NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 523 of 2025
&
I.A. No. 1993 of 2025

(Arising out of Order dated 11.02.2025 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court-III in I.A. No.3964/2024 in IB-589(PB)/2020)

IN THE MATTER OF:

Anil Syal ...Appellant

Versus

Ajay Gupta & Anr. ...Respondents

Present:

For Appellant	:	**Ms. Prachi Johri and Ms. Abhipsa Sahu, Advocates**
For Respondents	:	**Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha and Ms. Aakriti Gupta, Advocates for R-1.**
		Mr. Brijesh Kumar Tamber and Mr. Prateek Kushwaha, Advocates for R-2/UBI.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by a Bankrupt has been filed challenging the order dated 11.02.2025 passed by National Company Law Tribunal ("**NCLT**"), New Delhi Bench, Court-III rejecting IA No.3964 of 2024 filed by the Appellant under Section 139(1)(a) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**IBC**") read with Rule 11 of the NCLT Rules, 2016, where the Appellant had prayed for an order for discharge of the Applicant from the Bankruptcy Process under Section 138(1)(a) of the IBC. Adjudicating Authority having rejected the application, aggrieved by which order, this Appeal has been filed by the Appellant.

2. Brief background facts necessary to be noticed for deciding the Appeal are:

(i) Personal Insolvency Resolution Process (“**PIRP**”) commenced on an application filed by the Appellant under Section 94 of the IBC on 28.10.2020. No repayment plan having been approved, on an application filed by the Appellant, Bankruptcy Process under Section 122 was initiated vide order dated 30.09.2022. By a subsequent order dated 23.12.2022, the Adjudicating Authority directed the Bankruptcy Process commencement dated to be treated as 23.12.2022.

(ii) On 16.03.2023, the Union Bank of India (“**UBI**”) submitted its claim for Rs.71.90 crores, while relinquishing its security interest in the asset of the Appellant (50% share in the Flat bearing First Floor, H No.11, Uday Park, New Delhi).

(iii) Bankruptcy Trustee made a public announcement for e-auction of 50% rights of the Appellant in the above asset. On 27.06.2023, e-auction was conducted by Respondent No.1 and one Mr. Akshat Gupta was declared as successful bidder at an auction price of Rs.91.72 lakhs. On 05.07.2023, Sale Certificate was issued by Respondent No.1 to Successful Bidder.

(iv) Respondent No.1 issued notice under Section 176 of the IBC of the intention to declare the final dividend. Respondent

No.1 submitted Report to the CoC in the 4th Meeting held on 21.08.2023 for completion of administration of estate of Bankrupt. Respondent No.1 also filed an IA No.5990 of 2023 under Section 138(1)(b) of the IBC seeking discharge of the Bankrupt on 31.10.2023.

(v) The Union Bank of India (Respondent No.2) filed an IA No.4421 of 2023 seeking setting aside of the e-auction. The Adjudicating Authority vide order dated 04.07.2024 set-aside the e-auction on the ground that only 15 days' notice for auction was given by Respondent No.1. The Adjudicating Authority directed the Bankruptcy Trustee and the UBI to conduct a fresh valuation for the same property, average of which valuation was to be considered for the fresh auction.

(vi) The Appellant filed Company Appeal (AT) (Ins.) No.1437 of 2024, challenging the order dated 04.07.2024, which Appeal came to be disposed of on 30.07.2024. This Tribunal did not interfere with the order directing for re-valuation of the property. However, liberty was given to the Appellant to make an appropriate application before the Adjudicating Authority for raising the issue of discharge of the Appellant.

(vii) After passing of the order dated 04.07.2024, the 5th CoC Meeting was convened on 30.07.2024, where Respondent No.1 informed the CoC that one year period had elapsed, hence, discharge application needs to be filed under Section

138(1)(a). Respondent No.2 requested Respondent No.1 to defer the agenda, so that UBI may obtain a legal advice on the same, which was not provided to Respondent No.1 so far.

(viii) On 06.08.2024, IA No.5990 of 2023 for discharge under Section 138(1)(b) of the IBC filed by the Bankruptcy Trustee was allowed to be withdrawn having become infructuous.

