

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1561 of 2023

[Arising out of the Impugned Order dated 26.09.2023 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench-VI, in I.A. No. 1291/2022 in C.P. (IB) No. 81 (PB)/2019]

In the matter of:

Pooja Bahry

Liquidator for Dev Denso Power Ltd.
59/27, Prabhat Road,
New Rohtak Road, New Delhi- 110005

...Appellant

Versus

**1. Uttar Pradesh Rajkiya Nirman
Nigam Limited**

Having its Registered Address at:-
Vishweshwaraiya Bhawanvibhuti Khand
Gomti Nagar, Lucknow
Uttar Pradesh- 226001

.... Respondent No.1

**2. Uttar Pradesh Power Transmission
Corporation Limited**

Having its Registered Address at:-
Shakti Bhawan, 14-A, Ashok Marg,
Lucknow, Uttar Pradesh- 226001

.... Respondent No.2

Present:

For Appellant : Mr. Abhishek Anand, Mr. Karan Kohli and Ms. Palak Kalra, Advocates.
Ms. Pooja Bahry, Advocate for liquidator.

For Respondent : Mr. Rajesh Pathak and Mr. Ishank Gupta, Advocates for R1.
Mr. Altab Mansoor, Advocate for R2.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61(1) of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 26.09.2023 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-VI) in I.A. No. 1291/2022 in C.P. (IB) No. 81(PB)/2019. By the impugned order, the Adjudicating Authority has dismissed IA No. 1291 of 2022 filed by the Appellant-Liquidator seeking directions against Respondent No.1 and 2 to recover certain dues from them as payable to the Corporate Debtor. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

2. Giving a brief snapshot of the matter at hand, Shri Abhishek Anand, Ld. Advocate for Appellant submitted that Respondent No.1-Uttar Pradesh Rajakiya Nirman Nigam Ltd. ("**URNL**" in short) had been awarded the project for construction of sub-stations by Respondent No.2-Uttar Pradesh Power Transmission Corporation Ltd. ("**UTCL**" in short). In turn the Respondent No.1-URNL had sub-contracted the work to the Corporate Debtor-Dev Denso Power Ltd. for which they entered into Letters of Intent ("**LoI**" in short) for construction of power sub-stations at Khurja, Panwari and Dharampur. The Corporate Debtor was admitted into the rigours of Corporate Insolvency Resolution Process ("**CIRP**" in short) on 11.06.2019 and eventually on 06.09.2021, liquidation proceedings were initiated against the Corporate Debtor and the Appellant was appointed the Liquidator. The Appellant informed the Respondent No.1 on 16.09.2021 to pay up an outstanding recoverable amount payable to them for

completing the execution of the power sub-station projects as an amount of Rs 172.58 lakhs was reflected in the audited balance sheet of the Corporate Debtor. On 17.02.2022, the Appellant-Liquidator reiterated before the Respondent No.1 that the three projects had been successfully handed over to them by the Corporate Debtor and that an amount of Rs 150.79 lakhs was outstanding for Dharampur and Panwari project and Rs 15.90 lakh for the Khurja project. Since this outstanding amount had crystallized and the amount was also admitted by Respondent No.1, the same be paid up to be added to the liquidation estate of the Corporate Debtor. The Respondent No.1 however contended that there were no pending bills for Khurja project and payment for the Dharampur project was contingent on submission of tax invoices by the Appellant and subject to their receiving funds from Respondent No.2. The Appellant informed the Respondent No.1 that they cannot raise the issue of unavailability of old tax invoices to deny the payment. Furthermore, in terms of the LoI, the payment was not contingent or conditional on Respondent No.1 receiving funds from Respondent No.2 and hence this cannot be a tenable ground for non-payment. On 17.03.2022 the Appellant filed IA No. 1291 of 2022 before the Adjudicating Authority seeking directions to be issued to Respondent No.1 to deposit Rs 172.58 lakh into the liquidation account of the Corporate Debtor. The Adjudicating Authority dismissed the IA No. 1291 of 2022 directing the Appellant-Liquidator to approach an appropriate forum to recover their dues from the Respondents. Aggrieved by the impugned order the present Appeal has been preferred by the Appellant.

