

FORM NCLAT-2

**[See Rule 31 of the National Company Law Appellate
Tribunal Rules, 2016]**

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT
CHENNAI (APPELLATE JURISDICTION)**

I.A. No. _____ of 2026

in

Company Appeal (AT) (Insolvency) No. _____ of 2026

IN THE MATTER OF:

Dr. Viloo Zareer Morawala Patell,
W/O Zareer Minoo Patell
aged 70 years, having **DIN:**
01692908,
Aadhar: 903319316527
Suspended Managing Director and
Shareholder holding 38.57 Percent
of
Total Shareholding of
Avesthagen Limited
(CIN: U73100KA1998PLC030671)
Residing at:
8A Regency Heights Cleveland Road,
Frazer Town, Bengaluru 560005
e-mail: viloo@avesthagen.com
Phone: +91-9886037291

**APPLICANT-
APPELLANT**

AND

Biotechnology Industry Research
Assistance Council
(CIN: U73100DL2012NPL233152)
Fifth Floor, NSIC Business Park, NSIC
Bhawan, Okhla Industrial Estate,
New Delhi - 110020
Email ID: user6.birac@nic.in
Represented by its Authorised Officer
and Deputy Manager Legal- Smt. Alka
Sharma

RESPONDENT 1

Avesthagen Limited
(CIN: U73100KA1998PLC030671)
#144, Level II, NXB, 10th Road
Hi Tech Defence & Aerospace Park
KIADB IT Park
Arebinnamangala, Jala Hobli
Bengaluru 562149 Karnataka India,



Represented by the IRP, Mr. Piyush
Kisanlal Jani with Phone: 9922999355
Email ID:
capiyush@gmail.com and
corporateaffairs@avesthagen.com

RESPONDENT 2

**APPLICATION UNDER RULE 31 OF THE NATIONAL COMPANY
LAW APPELLATE TRIBUNAL RULES, 2016 SEEKING INTERIM
STAY OF THE IMPUGNED ORDER DATED 06.02.2026 PASSED
BY THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH IN C.P. (IB) NO. 161/BB/2024**

The Appellant/Applicant above named most respectfully showeth:

1. That the Appellant/Applicant has preferred the accompanying Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code"), being aggrieved by the final order dated 06.02.2026 (hereinafter referred to as the "Impugned Order") passed by the Hon'ble National Company Law Tribunal, Bengaluru Bench (hereinafter referred to as the "Adjudicating Authority") in C.P. (IB) No. 161/BB/2024, whereby the Adjudicating Authority was pleased to admit the petition filed by the Respondent under Section 7 of the Code and initiate Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against the Appellant Company. A true copy of the Impugned Order is annexed as **Annexure-I** to the Memorandum of Appeal.
2. That the present application is being filed seeking an urgent ad-interim ex-parte stay on the operation, implementation, and execution of the Impugned Order dated 06.02.2026 and all consequential actions arising therefrom, pending the hearing and final disposal of the accompanying Appeal.

BRIEF FACTS NECESSITATING THE INTERIM RELIEF:

3. The Appellant is a pioneering, research-driven biotechnology company with a significant portfolio of intellectual property, including patents valued at an estimated USD 610.43 million for FY 2025-26. The Respondent, a Government of India enterprise, provided financial assistance to the Appellant under specialised innovation-promoting schemes, namely the Biotechnology Industrial Partnership Programme (BIPP) and the Small Business Innovation Research Initiative (SBIRI), which are distinct from conventional commercial lending.
4. The Respondent filed a petition under Section 7 of the Code before the Adjudicating Authority, claiming a default of Rs. 4,77,04,159.35/. The Adjudicating Authority, vide the Impugned Order dated 06.02.2026, erroneously admitted the



said petition, initiated CIRP against the Appellant, declared a moratorium, and appointed an Interim Resolution Professional (IRP).

5. Being aggrieved by the said Impugned Order, which is patently illegal, contrary to the facts on record, and is vitiated by the failure to undertake the requisite consideration of material facts and legal requirements, the Appellant has preferred the accompanying Appeal on, inter alia, the following grounds, which demonstrate a strong prima facie case in favour of the Appellant.

GROUND FOR GRANT OF INTERIM STAY:

The Appellant has a strong prima facie case, the balance of convenience is overwhelmingly in its favour, and it will suffer irreparable injury if the interim relief as prayed for is not granted.

