

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1165 of 2025

[Arising out of Order dated 01.08.2025 passed by the Adjudicating Authority
(National Company Law Tribunal, Mumbai Bench, Court – V), in I.A.
(LIQ.)/14/2025 in C.P. (IB) No.1029/MB/2021]

IN THE MATTER OF:

Manish Jaju

**Erstwhile Resolution Professional of
Rajesh Landmark Projects Private Limited**

Having his office address at:
D- 502, Neelkanth Business Park,
Vidyavihar, Mumbai – 400086.

...Appellant

Versus

**1. The Committee of Creditors of Rajesh
Landmark Projects Private Limited
Through M/s Asset Care & Reconstruction
Enterprise Limited**

A company registered under the Provisions of
Companies Act, 1956

Having its registered office at
2nd floor, 13, Mohan Dev Building,
Tolstoy Marg, New Delhi- 110 001,
And also having address at
Unit No. 502, C Wing, One BKC,
G Block, Sandra Kurla Complex,
Mumbai 400 051.

Email Id: mk.manav@acreindia.in

...Respondent No.1

2. Ms. Smita Gupta

Liquidator Rajesh Landmark Projects Pvt Ltd

Having address at: Flat no. 7702, 7th Floor,
Godrej Central J Tower, Shell Colony,
Near Tilak Nagar Railway Station,
Chembur, Mumbai – 400071.

E-mail id: sumitayal31@gmail.com

...Respondent No.2

Present:

For Appellant : Mr. Devul Dighe, Advocate.

**For Respondents : Mr. Pranjit Bhattacharya, Ms. Salonee Shukla and
Ms. Aashima Gautam, Advocates for R-1.**

Mr. Adeel Parker, Advocate for Liquidator.

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed by erstwhile resolution professional of the corporate debtor challenging the order dated 01.08.2025 passed by the adjudicating authority (National Company Law Tribunal (NCLT), Court V, Mumbai Bench) in I.A. (LIQ.)/14/2025, in C.P. (IB) No.1029/MB/2021. By the impugned order, adjudicating authority allowed the I.A. (LIQ.)/14/2025 filed by the appellant seeking liquidation of the corporate debtor, however, by allowing the liquidation application instead of appointing the appellant as liquidator has appointed R-2 Ms. Smita Gupta as the liquidator, relying on circular dated 18.07.2023 of the IBBI. Aggrieved by the said order, this appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the appeal are:

- i. The corporate insolvency resolution process (CIRP) against the corporate debtor Rajesh Landmarks Project Private Limited was initiated by order dated 10.10.2022 passed by the adjudicating authority, appellant was appointed as a Resolution Professional (RP) by the Committee of Creditors (CoC).
- ii. CoC in its 33rd meeting held on 10.12.2024 resolved to not approve the resolution plan submitted by RARE ARC and with 83.93 voting share decided to liquidate the corporate debtor.

- iii. In pursuance of the resolution of the CoC, the appellant who was the RP filed IA Liquidation 14/2025. The CoC by its resolution had resolved to appoint the appellant as liquidator.
- iv. The liquidation application came for consideration before adjudicating authority on 26.06.2025. The counsel of the liquidator undertook to file consent of proposed liquidator and the valid AFA.
- v. In pursuance of the order dated 26.06.2025, the consent of the appellant filed the written consent of the appellant dated 26.06.2025 and the authorisation for Assignment dated 17.01.2021.
- vi. Adjudicating Authority heard the liquidation application and by the impugned order has allowed the liquidation application, however, by allowing the application for liquidation noticing that CoC has proposed the appellant to act as liquidator, relying on a circular dated 18.07.2023 of the IBBI decided to appoint one Ms. Smita Gupta as liquidator, aggrieved by which order this appeal has been filed.