(ix) On 06.08.2024, the Appellant filed IA No.3964 of 2024 seeking discharge of the Appellant in terms of Section 138(1)(a) of the IBC. Discharge application filed by the Appellant was opposed by the Bankruptcy Trustee as well as the UBI. Both Respondent Nos.1 and 2 pleaded that Appellant has no *locus* to file discharge application under Section 138(1)(a). The UBI filed reply to IA No.3964 of 2024. On 11.02.2025, the Adjudicating Authority rejected the application filed by the Appellant. The Adjudicating Authority accepted the submission of the UBI that granting discharge to the Appellant may result in further obstruction during the sale of the asset as the remaining 50% ownership belongs to the wife of the Appellant. The Adjudicating Authority observed that it is unnecessary to address application filed by the Appellant as it does not align with the spirit of the IBC and the application has been filed by the Applicant with the intention of disrupting and derailing the Bankruptcy Process.

Aggrieved by the order rejecting the application, this Appeal has been filed.

3. We have heard Ms. Prachi Johri, learned Counsel appearing for the Appellant; Shri Milan Singh Negi, learned Counsel has appeared for Respondent No.1; and Shri Brijesh Kumar Tamber has appeared for Respondent No.2 – Union Bank of India.

4. Learned Counsel for the Appellant challenging the impugned order submits that discharge of the Appellant after expiry of one year is mandatory under Section 138(1)(a) of the IBC. The use of expression "shall" cast a duty on Respondent No.1 to file an application, which needs to be allowed by the Adjudicating Authority. Inspite of the Appellant making repeated requests to Respondent No.1 for filing of an application for discharge, Respondent No.1 failed in its duty to file an application under Section 139(1)(a), whereas more than two years have elapsed from commencement of Bankruptcy Process against the Appellant. Learned Counsel for the Appellant referring to IBBI Report on Bankruptcy Process contended that IBBI opined that discharge is automatic on expiry of period of one year. It is submitted that in view of consequences of discharge under Section 139, neither the Appellant's property nor Bankruptcy Trustee are discharged and the property of the Appellant is already with the Bankruptcy Trustee, which has been sold once by Bankruptcy Trustee, which auction was set aside on an application filed by the UBI and no fresh action has yet been taken, although more than 10 months have elapsed. The Adjudicating Authority without any basis

has observed that discharge of the Appellant shall create an obstruction in the Bankruptcy Process. Finding of possibility of disrupting and derailing the Bankruptcy Process is pure conjecture and completely unsustainable. The observation that wife of the Appellant is complicit with the Appellant, is also without any basis. Only 50% rights of the Appellant are with Bankruptcy Trustee, who is free to sale the property. There is no jurisdiction with the Bankruptcy Trustee or the UBI with regard to 50% share of the wife of the Appellant. The Appellant's application seeking discharge was bonafide and have been filed due to failure of the Bankruptcy Trustee to file an application under Section 138(1)(a) and further in pursuance of the liberty granted by this Tribunal vide its judgment and order dated 30.07.2024. In a case, when Bankruptcy Trustee fails to discharge its mandatory obligation of filing an application after lapse of one year period, the Appellant, who is directly affected by continuance of Bankruptcy Process, is fully entitled to bring the same to the notice of the Adjudicating Authority. The Adjudicating Authority ought to have examined the merits of the case for passing the order of discharge. The mere fact that Bankruptcy Trustee has not filed any application under Section 138(1)(a), cannot be a reason to not discharge the Appellant, which is mandate of the law.

5. Learned Counsel for Respondent No.1 submitted that Respondent No.1 had already filed an application under Section 138(1)(b) being IA No.5990 of 2023, within one year of the Bankruptcy Process, which was permitted to be withdrawn after setting aside of the auction held on

30.07.2024. In the 5th CoC Meeting held on 30.07.2024, Respondent No.1 informed the CoC that application under Section 138(1)(b) has to be filed by the Bankruptcy Trustee, as one year period has elapsed, on which the UBI, who is having 97.27% vote share, requested Respondent No.1 to defer the agenda for seeking legal opinion on the said issue, on which request, the agenda was deferred and no legal opinion has yet been submitted by the UBI to Respondent No.1, who has to act on the decision of the CoC. Hence, Respondent No.1 could not file application under Section 138(1)(a). It is, however, submitted that Respondent No.1 is bound to act in accordance with the provisions of IBC and the Rules and Regulations framed thereunder. It is submitted that Respondent No.1 is not averse to the rights of either the Bankrupt or the Creditors.