3. Submission was pressed by the Appellant that the statutory provisions of IBC read with IBBI (Liquidation Process) Regulations, 2016 ("**LPR**" in short) mandated the Liquidator to take all necessary steps to protect and preserve the

assets of the liquidation estate to prevent diminution in value. It was emphatically asserted that since the audited balance sheet of the Corporate Debtor reflected an outstanding receivable of Rs 172.58 lakh, such an entry in the balance sheet, in law, is a binding acknowledgement of liability on the part of the Respondents to pay. Further this amply substantiated that the outstanding amount stood crystallized and such outstanding receivables automatically form part of the liquidation estate and therefore recoverable by the Liquidator for the benefit of stakeholders. Since the Liquidator was duty bound to take requisite steps for recovery of legally enforceable claim qua the Respondents No.1 and 2 and payments for the same was not forthcoming, I.A. No. 1291 of 2022 was filed by the Appellant-Liquidator before the Adjudicating Authority towards recovery of amounts which was due and payable to the Corporate Debtor under liquidation. Since the recovery directly related to the liquidation estate and distribution of liquidation proceedings to stakeholders, the Adjudicating Authority enjoyed full jurisdiction to adjudicate on the said I.A. and could not have absolved themselves from exercising their jurisdictional powers. Hence, the dismissal of I.A. No. 1291 of 2022 by the Adjudicating Authority on grounds of lack of jurisdiction is erroneous.

4. Advancing their arguments further, it was submitted that when the outstanding debt amount was not contested nor any contractual dispute raised, this amount clearly formed part of the liquidation estate. Hence its recovery fell within the jurisdiction of the Adjudicating Authority which ought to have adjudicated IA No. 1291 of 2022 on merits. Assailing the impugned order, submission was pressed by the Appellant that the Adjudicating Authority had erroneously ordered the Liquidator to approach an appropriate forum to recover

the dues from the Respondents at a time when Section 60(5)(c) of the IBC categorically empowers the Adjudicating Authority to decide “any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the Corporate Debtor.” In support of their contention, attention was adverted to the judgment of this Tribunal in ***RKKR Steels Pvt. Ltd. Vs Surana Industries Ltd. in CA(AT)(Ins) No. 473 of 2020*** in which it has been held that the Liquidator is empowered to recover the outstanding dues including legally enforceable and duly admitted claims by filing necessary application before the Adjudicating Authority. The impugned order directing the Liquidator to take recourse to alternative legal remedies to recover their admitted receivables would undermine the objectives of IBC as it would lead to prolonging the recovery of liquidation estate assets.

5. Refuting the contentions raised by the Appellant, Shri Rajesh Pathak, Ld. Advocate representing Respondent No.1-URNL submitted that the Adjudicating Authority had correctly dismissed IA No. 1921 of 2022 since the Adjudicating Authority cannot expand its jurisdiction by adjudicating upon disputed contractual claims. In the present factual matrix, the claims raised by the Appellant still remained uncrystallized and unadmitted rendering them legally unenforceable. It was vehemently contended that mere entries in the books of accounts of the Corporate Debtor cannot become a legal obligation of the Respondents to pay up especially when the liability to pay stood disputed and this dispute remained unadjudicated. It was submitted that in terms of the LoI, any dispute which arose between the parties was required to be referred to arbitration. However, the Appellant neither invoked arbitration nor instituted an appropriate application in accordance with law. Hence, in the facts of the present

case where the liabilities are yet contingent and disputed, the resolution of the disputes have to be sorted out by taking recourse to agreed-upon mechanisms charted out in the LoI. Since the claim of the Appellant was clearly not maintainable, the Adjudicating Authority had therefore correctly relied on the judgement of the Hon'ble Supreme Court in ***Gujarat Urja Vikas Nigam Ltd. Vs Amit Gupta in Civil Appeal No. 9241 of 2019*** case to hold that since this was a case of contractual dispute it was required to be adjudicated in an appropriate forum.

