceived thought. It is a well-settled principle of statutory interpretation that where the Legislature confers a power or enables a particular act to be done, it also, by necessary implication, confers the authority to do all such acts as are indispensable for effectively carrying out the purpose for which the power has been granted. This doctrine is founded on the legal maxim, *"Quando lex aliquid concedit, concedere videtur et id sine quo res ipsa esse non potest"* i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavailable"

32. Therefore, merely because the Insolvency and Bankruptcy Code does not expressly provide for withdrawal of applications under Sections 43 and 66, it cannot be concluded that the Legislature intended to prohibit such withdrawal. On the contrary, the principles underlying Order XXIII Rule 1 can safely be invoked while exercising inherent powers under Rule 11 of the NCLT Rules, 2016. It is also pertinent to note that Order XXIII Rule 1 itself draws a distinction between an unconditional withdrawal and a withdrawal with liberty to institute fresh proceedings. Permission of the Court is required only where liberty to institute fresh proceedings is sought. Where the plaintiff intends to unconditionally abandon the proceedings, the consequence is merely that a fresh proceeding on the same cause of action cannot thereafter be maintained.
33. It is also pertinent to note that permitting withdrawal of avoidance applications is not without precedent. In ***Bharti Airtel Limited v. Credosync Infosoft Private Limited*****, IA (DIS.) No. 02 of 2025**, decided on 28.04.2025, this Adjudicating Authority recorded that an application filed under Section 66 of the Code, which had earlier been approved by the Committee of Creditors for prosecution, was subsequently withdrawn. Thus, withdrawal of applications under Sections 43 and 66 of the Code, where the facts so justify, is not an unknown practice before this Tribunal.
34. The learned Technical Member has further held that proceedings under Sections 43 and 66 of the Code are punitive in nature and, therefore, ought not to be permitted to be withdrawn. I am unable to persuade myself to agree with the said view.
35. An application under Section 43 of the Code falls under Chapter III of Part II, which deals with preferential, undervalued, extortionate credit and fraudulent transactions. The reliefs that may be granted upon a finding that a preferential transaction has been entered into are contained in Section 44 of the Code. It reads as under *"44. Orders in case of preferential transactions. - (1) The Adjudicating Authority, may, on an application made by the resolution professional or liquidator under sub-section (1) of section 43, by an order:*

    *(a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;*

    *(b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;*

*(c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;*

*(d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;*

*(e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;*

*(f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and*

*(g) direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the corporate insolvency resolution process for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference".*

36. Thus Section 44 empowers the Adjudicating Authority, inter alia, to direct that the property transferred be vested in the Corporate Debtor, require payment of sums representing the benefit received under the impugned transaction, release or discharge any security interest created by the Corporate Debtor, revive the liability of a guarantor, create an appropriate charge over the property of the person liable and pass such other consequential directions as may be necessary to restore the position as it existed prior to the preferential transaction.

37. Likewise, Section 66 of the Code falls under Chapter VI of Part II dealing with wrongful and fraudulent trading. The consequential powers of the Adjudicating Authority are provided under Section 67 of the Code. It reads as:

*"67.* Proceedings *under section 66. - (1) Where the Adjudicating Authority passes an order under sub-section (1) or sub section (2) of section 66, as the case may be, it may give such further directions as it may deem*

*appropriate for giving effect to the order, and in particular, the Adjudicating Authority may—(a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the corporate debtor to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the corporate debtor held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and (b) from time to time, make such further directions as may be necessary for enforcing any charge imposed under this section."*

The said provision enables the Adjudicating Authority to issue consequential directions for enforcing the liability created under Section 66, including creation and enforcement of charges over the assets of the person held liable. Neither Section 66 nor Section 67 prescribes any criminal offence or penal punishment.

38. A conjoint reading of Sections 43, 44, 66 and 67 of the Code leaves no manner of doubt that the consequences contemplated thereunder are civil, monetary and commercial in nature. The object of these provisions is to restore the value wrongfully diverted, from the Corporate Debtor and augment the asset pool available for distribution in accordance with the provisions of the Code. They do not contemplate imposition of any criminal liability or punishment. I am, therefore, unable to subscribe to the view that proceedings under Sections 43 and 66 are punitive in nature merely because findings of fraud or preferential dealings may incidentally arise while adjudicating such applications.