6. Learned Counsel appearing for UBI opposing the Appellant's submission, submits that application under Section 138(1)(a) has to be filed by Bankruptcy Trustee, hence, the application filed by the Appellant was not maintainable. It is submitted that the Adjudicating Authority has given sufficient reasons for rejecting the application filed by the Appellant. The Appellant is incompetent to maintain any legal action or proceeding in relation to the bankruptcy debt. The right to file an application for seeking discharge order is vested only with Bankruptcy Trustee. The rejection of application filed by the Appellant is thus in accordance with law. There is no automatic discharge after the lapse of one year period. The legislative intent is clear that after expiry of the period of one year, application has to be filed for discharge, which needs

to be considered and decided. The minimum period of one year provided for filing an application. The Bankrupt has not been given any right under Section 138 (1)(a) to file the discharge application. The UBI has filed its objection to IA No.5990 of 2023 and has highlighted the difficulty, which the UBI shall face, in event the discharge is allowed. It is submitted that the Appellant has only 50% rights in the asset and the Appellant if allowed to discharge, the UBI shall face difficulty in realizing its dues by sale of 50% share of the Bankrupt. The Bankruptcy Trustee has failed to provide the necessary Report before the Adjudicating Authority. The litigation initiated by the Appellant is a gross abuse of the process of law.

7. We have considered the submission of learned Counsel for the parties and have perused the records.

8. Sections 138 and 139 of the IBC, which deal with the discharge of a Bankrupt, provide as follows:

> "**138. Discharge order. –**
>
> (1) The bankruptcy trustee shall apply to the Adjudicating Authority for a discharge order –
>
> > (a) on the expiry of one year from the bankruptcy commencement date; or
> >
> > (b) within seven days of the approval of the committee of creditors of the completion of administration of the estates of the bankrupt under section 137, where such approval is obtained prior to the period mentioned in clause (a).
>
> (2) The Adjudicating Authority shall pass a discharge order on an application by the bankruptcy trustee under sub-section (1).

(3) A copy of the discharge order shall be provided to the Board, for the purpose of recording an entry in the register referred to in section 196.

139. Effect of discharge. –

The discharge order under sub-section (2) of section 138 shall release the bankrupt from all the bankruptcy debts:

Provided that a discharge shall not –

(a) affect the functions of the bankruptcy trustee; or

(b)affect the operation of the provisions of Chapter IV and V of Part III:

(c) release the bankrupt from any debt incurred by means of fraud or breach of trust to which he was a party; or

(d) discharge the bankrupt from any excluded debt."

9. We have noticed above that Bankruptcy Process against the Appellant commenced on 23.12.2022 and Bankruptcy Trustee has sold the 50% share of the Flat of the Appellant on 27.06.2023. After the sale of 50% asset, notice was also issued under Section 176 by Respondent No.1 on 09.07.2023 and on 31.10.2023 application was filed by the Bankruptcy Trustee under Section 138(1)(b) of the IBC.

10. On objection filed by the UBI, auction held on 27.06.2023 was set aside by the Adjudicating Authority by order dated 04.07.2024. The order dated 04.07.2024 has been brought on record in the reply filed by the UBI as Annexure R-2/17. The reason for setting aside the auction given by the Adjudicating Authority was that sufficient time of 30 days was not given for conducting e-auction to get the best value. Paragraphs 19, 20, 21 and 22 of the order dated 04.07.2024 are as follows:

> “**19.** The above observation made by the Hon'ble NCLAT makes it clear that a sufficient time of 30 days ought to be given for conducting e-auction to get the best value. However, in the instant case, the Bankruptcy Trustee acted in a hasty manner and conducted thee-auction on 25th day from the date of the issuance of the advertisement dated 02.06.2023. We are therefore of the view that the Bankruptcy Trustee of Mr. Anil Syal has acted in a hest in conducting the auction of the 50% undivided share in the residential flats in question.
>
> **20.** We direct the Bankruptcy Trustee to conduct the fresh valuation w.r.t. the sale of the property (50% undivided share in a residential flat which is indivisible) bearing H. No. 117, First Floor, Uday Park, New Delhi-110049. The Applicant Bank is also directed to conduct a fresh valuation w.r.t. the sale of the property (50% undivided share in a residential flat which is indivisible) bearing H. No. 117, First Floor, Uday Park, New Delhi-110049. Thereafter, the Average of both the Valuation will be considered for the fresh auction by the meeting of the Creditors.
>
> **21.** We further direct the Bankruptcy Trustee to return the e-auction sale proceeds to Mr. Akshat Gupta, Auction Purchaser including EMD, if any and cancel the sale certificate issued to Mr. Akshat Gupta, Auction Purchaser.
>
> **22.** Accordingly, the IA-4421/2023 is allowed by setting aside the e-auction dated 27.06.2023 conducted by the bankruptcy trustee by directing the bankruptcy trustee to conduct a fresh auction by maintaining at least 30 days' time between the paper publication and the e-auction so as to enable more bidders to participate in the auction for fetching high value of the property. The bankruptcy trustee shall also clearly mention the timings for the inspection of the property in the paper publication.”

11. The order dated 04.07.2024 was challenged by the Appellant before this Tribunal. This Tribunal disposed of the Appeal upholding the order of Adjudicating Authority directing for re-auction of the property. It is

useful to notice paragraphs 4, 5 and 6 of the order of this Tribunal dated 30.07.2024, which are as follows:

> “**4.** Learned counsel appearing for the Bankruptcy Trustee submits that the issue regarding filing of application under Section 38(1)(a) of the Code has to be agitated before the Adjudicating Authority by the Appellant, if any and said issue is not the subject matter of the present appeal.
>
> **5.** In view of the aforesaid, we are of the view that in so far as present appeal, we do not find any ground to interfere with the order directing for reauction of the property. We, however, give liberty to the Appellant to make appropriate application before the Adjudicating Authority for raising the issue of discharge of Appellant.
>
> **6.** Learned counsel for the Appellant submits that although Appellant has no issue with regard to re-auction but the re-auction should be held by some other authority and he may be discharged in the meanwhile. We are unable to accept the submission of the Appellant that re-auction should be held by some other authority. It is the Bankruptcy Trustee who has to hold the auction as directed by the Adjudicating Authority. Appeal is disposed of accordingly.

12. The above order indicates that this Tribunal did not interfere with the order directing for re-auction of the property. However, liberty was given to the Appellant to make appropriate application for raising the issue of discharge of the Appellant. After the order dated 30.07.2024, application for discharge was filed by the Appellant being IA No.3964 of 2024. The Bankruptcy Trustee has referred to the Minutes of the 5th CoC Meeting held on 30.07.2024. The Minutes of the Meeting have been brought on the record as Annexure A-10 to the Appeal. Discussion with

respect to discharge application under Section 138(1)(a) have been noticed in Item No.A4 – "To take note of the status of the Bankruptcy Process". The discussions contained in Item No.A4 (e) are as follows:

> "**e) To deliberate upon the discharge application filed by the BT u/s 138(1)(a);**
>
> The bankruptcy trustee requested the members to deliberate upon the requirement of filing discharge application u/s 138(1)(a) upon expiry of 1 year.
>
> The bankruptcy trustee presented the provisions of the section 138 of the code before the members and also stated that after order for set aside of auction vide order dated 04.07.2024, the discharge application filed u/s 138(1)(b) which is pending before the Hon'ble NCLT, may now become redundant as the sale process has been set aside.
>
> Further also, the compliance of the said order is under process and completion of fresh auction may take another 2-3 months. As per the understanding of the BT, section 138 mandates for filing an application of discharge upon expiry of 1 year or within 7 days of the approval of the CoC of the completion of administration of the estate of the bankrupt, whichever is earlier.
>
> Now since the administration of the estate of the bankrupt has been rendered incomplete due to fresh auction being ordered by the Hon'ble NCLT, an application for discharge is required to be filed under section 138(1)(a) since one year has already expired since start of bankruptcy process. Although, the assets in the estate of the bankrupt shall continue to-vest with the BT and steps will be taken for fresh auction and the Adjudicating Authority shall decide upon discharge application in light of the facts of the matter.
>
> The representative of the UBI took note of the same and requested the bankruptcy trustee to defer this agenda to the next meeting till than they will also discuss with their legal advisor.
>
> The bankruptcy trustee took note of the same."