3. This appeal has been filed only limited to the extent by which adjudicating authority appointed Ms. Smita Gupta as liquidator. In the appeal, following prayers has been made:

“a) This Hon'ble Appellate Tribunal be pleased to pass appropriate orders admitting the above the appeal and set aside the impugned order dated 1st August 2025 passed by the Hon'ble NCLT, Mumbai Bench No. V only to the extent of appointing Ms. Smita Gupta as the Liquidator of the Corporate Debtor instead of the Appellant;

b) This Hon'ble Appellate Tribunal be pleased to pass appropriate orders appointing the Appellant Mr. Manish Motilal Jaju as Insolvency Professional

registered with IBBI with Registration No. IBBI/IPA-001/IP-P00034/2016-17/10087 as the Liquidator of the Corporate Debtor Rajesh Landmark Projects Private Limited;

c) To pass any other order(s) which this Hon'ble Appellate Tribunal may deem fit in the facts and circumstances of the case.”

4. We have heard learned counsel for the appellant as well as learned counsel appearing for the R-2 and learned counsel appearing for the CoC.

5. Learned counsel for the appellant submits that by virtue of Section 34, sub-Section (1) of the IBC, RP was entitled to be appointed as liquidator. The CoC in its resolution has already resolved to appoint the appellant as liquidator. Reliance by the adjudicating authority on the circular dated 18.07.2023 is misplaced. The 18.07.2023 is not a circular but an internal communication by IBBI to the Secretary NCLT, Principal Bench, New Delhi. The communication dated 18.07.2023, IBBI has displaced the legislative scheme as contained in Section 34(1) of the IBC. Present is not a case where IBBI has recommended for replacement of the appellant and circular dated 18.07.2023, which is relied by the adjudicating authority is not a recommendation as contemplated by Section 34(4)(b). The adjudicating authority has not followed the statutory scheme under Section 34 of the IBC and the order of the adjudicating authority thus is unsustainable.

6. Learned counsel for the CoC submits that CoC has already recommended appellant for appointment as liquidator, hence, they support the submission of the appellant.

7. Learned counsel appearing for the R-2 submits that appointment of liquidator is complete prerogative of the adjudicating authority hence, R-2 has

no submission qua merits of the appeal. R-2 has filed the reply in which R-2 has referred to certain expenses incurred by the R-2 totalling to ₹45,625/-.

8. We have considered the submissions of the counsel for the parties and perused the records.

9. From the facts as noted above, it is clear that CoC while passing the resolution for liquidation of the corporate debtor has resolved to appoint the appellant as liquidator which is already noticed by adjudicating authority in paragraph 12 of the impugned order. Adjudicating Authority, however, relying on the circular dated 18.07.2023 has not appointed the appellant and appointed Ms. Smita Gupta as the liquidator. Reasons for not appointment of the appellant are contained in paragraph 12 of the impugned order, which are as follows:

“12. We note that the Applicant and CoC have proposed the acting Resolution Professional i.e., Mr. Manish Motilal Jaju to act as the Liquidator. However, in Circular No. Liq12011/214/2023-IBBI/840 dated 18.07.2023, IBBI has provided the following guidance:

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3. In view of above justification, the Board in exercise of its powers conferred under section 34(4)(b) recommends that an IP other than the RP/IRP may be appointed as liquidator in all the cases where liquidator order is to be passed henceforth. The liquidator can be appointed from the panel list of IBBI.

*In view of the above, this bench is inclined to appoint an Insolvency Professional from the IBBI Panel **Ms. Smita Gupta** bearing Registration No. **IBBI/IPA-001/IP-P-02768/2023- 2024/14283** to act as the Liquidator in terms of section 34 of the Code. His Authorization for Assignment is valid up to 30.06.2026.”*

10. For considering the submissions of the counsel for the parties, we need to notice the legislative scheme under the IBC for appointment of liquidator.

Chapter III, Part II of the IBC contains heading “liquidation process”. Section 33 deals with initiation of liquidation and Section 34 deals with appointment of liquidator and fee to be paid. Section 34 of the IBC is as follows:

“34. Appointment of liquidator and fee to be paid.-

(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under [Chapter II] [or for the pre-packaged insolvency resolution process under Chapter III-A] shall subject to submission of a written consent by the resolution professional to the Adjudicating Authority in specified form,] act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).

(2) On the appointment of a liquidator under this section, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.

(3) The personnel of the corporate debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor and provisions of section 19 shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the interim resolution professional.

(4) The Adjudicating Authority shall by order replace the resolution professional, if

(a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or

(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded [in writing; or]

[(c) the resolution professional fails to submit written consent under sub-section (1).]