6. Making his submissions, Mr. Altab Mansoor, Ld. Advocate for Respondent No.2 submitted that Respondent No.2 having no privity of contract with the Appellant, no liability can be fastened on them by the Appellant. Further, echoing the contention raised by Respondent No.1, it was submitted that since the claim of the Appellant is a disputed one, the same cannot be enforced by the Adjudicating Authority in exercise of its jurisdiction under Section 60(5) of the IBC. Since the Appellant has not produced any concrete evidence to buttress the fact that the claims made by them had crystallized and was unequivocally admitted by the Respondents, the Adjudicating Authority had rightly held the claim being a disputed contractual due, the same cannot be decided by the Adjudicating Authority in exercise of their summary jurisdiction.

7. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

8. The short point before us for our consideration is whether in the facts of the present case, the Adjudicating Authority committed any error in not exercising its enabling jurisdiction under Section 60(5) of the IBC to pass directions on the recovery of the purported amounts claimed by the Liquidator

on behalf of the Corporate Debtor which amounts have been disputed by Respondent Nos.1 and 2.

9. It is the case of the Appellant that she filed her application before the Adjudicating Authority in exercise of the powers conferred on the Liquidator under Sections 35 of the IBC. It was emphatically asserted that Section 35 of the IBC makes it a statutory duty for the Liquidator to take control of all assets, property, effects and actionable claims of the Corporate Debtor. The Liquidator is empowered to recover not only assets standing in the name of the Corporate Debtor but also every property, right or benefit or claim which accrues in connection with the liquidation estate. Elaborating further it was stated that the term “property” as defined in Section 2(27) of the IBC includes both money as well as actionable claims. It was also submitted that Section 36 of the IBC provides that the Liquidator shall form the liquidation estate and hold the same for the benefit of all stakeholders and shall include any assets over which the Corporate Debtor has ownership rights including all rights and interests as evidenced in the balance sheet of the Corporate Debtor. Regulation 39 of LPR also reinforces the duty of the Liquidator to take all necessary steps to protect and preserve the assets of the liquidation estate. Thus, filing of IA No. 1921 of 2022 to secure recovery of the outstanding receivables from the Respondents by invoking the jurisdiction of the Adjudicating Authority fell very much within the scope of the powers, duties and responsibility to be exercised by the Liquidator. However, the Adjudicating Authority without taking cognisance that the due claimed on behalf of the Corporate Debtor stood admitted mistakenly proceeded to reject the application merely on the ground that the Adjudicating Authority

did not have the jurisdiction to look into this aspect under Section 60(5) of the IBC.

10. Per contra it is the contention of the Respondents that Section 35(1)(b) of the IBC does not authorize the Liquidator to enforce disputed receivables directly without pursuing the disputed claims before the appropriate forum of law. This statutory provision is applicable only in situations when the recoveries asserted by the Liquidator are legally enforceable and backed by valid documents. The present stand taken by the Liquidator to directly enforce contested receivables bypassing the contractual remedies of arbitration/civil proceedings is not tenable. The IBC provides for the Liquidator to institute or defend suits and other legal proceedings on behalf of the Corporate Debtor and it is therefore open to the Liquidator to approach the appropriate forum for redressal of their purported unmet claims which are provisional in nature and yet uncrystallised. It has been contended that the Adjudicating Authority has therefore correctly applied the ***Gujarat Urja judgment*** which sets out with the boundaries within which the Adjudicating Authority can exercise their jurisdiction under Section 60(5) of the IBC and proceeded to reject I.A. No 1291 Of 2022.

11. At this stage we may capture the essence of the findings of the Adjudicating Authority as spelt out in the impugned order. The Adjudicating Authority at para 6 of the impugned order has observed that the jurisdiction of the Adjudicating Authority in the context of Section 60(5) of the IBC is limited as the amount claimed by the Liquidator arises out of the contractual agreement between the parties “*which is outside the purview of the jurisdiction of this Tribuna*”. It has further held at para 8 of the impugned order that the Respondents having raised disputes with regard to the amount which is due and

payable, the adjudication of the said dispute so raised would require calling for evidence and as such cannot be proceeded under the provisions of IBC. The Adjudicating Authority has therefore correctly refused to interfere in the matter while giving the liberty to the Liquidator to approach an appropriate forum to recover the purported dues from the Respondents.