6. PRIMA FACIE CASE:

The Appeal raises substantial questions of law and fact, and has a high probability of success for the following reasons:

- i. **Because the application under Section 7 was barred by limitation, as more than five years had elapsed since the limitation period expired.** The alleged dates of default for the BIPP and SBIRI projects are 08.09.2015 and 31.03.2016, respectively. The three-year limitation period under Article 137 of the Limitation Act, 1963, expired long before the filing of the petition on 05.02.2024. The Adjudicating Authority's reliance on non-specific, generic entries in the Appellant's balance sheets as an acknowledgment of debt under Section 18 of the Limitation Act is contrary to settled law, which requires a clear, unequivocal, and specific acknowledgment of the particular debt owed to the creditor.
- ii. **Because the alleged debt does not qualify as a 'Financial Debt' under Section 5(8) of the Code.** The financial assistance was provided under Government innovation schemes with the primary objective of fostering R&D, not for a commercial return with the "time value of money". The agreements envisaged joint ownership of the intellectual property generated, and the repayment terms were conditional and concessional, lacking the essential character of a commercial loan. The Adjudicating Authority failed to conduct the threshold analysis of whether the disbursement was made against the consideration for the time value of money, thereby vitiating the very maintainability of the Section 7 petition.
- iii. **Because the Adjudicating Authority failed to consider that the alleged default was directly attributable to the**

Respondent's own failure to perform its obligations. It is an admitted position that out of a total sanctioned amount of ₹5.60 Crores, the Respondent disbursed only ₹3.25 Crores. This partial and incomplete disbursement critically hampered the project's execution, timelines, and commercialization potential, thereby directly impacting the Appellant's ability to generate revenue and service the debt. A default caused by the creditor's own non-performance cannot be a ground to trigger CIRP against the debtor.

iv. Because the Impugned Order proceeds to initiate CIRP against a solvent and viable company of national significance, without recording any finding of insolvency or financial distress necessitating such action.

The Appellant is a going concern with a paid-up capital of ₹7.5 Crores, investments of USD 70 Million, and a patent portfolio valued at over USD 610 Million. The initiation of CIRP is a gross misuse of the Code, which is intended for the resolution of insolvency and not as a tool for debt recovery against solvent entities. The Impugned Order defeats the very object of the Code as laid down by the Hon'ble Supreme Court.

v. Because the Impugned Order frustrates public policy and the objective of Government-led innovation schemes.

The BIPP and SBIRI schemes were designed to support long-gestation R&D projects. Pushing a beneficiary of such schemes into insolvency proceedings defeats the national interest of promoting scientific innovation. The Adjudicating Authority failed to consider the policy framework and the pending request for restructuring under the General Financial Rules, 2017, which was a more appropriate remedy.

7. BALANCE OF CONVENIENCE:

The balance of convenience lies squarely in favour of granting the stay.

i. If the stay is not granted, the CIRP will proceed, the Board of Directors will remain suspended, the IRP will take over management, and the Committee of Creditors will be constituted. This will cause irreversible disruption to the Appellant's highly sensitive R&D operations, jeopardize its valuable intellectual property, and erode its corporate value, rendering the Appeal infructuous. The Appellant, a solvent and functioning entity, will be pushed towards an unwarranted corporate death.

ii. Conversely, if the stay is granted, the Respondent will only be delayed in its attempt to recover a time-barred and disputed

claim. No prejudice will be caused to the Respondent, as the Appellant's assets, particularly its vast IP portfolio, far exceed the claimed amount. The grant of a stay would merely preserve the status quo, allowing this Hon'ble Appellate Tribunal to adjudicate the substantial legal issues raised in the Appeal on their merits.

8. IRREPARABLE INJURY:

The Appellant will suffer irreparable loss and injury if the stay is not granted.

i. The initiation of CIRP carries an immense stigma that causes irreparable damage to the reputation and goodwill of a research-based company like the Appellant, which thrives on collaborations and investor confidence.

ii. The loss of management control, suspension of the Board, and the uncertainty cast by the CIRP will derail ongoing research projects, imperil licensing negotiations, and lead to an exodus of critical scientific talent. This damage cannot be quantified or compensated in monetary terms.

iii. If the CIRP is allowed to continue, and steps such as the formation of the CoC and invitation for resolution plans are taken, it will create third-party rights and irreversible complexities, making it impossible to restore the Appellant to its original position even if the Appeal is eventually allowed.

That the Appellant has not filed any other similar application before this Hon'ble Appellate Tribunal or any other court or tribunal.

PRAYER

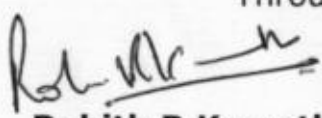
In light of the aforesaid facts and circumstances, it is most humbly prayed that this Hon'ble Appellate Tribunal may be pleased to:

- a)** Stay the operation, implementation, and execution of the Impugned Order dated 06.02.2026 passed by the Hon'ble National Company Law Tribunal, Bengaluru Bench in C.P. (IB) No. 161/BB/2024, and all consequential actions and proceedings arising therefrom, including the moratorium, the appointment and functioning of the IRP, and the constitution of the Committee of Creditors, pending the final hearing and disposal of the accompanying Appeal;
- b)** Grant an ad-interim ex-parte stay in terms of prayer (a) above; and
- c)** Pass such other or further order(s) as this Hon'ble Appellate Tribunal may deem fit and proper in the interest of justice.



AND FOR THIS ACT OF KINDNESS, THE APPELLANT/APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.