(5) For the purposes of [clauses (a) and (c)] of sub-section (4), the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator.

(6) The Board shall propose the name of another insolvency professional [along with written consent from the insolvency professional in the specified form,] within ten days of the direction issued by the Adjudicating Authority under sub-section (5).

(7) The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.

(8) An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.

(9) The fees for the conduct of the liquidation proceedings under sub-section (8) shall be paid to the liquidator from the proceeds of the liquidation estate under section 53.”

11. As per sub-Section (1) of Section 34, where adjudicating authority passes an order for liquidation of the corporate debtor under Section 33, the RP appointed for the CIRP under Chapter II, shall subject to submission of written consent by the RP to the adjudicating authority shall act as a liquidator unless replaced by the adjudicating authority under sub-Section (4). Thus, the legislative scheme under sub-Section (1) of Section 34 is clear that subject to RP giving his written consent to the adjudicating authority, adjudicating authority while passing an order of liquidation shall appoint the RP to act as liquidator. The exception to not appoint RP as a liquidator is itself contained in sub-Section (1) which provides “unless replaced by the

adjudicating authority under sub-Section 4”. Sub-Section (4) thus contains an order of replacement, contains provisions under which adjudicating authority shall by order replace the RP. Sub-Section (4) of Section 34 is as follows:

“34. Appointment of liquidator and fee to be paid.-

(4) The Adjudicating Authority shall by order replace the resolution professional, if

(a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or

(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded [in writing; or]

[(c) the resolution professional fails to submit written consent under sub-section (1).]”

12. The replacement of RP thus is contemplated under sub-Section (4) and three circumstances has been mentioned as a, b & c. The present is a case where adjudicating authority relies on circular dated 18.07.2023 of the IBBI, which circular claim to have been issued under Section 34(2)(b). We need to notice the entire circular 18.07.2023 relied by adjudicating authority. The copy of the letter dated 18.07.2023 has been brought on record as Annexure – E, which is the following effect:

“Liq-12011/214/2023-IBBI/840

18th July 2023

*To
Secretary,
National Company Law Tribunal
Principal Bench
New Delhi*

Subject: Recommendation for appointment of Liquidator other than IRP/RP under section 34(4)(b) of the IBC, 2016 - regarding

The Code envisages time bound resolution of the Corporate Debtor (CD) to maximise the value of the assets. In cases where the CD has not been resolved successfully, Adjudicating Authority (AA) orders for initiation of the liquidation process of the CD and appoints a liquidator. In this regard, Section 34 of the Code provides that where AA passes an order for liquidation of the CD, the resolution professional (RP) appointed for the CIRP shall act as the liquidator unless replaced by the AA under the following three circumstances:

(i) the resolution plan submitted by the RP under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or

(ii) the Board recommends the replacement of a RP to the AA for reasons to be recorded in writing; or

(iii) the RP fails to submit written consent.

2. Section 34(4)(b) inter-alia provides that the AA shall replace the RP if the Board recommends the replacement for reasons to be recorded. During the review of performance of processes under the Code, it has been found that there is a meagre 4% average realisation against the admitted claims during the liquidation process whereas in Corporate Insolvency Resolution Process (CIRP) the average realisation is 32% against the admitted claims during CIRP. This necessitated for fresh perspective in the liquidation process and replacement of RP to act as liquidator. This subject has been considered by the Board and it is considered that AA may appoint a new IP as liquidator due to the following reasons:

(i) The IBC has been introduced with larger economic goals to revive the distressed viable CDs to convert non-performing assets as performing assets, promote employment, entrepreneurship, and credit by valuing capital invested in the project rather than selling in bits and pieces or recovery mechanism. The prime objective of the Code is resolution. Accordingly, in cases where the CD has not been successfully resolved or resolution plan has been failed, IP who has been

assigned to conduct the resolution process of the CD, may not be recommended to continue to act as liquidator.