13. The case of the Bankruptcy Trustee before the Adjudicating Authority and before this Tribunal is that although the Bankruptcy Trustee has flagged the issue by filing an application under Section 138(1)(a), since one year period has elapsed, but the UBI has not given any legal opinion as mentioned in the Meeting, nor has given a green signal to the Bankruptcy Trustee to file an application.

14. Section 138 of the IBC has fallen for consideration in the present case. We need to notice the legislative scheme under Section 138 of the IBC. We may first notice the statutory scheme regarding discharge of a 'bankrupt' as was contained in The Presidency-Towns Insolvency Act, 1909 and The Provincial Insolvency Act, 1920. The Presidency-Towns Insolvency Act, 1909 deals with 'Discharge of insolvent' under Section 38 of the Act. Section 38 of the Act provides as follows:

> "**38. Discharge of insolvent.—** (1) An insolvent may, at any time after the order of adjudication, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but, save where the public examination of the insolvent has been dispensed with under the provisions of this Act, the application shall not be heard until after such examination has been concluded. The application shall be heard in open Court.
>
> (2) On the hearing of the application, the Court shall take into consideration any report of the official assignee as to the insolvent's conduct and affairs, and, subject to the provisions of section 39, may—
>
> (a) grant or refuse an absolute order of discharge, or
>
> (b) suspend the operation of the order for a specified time, or
>
> (c) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards

become due to the insolvent, or with respect to his after acquired property."

15. The above provision indicates that right was given to the insolvent to apply for discharge and discharge was dependent on order of the Court, after taking into consideration any report of the official assignee.

16. In The Provincial Insolvency Act, 1920, 'Discharge' was dealt in Section 41 of the Act, which provision is as follows:

> "**41. Discharge.--** (1) a debtor may, at any time after the order of adjudication and shall, within the period specified by the Court, apply to the Court for an order of discharge, and the Court shall fix a day, notice whereof shall be given in such manner as may be prescribed, for hearing such application, and any objections which may be made thereto.
>
> (2) Subject to the provisions of this section, the Court may, after considering the objections of any creditor and, where a receiver has been appointed, the report of the receiver
>
> (a) grant or refuse an absolute order of discharge; or
>
> (b)suspend the operation of the order for a specified time; or
>
> (c) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property."

17. The above provision also indicates that debtor was given a right to file an application for discharge and the discharge was dependent on the order passed by the Court.

18. We also need to notice certain statutory provisions pertaining to discharge of insolvent in foreign jurisdiction. Insolvency Act, 1986 as

applicable in the United Kingdom, is contained in Section 279 of the statute. Section 279 is as follows:

> "**279.—**(1) Subject as follows, bankrupt is discharged from bankruptcy—
>
> (a) in the case of an individual who was adjudged bankrupt on petition under section 264(1)(d) or who had been an undischarged bankrupt at any time in the period of 15 years ending with the commencement of the bankruptcy, by an order of the court under the section next following, and
>
> (b) in any other case, by the expiration of the relevant period under this section.
>
> (2) That period is as follows—
>
> (a) where certificate for the summary administration of the bankrupt's estate has been issued and is not revoked before the bankrupt's discharge, the period of years beginning with the commencement of the bankruptcy, and
>
> (b) in any other case, the period of years beginning with the commencement of the bankruptcy.
>
> (3) Where the court is satisfied on the application of the official receiver that an undischarged bankrupt in relation to whom subsection (1)(b) applies has failed or is failing to comply with any of his obligations under this Part, the court may order that the relevant period under this section shall cease to run for such period, or until the fulfilment of such conditions (including condition requiring the court to be satisfied as to any matter), as may be specified in the order.
>
> (4) This section is without prejudice to any power of the court to annul bankruptcy order."