APPELLANT

Through

Rohith R Kamath

Advocate for the Appellant

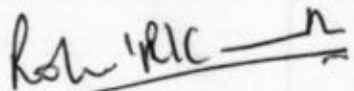
19/1, 8th Main, Central Excise Layout,
Vijaynagar, Bengaluru - 560040
Ph: +91-9686481506
Email:
rohithkamath@rexlawchambers.com

Place: Chennai
Date: 10.03.2026

DECLARATION

The applicant above named hereby solemnly declare that nothing material has been concealed or suppressed and further declare that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the originals or fair reproduction of the originals of true translation thereof.

Verified at Chennai on this day Tenth of March 2026

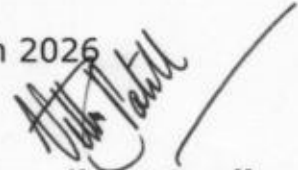

Counsel for Applicant


Applicant

VERIFICATION

I **Dr. Viloo Zareer Morawala Patell** W/o Zareer Minoo Patell, age 70 years, working as Managing Director in the office of Avesthagen, resident of Bengaluru, do hereby verify that the contents of the paras **1 to 8** believed to be true on legal advice and that I have not suppressed any material facts.

Verified at Chennai on this day Tenth of March 2026


Signature of Appellant-Applicant

(48)



தமிழ்நாடு தமில்நாடு TAMILNADU



09 MAR 2026

VILLOO ZAREER MORAWALA PATEL

ET 681086
 P. N. SRIDHAR,
 STAMP VENDOR,
 L. No 5709/B3/2006
 HIGH COURT CAMPUS
 CHENNAI 600 104

Dr. villoo zareer morawala petell

VS

Biotechnology Industry
 Research Assistance Council



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தமிழ்நாடு தமில்நாடு TAMILNADU

ET 681087



09 MAR 2026

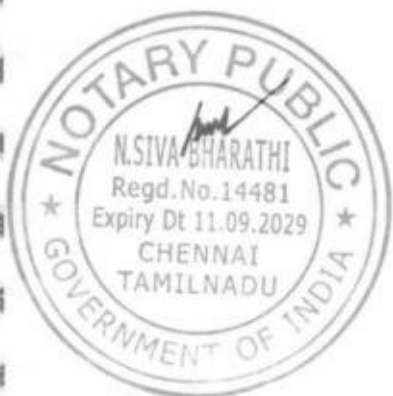
VILLOO ZAREEN MORAWALA PATEL

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VS

Biotechnology Industry
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**Dr. Viloo Zareer Morawala
Patell**

APPELLANT

AND

**Biotechnology Industry
Research Assistance Council**

RESPONDENT 1

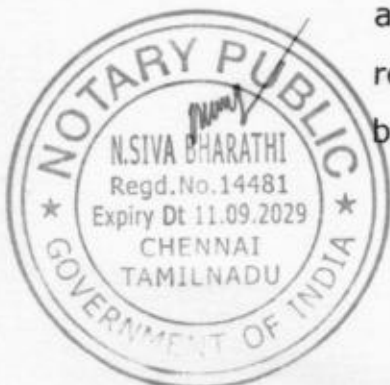
Avesthagen Limited

RESPONDENT 2

VERIFYING AFFIDAVIT

I, **Dr. Viloo Morawala Patell**, W/O Zareer Mino Patell aged 70 years, having DIN: 01692908, Aadhar: 903319316527 Suspended Managing Director and Shareholder holding 38.57 Percent of Total Shareholding of Avesthagen Limited (CIN: U73100KA1998PLC030671) Residing at: 8A Regency Heights Cleveland Road, Frazer Town, Bengaluru 560005 with e-mail: viloo@avesthagen.com and Phone: +91-9886037291, the Appellant in the above Appeal, do hereby solemnly affirm and state as follows:

1. I am the Appellant in the present Appeal and I am well conversant of the facts and circumstances in the present case, and that I am aggrieved by the Order dated 06.02.2026 as I am a Shareholder of the **RESPONDENT 2** Company and as such I swear this affidavit.
2. That the contents of the accompanying Interlocutory Application have been drafted by my counsel under my instructions.
3. I have read and understood the contents thereof and I state that the averments made in paragraphs 1 to 8 of the application are true and correct to my knowledge and based on the records, and the legal submissions contained therein are believed to be true on legal advice received.



Viloo Patell

(4i)

4. That I state that no material fact has been concealed and that all annexures filed along with the Memorandum of Appeal, which are relied upon in the present application, are true copies of their respective originals.
5. That I state that the contents of this affidavit are true and correct, and no part of it is false and nothing material has been concealed therefrom.

Identified by me

Rohit Kulkarni

[Signature]

DEPONENT

Advocate

*Presented and
Stationed at*

Place: *Chennai*

Date: *10.03.2026*



[Signature] 10/03/2026
N.SIVA BHARATHI
ADVOCATE & NOTARY PUBLIC
Government of India
Plot No.12, Siva Adithya Iliam,
Prathana Park 2nd Avenue, Rajan Nagar,
1st Street, Injambakkam, Chennai-600 115.
Cell : 9962243549, 7810074935