(ii) The Code creates an ecosystem for maximisation of the value of assets of a CD. Non-revival of the CD through CIRP adversely impacts on its value. Value is usually dependent on the time taken to resolve the insolvency since it erodes over time and rapidly once the insolvency proceedings commence. Therefore, any delay in the insolvency resolution process may make reorganisation of the CD difficult and would induce liquidation, thereby destruction of value for the stakeholders. Thus, an independent IP needs to be entrusted to conduct the Liquidation process of the CD for value maximisation while also ensuring the transparency and complete independence in two separate assignments.

(iii) The Code envisages CIRP and liquidation as two distinct processes with distinct roles and responsibilities. Thus, an IP undertakes the two different assignments as RP and Liquidator, separately. Segregating the dual role of an IP in the same CD as RP and liquidator will foster an inbuilt system of check and balance in the process, thereby enhancing the accountability of each job and strengthening stakeholder's trust in the processes under the Code. Further, it would eliminate any perverse incentives, whatsoever, available with RP in deliberately pushing the CD towards liquidation and secure next assignment on ex-ante basis.

3. In view of above justification, the Board in exercise of its powers conferred under section 34(4)(b) recommends that an IP other than the RP/IRP may be appointed as liquidator in all the cases where liquidator order is to be passed henceforth. The liquidator can be appointed from the panel list of IBBI."

13. The subject of the letter provides "Recommendation of appointment of the liquidator, other than IRP/RP under Section 34(4)(b) of the IBC". When we read the letter dated 18.07.2023, it is clear that circular is a general circular issued by the IBBI addressed to Secretary NCLT, Principal Bench, New Delhi, where IBBI referring to provisions of Section 34(4)(b) has exercised

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its power conferred under Section 34(4)(b) to recommend that IP other than IRP/RP may be appointed as liquidator in all the cases, where liquidation order is to be passed henceforth. Paragraph 3 of the letter contains following:

“3. In view of above justification, the Board in exercise of its powers conferred under section 34(4)(b) recommends that an IP other than the RP/IRP may be appointed as liquidator in all the cases where liquidator order is to be passed henceforth. The liquidator can be appointed from the panel list of IBBI.”

14. We need to examine as to what is the nature of jurisdiction which can be exercised by the IBBI under Section 34(4)(b). Whether in exercise of power under Section 34(4)(b), IBBI can issue the circular 18.07.2023 in the nature which has been issued providing that in all cases, liquidator be appointed other than IRP/RP. We need to look into the purpose and object for which Section 34(4) has been enacted. As noted above under Section 34(1) RP has to act as a liquidator subject to giving written consent unless replaced by the adjudicating authority under sub-Section (4). Thus, legislative scheme is to appoint RP as the liquidator unless replaced by the adjudicating authority. Thus, replacement of the liquidator by adjudicating authority is an act of the adjudicating authority as contemplated by sub-Section (4) of Section 34 and the grounds for replacement has also been provided in sub-Section (4) of Section 34. We in the present case are concerned with Section 34(4)(b), which is as follows:

“34. Appointment of liquidator and fee to be paid.-

(4) The Adjudicating Authority shall by order replace the resolution professional, if

(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded [in writing; or]

...

15. The above provision indicates that adjudicating authority shall replace the RP if the board recommends the replacement of the RP to the adjudicating authority. When we look into the legislative scheme under Section 34, the liquidation order under Section 33 is contemplated with respect to CIRP under Chapter II and RP which is then referred to in Section 34(1) is the RP who was functioning in the CIRP process and the replacement contemplated is the replacement of a Resolution Professional, which clearly means the RP who was functioning in the CIRP of the corporate debtor, for the purpose of present case RP functioning in the CIRP of the corporate debtor, Rajesh Landmark Projects Private Limited.

16. Under the IBC 2016, the board exercises various powers and functions according to IBC Code the board act as a regulator who register insolvency professional, monitor the insolvency professionals and pass any direction as may be required for compliance of the provisions of the Code and the regulation issued there under. Standard for functioning of the insolvency professional is also to be specified by the regulation. It is useful to look into Section 196 of the IBC, which provides for power and functions of the Code. Section 196(1)(a) (aa) (b) (c) (d) (e) (f) (g) are as follows:

“196. Powers and functions of Board.-

(1) The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions namely:—

(a) register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations;

[(aa) promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of this Code;]

(b) specify the minimum eligibility requirements for registration of insolvency professional agencies, insolvency professionals and information utilities;