19. The above provision indicates that apart from Section 279 (1)(a), in other cases discharge was by the expiration of the relevant period.

20. The Statutes of the Republic of Singapore on Bankruptcy Act - 'Discharge by certificate of Official Assignee' is dealt in Section 125, which provisions is as follows:

> "**Discharge by certificate of Official Assignee**
>
> **125.**--(1) The Official Assignee may, in his discretion and subject to section 126, issue a certificate discharging a bankrupt from bankruptcy.
>
> (2) The Official Assignee shall not issue a certificate discharging a bankrupt from bankruptcy under subsection (1) unless
>
> > (a) a period of 3 years has lapsed since the date of commencement of the bankruptcy; and
> >
> > (b) the debts which have been proved in bankruptcy do not exceed $100,000, or such other sum as may be prescribed.
>
> (3) Notice of every discharge under subsection (1) shall be given to the Registrar and be published in the Gazette and advertised in any local newspaper.
>
> (4) The Official Assignee shall, upon the application of a bankrupt or his creditor or other interested person, issue to the applicant a copy of the certificate of discharge upon the payment of the prescribed fee.
>
> (5) Every application under subsection (4) shall be served on the Official Assignee and on the bankrupt and the court shall hear the Official Assignee and the bankrupt before making an order on the application.
>
> (6) On an application made under subsection (4), the court may, if it thinks it just and expedient –
>
> > (a) dismiss the application;
> >
> > (b) make an order that the bankrupt shall not be granted a certificate of discharge by the Official Assignee for a period not exceeding 2 years; or
> >
> > (c) make an order permitting the Official Assignee to issue a certificate discharging the bankrupt but subject to such conditions as the court may think fit to impose, including conditions with respect to –
> >
> > > (i) any income which may be subsequently due to the bankrupt after his discharge; or

(ii) any property devolving upon the bankrupt, or acquired by him, after his discharge,

As may be specified in the order."

21. The above statutes of foreign jurisdiction as noted above indicate that shift in law with regard to grant of discharge is after expiration of time fixed in the statute. The legislative scheme under Sections 138 and 139 also clearly contemplates consideration of discharge on expiry of one year from the bankruptcy commencement date. We may also notice the Report of the Bankruptcy Law Reforms Committee, November 2015, which while dealing with 'discharge' in paragraph 6.6 stated as follows:

"**6.6 Discharge**

Discharge relates to the relief offered to the debtor. The world has adopted one of two measures - an "earned" start where the duration of the repayment plan lasts for between three to seven years. This is the system prevalent in most European countries. The other is that of a "fresh" start where debt relief is granted with a year. In the US, fresh start

Box 6.21: Drafting instructions for discharge
1. When the moratorium period ends and an FSO is issued, the debtor is discharged from all debt specified in the Order. The record will permanently stay on the credit history of the debtor. 2. The discharge under the IRP will be granted in accordance with the repayment plan. It is possible that discharge is granted before full repayment, as negotiated in the plan, is complete. The successful IRP will be recorded in the credit history of the debtor and will permanently stay. 3. The debtor will be granted a "discharge from bankruptcy" at the end of one year. This record will stay on the credit history permanently. 4. The bankruptcy procedure may continue. The discharged bankrupt will be required to co-operate with the relevant authority to conclude the bankruptcy process.

5. The discharge does not release the debtor from liabilities specified by the Code

underlies the policy of small-business insolvency legislation. The UK has also moved towards a system of discharge within twelve months. The choice for India seems to be a combination of debt relief and earned relief given the design of two procedures: the FSO and the IRP."