39. The peculiar facts of the present case also assume significance. The Applicant is the original Financial Creditor who initiated the Corporate Insolvency Resolution Process under Section 7 of the Code. The Applicant was also the sole member of the Committee of Creditors having 100% voting share and subsequently became the Successful Resolution Applicant. The approved Resolution Plan specifically provides that all benefits arising out of proceedings under Sections 43 to 51 and Section 66 of the Code shall vest exclusively in the Successful Resolution Applicant. Pursuant thereto, the Adjudicating Authority, by order dated 30.04.2024, substituted the Applicant in place of the Resolution Professional for prosecuting the present applications.

40. It is an admitted position that there is no other Financial Creditor or Operational Creditor having any claim over the amounts sought to be recovered in the present applications. The Applicant is the sole beneficiary of any recovery that may ultimately result from these proceedings. It is pleaded that having regard to the commercial realities, the Applicant has taken a conscious decision to settle all disputes with the erstwhile directors and the other Respondents by entering into the Consent Terms. Such a commercial decision, in the absence of any statutory prohibition or demonstrable prejudice to any stakeholder, ordinarily deserves due deference.
41. Regulation 35A of the Insolvency Resolution Process for Corporate Persons Regulations, 2016 obligates the Resolution Professional to examine whether the Corporate Debtor has been subjected to transactions covered under Sections 43, 45, 50 or 66 of the Code and, where necessary, to file appropriate applications before the Adjudicating Authority. Regulation 38(2)(d) further mandates that every Resolution Plan shall provide the manner in which proceedings relating to avoidance transactions or wrongful or fraudulent trading shall be pursued after approval of the Resolution Plan, together with the manner in which the proceeds arising therefrom shall be distributed. Thus, the statutory scheme itself recognises that such proceedings may continue even after approval of the Resolution Plan and that their ultimate beneficiary would depend upon the terms of the approved Resolution Plan.
42. It is now well settled that avoidance applications are independent proceedings and survive the approval of a Resolution Plan. Their object is to maximise the value of the assets of the Corporate Debtor by recovering the value lost on account of avoidable transactions. In ***Tata Steel BSL Limited v. Venus Recruiters Private Limited & Ors.***, **[(2023) 1 High Court Cases (Del) 301]** the Hon'ble Delhi High Court observed that the endeavour in such proceedings is to secure the maximum possible recovery for the benefit of the stakeholders of the Corporate Debtor. In the said case, the Resolution Plan was silent as to the treatment of pending avoidance applications. The present case, however, stands on a different footing. Here, the approved Resolution Plan expressly provides that all recoveries arising out of proceedings under Sections 43 to 51 and Section 66 of the Code shall exclusively vest in the Applicant as the Successful Resolution Applicant. Consequently, the

Applicant alone is entitled to take an informed commercial decision as to whether such proceedings should be pursued or settled.

43. Even if permission to withdraw the present applications is declined, only two eventualities may arise. The Applicant may continue to prosecute the proceedings, in which event any benefit/amount recovered would ultimately accrue to the applicant exclusively in terms of the approved Resolution Plan. Alternatively, the Applicant may choose not to effectively prosecute the proceedings, resulting in their dismissal on merits or otherwise. In either situation, no useful purpose would be served by compelling the Applicant to continue with litigation which it no longer wishes to pursue. A right to prosecute a proceeding necessarily includes the right to abandon the same, unless such right is expressly curtailed by the statute. In the present case, neither the Code nor the Regulations impose any such restriction.

44. It is also relevant to note that, apart from the monetary reliefs, the Resolution Professional had prayed for a direction to the Serious Fraud Investigation Office ("SFIO") to conduct an investigation into the affairs of the Corporate Debtor and its related parties, as well as for reporting the transactions to the Insolvency and Bankruptcy Board of India for appropriate action under Section 236 of the Code.

45. Insofar as the prayers seeking investigation by the Serious Fraud Investigation Office ("SFIO") and initiation of proceedings under Section 236 of the Code are concerned, I am of the view that the same do not alter the conclusion reached herein. The jurisdiction exercised by the Adjudicating Authority while dealing with applications under Sections 43 and 66 of the Code is confined to the reliefs contemplated under the said provisions.