12. To arrive at our findings on the tenability of the conclusions reached by the Adjudicating Authority for not exercising its enabling jurisdiction under Section 60(5) of the IBC, we may first notice the terms of the LOI which governed the transaction between the parties. Clause 21 Form A Certificate and Clause 23 Form B certificate of the terms of payment clearly mandates the need of certification of the Engineer and need of contractor's invoice besides confirmation of dispatch and delivery of the whole material at the place fixed for delivery to be followed by check at the site of the work alongwith complete documentation. Further Clause 38 Form A provides that whether before or during the progress or after the completion of the contract, any question of difference or dispute shall be referred for adjudication to the Chairman U.P. Power Transmission Corporation Limited or to any other person nominated by him in this behalf and his decision in writing shall be final, binding and conclusive and this shall be deemed to be a submission to arbitration within the meaning of the Indian Arbitration Act, 1940 or any statutory modification thereof. Further, Clause 38-A provides that any action taken or proceedings initiated on any of the terms of this agreement shall be the court of competent jurisdiction under the High Court of Judicature at Allahabad. The above Clauses and Forms have been outlined in the Reply Affidavit filed by Respondent No.1 and the terms of agreement have not been contested by any of the parties.

13. Having perused the pleadings of the Appellant and heard their contentions, it is one of their principal limbs of argument that the very fact that the audited balance sheet of the Corporate Debtor reflected dues of Rs 172.58 lakhs, this amount of outstanding receivables formed part of the liquidation estate and hence it was the duty of the Appellant to claim recovery of the said amount. It was also submitted that UPCL-Respondent No.2 had confirmed that they had already released the payments to URNL-Respondent No.1. The Office Memorandum (OM) of UPCL-Respondent No. 1 dated 09.10.2018 when read with letters addressed by URNL-Respondent No.1 on 18.07.2019, 20.12.2019, 16.11.2021 and 28.03.2022 evidences payment made to Respondent No.1 by Respondent No.2. When Respondent No. 1 had already received the payment from Respondent No.2, the amount had crystallised and had become recoverable by the Liquidator.

14. This brings us to the other related argument canvassed by the Appellant that once a Corporate Debtor has been ordered to undergo liquidation proceedings, the appropriate forum for adjudication of all disputes shall be the Adjudicating Authority. It was also asserted that in terms of Section 60(5) of the IBC, the Adjudicating Authority is the competent authority to entertain or dispose of any application or proceeding by or against the Corporate Debtor and any claim made by or against the Corporate Debtor. It was asserted that it was erroneous to fall back on Clause 38 of Form-A to justify the need to enter into arbitration in case of any dispute arising between the parties. It was also asserted that since the Corporate Debtor was undergoing liquidation, Clause 38 could not have been invoked since during the liquidation proceedings, no suit or other legal proceedings could have been initiated by or against the Corporate

Debtor in terms of Section 33 of the IBC. Further, Section 63 of IBC also specifies that Civil Court will not have any jurisdiction to entertain a suit or proceeding in respect of which NCLT has jurisdiction under IBC. We also notice the averment made by the Appellant that the Respondent No.1 had categorically admitted the outstanding amount of Rs 150.79 lakhs in their communication dated 18.07.2019. Basis this admission, the amount had already been reflected as “receivables” in the audited balance sheet of the Corporate Debtor. Referring the matter for arbitration is therefore not legally tenable particularly so when the Corporate Debtor is under liquidation proceedings. Hence, the any dispute surrounding the present receivable amount cannot be referred to arbitration as it would violate the statutory framework of IBC.

15. Submission has also been made that the Adjudicating Authority had wrongly relied on the judgment of the Hon’ble Supreme Court in **Gujarat Urja** and of this Tribunal in **Ramachandra D. Choudhary, RP Vs Bansal Trading Company in CA(AT)(Ins) No. 810-812 & 815 of 2020** in holding that the Adjudicating Authority lacked jurisdiction to entertain IA No. 1291 of 2022. The outstanding amounts not being contingent or disputed, it squarely fell within the purview and jurisdiction of the Adjudicating Authority under Section 60(5)(c) of the IBC to order recovery of the same. It is contended that in **Gujarat Urja judgment**, the Hon’ble Apex Court held that contractual disputes fall outside the insolvency framework and hence it is required to be pursued before the appropriate form of law. Similarly, in the **Bansal Trading judgment**, it was a case involving adjudication of disputed debts raised by sundry debtors which could not have been adjudicated in a summary manner under Section 60(5) of

IBC. On the contrary, in the present case, it was contended that the liability is a crystallized liability which has also been admitted by the Respondents.