(c) levy fee or other charges [for carrying out the purposes of this Code, including fee for registration and renewal] of insolvency professional agencies, insolvency professionals and information utilities;

(d) specify by regulations standards for the functioning of insolvency professional agencies, insolvency professionals and information utilities;

(e) lay down by regulations the minimum curriculum for the examination of the insolvency professionals for their enrolment as members of the insolvency professional agencies;

(f) carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(g) monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder;”

17. Under Section 196(2) the board is empowered to make model bylaws to be adopted by insolvency personnel agencies which provide for the manner of monitoring and regulating the provisions of insolvency professional. Section 196(2)(n) is as follows:

“196. Powers and functions of Board.-

(2) The Board may make model bye-laws to be adopted by insolvency professional agencies which may provide for—

(n) the manner of monitoring and reviewing the working of insolvency professional who are members;”

18. Insolvency professional functions under regulatory control of the IBBI hence Section 34(4) the board has been given right to recommend for replacement of the RP. The right given for board to recommend the replacement of the RP under Section 34(4)(b) is right to recommend the replacement of a resolution professional i.e., resolution professional of the corporate debtor with regard to whom liquidation order has been passed. The decision to recommend for replacement has to be qua the particular RP which may be due to work and conduct of the RP, which is under constant monitoring and gaze of the IBBI. The power under Section 34(4)(b) cannot be exercised by the board to take a decision that in all cases of liquidation, IRP and RP be not appointed as liquidator. The power envisages under Section 34(4)(b) is a power to recommend replacement of the particular RP on the facts specific to that particular RP and that is not a general power which can be exercised by the board for passing the circular dated 18.07.2023, as has been brought on the record. In event, it is accepted that IBBI has power to issue general circular in exercise of power under Section 34(4)(b) that in all cases of liquidation IRP and RP be not appointed, this power clearly militates against the legislative scheme as contained in Section 34(1). Legislature while giving power to board under Section 34(4)(b) contemplated recommendation by board for replacement of the particular RP not the said power has to be exercised qua a particular RP in the CIRP of the corporate debtor on account

of work and conduct of that particular RP and the power under Section 34(4)(b) cannot be exercised to issue a general circular as issued by the IBBI on 18.07.2023, which is contrary to scheme under Section 34(1). IBBI has misinterpreted the power given to the IBBI under Section 34(4)(b).

19. The present is not a case where the letter dated 18.07.2023, was written by the IBBI recommending replacement of the appellant, hence the said letter cannot be basis for replacing the appellant as a liquidator.

20. We thus are of the view that impugned order of the adjudicating authority as contained in paragraph 12 appointing Ms. Smita Gupta as liquidator cannot be sustained. There being no grounds available under Section 34(4) for replacement of the appellant, appellant was required to be appointed as a liquidator. Reply has been filed by R-2. In paragraph 8 of the reply, following has been stated:

“8. And therefore, the appointment of the R2 as Liquidator for the Corporate Debtor was a complete prerogative of the Ld. Adjudicating Authority and therefore, the R2 is not having any submissions / averments qua the merits of the Appeal and the R2 rests its case to the wisdom of the Hon'ble Bench for the appropriate Order in that regard.”

21. R-2, however, in paragraph 9.6 has given details of the expenses incurred by the R-2. Para 9.6 is as follows:

“9.6. Accordingly, the R2 has incurred following expenses in interest of compliance of its Fiduciary duties:

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount (in ₹)</i>
<i>1.</i>	<i>Publication expense for making public announcement</i>	<i>13125/-</i>

2.	<i>Office expenses</i>	2500/-
3.	<i>Legal cost and expenses</i>	30,000/-
	<i>TOTAL</i>	<i>Rs. 45,625/-"</i>

22. In result of the above discussions and our conclusions, the order of the adjudicating authority insofar as it appoint Ms. Smita Gupta as liquidator cannot be sustained. The appeal is allowed, direction contained in paragraph 12 is set aside and the appointment of appellant as liquidator is substituted in the impugned order dated 01.08.2025. We further direct that the R-2 shall be entitled for the expenses incurred as noted above in para 9.6.

The appeal is allowed accordingly.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

18th September, 2025

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