46. Even if it is presumed for the sake of arguments, that the SFIO investigation into the affairs of the Company lands into the Criminal Charges of Fraud, they are triable by the Special Courts under Section 236 of the Insolvency and Bankruptcy Code, 2016, for which the SFIO can independently investigate into the affairs of any Company and launch prosecution. Even the criminal offences are compoundable i.e. the parties can arrive at a settlement and the prosecution has the effect of acquittal or discharge as the case may be. Therefore, the findings arrived at by the Learned Technical Member that the investigation sought through SFIO has penal consequences and

therefore, the withdrawal is not permissible, would not carry sufficient weight and meaning.

47. Accordingly, merely because the present applications are permitted to be withdrawn on the basis of the Consent Terms, it cannot be inferred that the jurisdiction of any competent authority to order an investigation or initiate proceedings in accordance with law stands extinguished or curtailed. If the facts of the case otherwise warrant the exercise of such statutory powers, the competent authority would be at liberty to act independently in accordance with law. The present order is confined only to the permissibility of withdrawal of the applications under Sections 43 and 66 of the Code and shall not be construed as expressing any opinion on the merits of any independent action that may be available under any other provision of law.

48. In view of the foregoing discussion, I am in respectful agreement with the conclusions arrived at by the learned Judicial Member. I am of the considered opinion that this Adjudicating Authority possesses the power to permit withdrawal of applications filed under Sections 43 and 66 of the Insolvency and Bankruptcy Code, 2016 in exercise of its inherent powers under Rule 11 of the National Company Law Tribunal Rules, 2016, by drawing guidance from the principles embodied in Order XXIII Rule 1 of the Code of Civil Procedure, 1908. The absence of an express provision under the Code permitting such withdrawal cannot, by itself, be construed as a legislative prohibition.

49. I further hold that proceedings under Sections 43 and 66 of the Code are essentially civil and restitutive in nature. The reliefs contemplated under Sections 44 and 67 are intended to restore the value of the assets of the Corporate Debtor and augment the asset pool available for the benefit of the stakeholders. The said provisions neither create any criminal offence nor prescribe any penal consequence. Therefore, the mere allegation of fraudulent or preferential transactions cannot be a ground to hold that such proceedings are incapable of being withdrawn upon settlement.

50. On the facts of the present case, it is an admitted position that the Applicant is the original Financial Creditor, the sole member of the Committee of Creditors and the Successful Resolution Applicant. Under the approved Resolution Plan, all benefits arising out of the present avoidance applications have been specifically vested in the Applicant. The Applicant has thereafter been substituted in place of the Resolution

Professional for prosecuting the present proceedings. There is no other stakeholder having any subsisting claim over the amounts sought to be recovered through these applications.

51. The Consent Terms placed on record disclose that the disputes between the parties have been amicably settled upon payment of a consolidated amount of Rs.3,89,50,000/-, apportioned between the two applications in the manner recorded hereinabove. The settlement has been arrived at without admission of liability by the Respondents. Having regard to the commercial decision taken by the Applicant, and in the absence of any statutory prohibition or prejudice to any other stakeholder, I find no reason to decline the prayer for withdrawal.

52. Accordingly, the questions referred for my opinion are answered as under:

    (a) Application filed under Sections 43 and 66 of the Insolvency and Bankruptcy Code, 2016 can be permitted to be withdrawn by the Adjudicating Authority in exercise of its inherent powers under Rule 11 of the National Company Law Tribunal Rules, 2016, read with the principles underlying Order XXIII Rule 1 of the Code of Civil Procedure, 1908 in appropriate cases.

    (b) In the facts and circumstances of the present case, the Applicant has made out a fit case for permitting withdrawal of I.A. No.4475 of 2023 and I.A. No.4830 of 2023 in terms of the Consent Terms and the Withdrawal Memos filed on record.

53. In light of the above discussion, both the Points “a” and “b” under reference are answered in Affirmative.

54. The view taken by the learned Judicial Member is concurred with.

**Sd/-**

**Sushil Mahadeorao Kochey**
Member (Judicial)
Vijay Andhale