22. In the above Report of November 2015, it was clearly mentioned that the debtor will be granted a "discharge from bankruptcy" at the end of one year. Paragraph 6.6.3 of the Report is as follows:

"**6.6.3 Bankruptcy**

In the case of an Adjudicator-led bankruptcy, the debtor will be granted a "discharge from bankruptcy" at the end of one year from the date of being adjudged a "bankrupt" i.e the bankruptcy order. This record will stay on the credit history permanently. The bankruptcy proceedings may continue. The discharged bankrupt will be required to cooperate with the relevant authority to conclude the bankruptcy process. The discharge does not release the debtor from any liability in respect of a fine imposed, or liability to pay damages from negligence, nuisance or breach of a statutory, contractual or other duty."

23. The Report of the Bankruptcy Law Reforms Committee and the statutes, as noted above, clearly has focused on discharge after expiry of period. The Joint Committee on the Insolvency and Bankruptcy Code, 2015 in its Report dated April 2016 suggested certain amendments in Clauses 138 and 139. The legislative scheme delineated by Section 138 and 139, thus shows the discharge in two eventualities. Section 138 obliges the Bankruptcy Trustee to apply to the Adjudicating Authority for a discharge on the expiry of one yar from the bankruptcy commencement date. The expression used in Section 138(1) is "*The bankruptcy trustee shall apply to Adjudicating Authority for a discharge order*". Thus, the above provision cast an obligation on the Bankruptcy Trustee to apply for

discharge on the expiry of the one year from the bankruptcy commencement date or in alternative within seven days of the approval of the Committee of Creditors of the completion of administration of the estate of bankrupt under Section 137. As noted above, in the present case, Bankruptcy Trustee has applied under Section 138(1)(b) for discharge, after 50% share of the Appellant were auctioned of the flat in question, which action having been set aside by the Adjudicating Authority, the application became infructuous and was permitted to be withdrawn.

24. Learned Counsel appearing for the Bankruptcy Trustee brought into the notice of the CoC (of which more than 97% vote shares are held by UBI) that as per Section 138(1)(a), the Bankruptcy Trustee has to file an application for discharge. However, on the request of the UBI, the said Agenda was deferred, to enable the UBI to obtain legal opinion. There is no explanation as to why after 30.07.2024, till the impugned application was decided by the Adjudicating Authority by the impugned order on 11.02.2025, what steps have been taken by the Bankruptcy Trustee towards discharge under Section 138(1)(a), which casts an obligation on the Bankruptcy Trustee, who cannot shirk from its statutory obligation on the pretext that it has brought into the notice of the CoC and the CoC has not asked him to file any discharge application. The creditors have their rights under Part-IV of the IBC, which rights can be realized in accordance with the scheme of the IBC. The obligation of the Bankruptcy Trustee is not dependent on the consent of the creditors, i.e. UBI. Hence,

we are satisfied that Bankruptcy Trustee has failed to discharge his statutory obligation in filing discharge application under Section 138(1)(a) of the IBC in the present case.

25. Insofar as the submission of the UBI opposing the application filed by the Appellant before the Adjudicating Authority and this Tribunal is concerned, the creditor can realise its dues from the asset of the Bankrupt and in the present case, the Bankruptcy Trustee has already conducted an auction, which on the application filed by the UBI was set aside on 04.07.2024. By order dated 04.07.2024, the Adjudicating Authority directed the Bankruptcy Trustee and the UBI to carry on independent valuation and thereafter, on average of both the valuation, the reserved price be fixed. It was the obligation of the Bankruptcy Trustee and the UBI to take steps to auction the 50% shares of the Bankrupt in the Flat in question. The fact that no steps could be finalized for sale of the asset of the Bankrupt, cannot give any ground to UBI to oppose the discharge. The order commencing bankruptcy against the Personal Guarantor has its own consequences and statute has been framed in a manner that on expiry of one year of bankruptcy commencement debt, the Bankruptcy Trustee has to file an application for discharge. The Bankruptcy Trustee cannot be allowed to shirk from its statutory obligation in not filing the application on the excuses, which have been sought to be raised in the present case, nor the creditor, i.e., UBI can be heard in saying that even though one year period has expired, no application for discharge be considered. The facts of the case clearly

indicate that the Bankruptcy Trustee failed to file application within one year from commencement of the bankruptcy process. Further, it is also noted that this Tribunal vide its order dated 30.07.2024 while deciding the Appeal filed by the Appellant, gave liberty to the Appellant in following words:

> "5. … We, however, give liberty to the Appellant to make appropriate application before the Adjudicating Authority for raising the issue of discharge of Appellant".

26. The Bankrupt, who is directly affected by continuance of the bankruptcy proceedings in a case where Bankruptcy Trustee does not perform its statutory obligation of filing an application after expiry of one year, cannot be said to be a person, who has no locus to even inform the Adjudicating Authority that application has not been filed by the Bankruptcy Trustee and to pray that Bankrupt be discharged. The Adjudicating Authority in the impugned order in paragraph 35 has made following observations:

> "**35.** In view of the above, this Adjudicating Authority believes it is unnecessary to address the present application, as it does not align with the spirit of the Insolvency and Bankruptcy Code (IBC). Moreover, the application seems to have been filed by the Applicant/Bankrupt with the intention of disrupting and derailing the Bankruptcy Process."

27. The observation of the Adjudicating Authority that application filed by the Appellant does not align with the spirit of the IBC, is rather without any substance. The timeline in the IBC has its own salutary purpose. When statute clearly provided that the Bankruptcy Trustee

shall file an application after expiry of one year for discharge and period of more than two years having been elapsed, we fail to see any force in the observation of the Adjudicating Authority that the application filed by the Bankrupt is not align with the spirit of the IBC. Further observation made in paragraph 35 that application seems to have been filed by the Appellant/ Bankrupt with the intention of disrupting and derailing the Bankruptcy Process, is also without any substance and unfounded. The Bankruptcy Trustee is in possession of the asset of the Bankrupt and once has already auctioned the asset, which auction was set aside by the Adjudicating Authority, on an application filed by the UBI. It is not even explained as to what manner the Bankrupt is disrupting and derailing the bankruptcy process. Further in paragraph 34, the Adjudicating Authority has accepted the submission of the UBI that granting a discharge to the Applicant/ Bankrupt through this application may result in further obstruction during the sale of the asset, as the remaining 50% ownership belongs to his wife, who is also complicit with the bankrupt. In the Bankruptcy Process, only 50% shares of the Appellant was part of the asset, which is in possession of the Bankruptcy Trustee. One auction was already successfully held, which was set aside by the Adjudicating Authority. We, thus, fail to see any basis for observation that 'granting a discharge to the Appellant may result in further obstruction during the sale of the asset'. As noted above, the Adjudicating Authority on 04.07.2024 has directed for fresh auction after obtaining fresh valuation by UBI and the Bankruptcy Trustee. Nothing is brought on record to show, as to why the said steps have not been taken by the UBI and the Bankruptcy Trustee for sale of the asset. In any view of the matter, any inaction on the part of the Bankruptcy Trustee and the UBI, cannot be a ground to resist the discharge application filed by the Appellant.

28. In the facts of the present case, we are of the view that the Adjudicating Authority has committed error in refusing to consider the application filed by the Appellant, which observation has been made in paragraph 35, as noted above. The order of discharge has to be passed by Adjudicating Authority. The Adjudicating Authority has also to ensure that timelines in the IBC are adhered to by all stakeholders, including the Bankruptcy Trustee. When it was clear that more than two years have expired and no application has been filed by the Bankruptcy Trustee as mandated by Section 138(1)(a), the Adjudicating Authority was not powerless to either issue directions to the Bankruptcy Trustee to file an application within the timeline, or to pass such orders as it may deem fit and proper. The impugned order is clearly an order, abdicating its jurisdiction by the Adjudicating Authority and to take proceedings as per timelines mandated in the IBC. We, thus, are fully satisfied that the impugned order passed by Adjudicating Authority is unsustainable and the same is set aside.

29. We allow the Appeal with following directions:

(1) The Bankruptcy Trustee is directed to file an application for discharge of the Bankrupt under Section 138(1)(a) of the IBC within 15 days from today.

(2) The Adjudicating Authority to consider the above application filed by the Bankruptcy Trustee and take a decision with regard to discharge, within a period of three months' from the date of filing of the application.

Partes shall bear their own costs. Pending IAs, if any, are also disposed of.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

8th July, 2025

Ashwani