16. Coming to our analysis and findings, we find that the amount claimed to be recoverable from the Respondents by the Appellant as part of the liquidation asset in terms of project wise dues was Rs 89.12 lakh; Rs 15.90 lakh and Rs 59.17 lakh alongwith interest @ 18% p.a. in respect of sub-stations at Dharampur, Khurja and Panwari respectively.

17. When we look at the material placed on record, we find that the Respondent No.1 has contended that in respect of Khurja project, a sum of Rs 15 lakh which was claimed by them related to unapproved variation from the project and that these payments were contingent upon receiving approval of Respondent No.2 in respect of the variations. This does not tantamount to acknowledgement of any pending or crystallized dues payable to the Corporate Debtor. In any case, no final bills had been submitted for the Khurja project and recoverable amount being provisional in nature cannot be treated as final admission of debt.

18. As for the Panwari project, though the accounts were settled and an amount of Rs 50.61 lakh was payable, the payment conditions laid down in Clause 2.10 of the LOI remained unmet which included submission of Engineer's Certificate of completion; detailed invoice with supporting tax documentation etc. Though the amount was reconciled but payment was subject to satisfying contract compliances which compliances had not yet been fulfilled. Thus, the debts in respect of Panwari project were not ripe for recovery.

19. Coming to the Dharampur project, it is the contention of the Appellant that the OM dated 09.10.2018 clearly provided that Rs 91.62 lakh was due to

be released to Respondent No.1 by Respondent No.2 and therefore constituted an admission on the part of Respondents of their liability. It may be useful to peruse the said OM which reads as follows:

“Hence Rs.91.62 lakhs due to be released against construction of 132 KV Dharampur (Bulandshahr) is hereby adjusted against the excess payment of Rs 1086.41 lakh released for construction of 220 kv Motiram Adda (Gorakhpur) after this adjustment the excess payment left shall be (960.94-91.62= 869.32 lakh)”

When we look at the above OM excerpts, clearly the above OM talks of release due of Rs 91.62 lakhs but was accompanied by the rider that this amount was to be adjusted against certain excess payment of Rs 1086.41 lakhs already released for construction of another project. This is undoubtedly a case where an issue of excess payment and adjustment/appropriation of the excess payment was involved.

20. Besides the fact that the said OM was not addressed to the Appellant, even the letters dated 18.07.2019, 20.12.2019, 16.11.2021 and 28.03.2022 which have been adverted attention to by the Appellant to claim that the debt had crystallised are in the nature of internal communications between the Respondents No.1 and 2 as Respondent No.1 was awarded multiple projects by Respondent No.2 other than the three sub-stations in question. At this stage it may be useful to notice one such communication dated 18.07.2019 which is as reproduced hereunder:

Date: 18.07.2019

*To
The Chief Engineer (Project & Purchase)
UP Power Transmission Corporation Ltd.*

*Subject :- Regarding Delayed Payment of 132/33 K.V. Electric
Sub station Dharampur Bulandshahar and Panwari Mahoba*

Reference: Ms. Pooja Bahry's letter dated 27.06.2019

Sir.

Please take reference of Ms. Pooja Bahry's notice dated 27th June, 2019 (photocopy enclosed) vide which it is referred that the payment of Sub-Contractors' pending bills could not be done by the Nirman Nigam due to shortage of funds. We wish to inform that that due to non-payment of the above bills, the concerned contractors have applied for payment of pending amount through National Company Law Tribunal (NCLT), Principal Bench, New Delhi under Insolvency and Bankruptcy Code, 2016.

In the above context it is requested that the pending payments detailed as per column no.10 in the enclosed sheet pertaining to the above mentioned electric Sub-Stations aggregating Rs.150.79 Lacs may please be released so as to enable the Corporation to make payment of the pending bills to the concerned Sub-Contractors.

With thanks.

*Yours faithfully,
General Manager (Fin.)*

21. In our considered view, basis such internal reconciliation notes regarding project wise excess payments and adjustments to be made across unrelated projects, it would be misplaced to hold these communications as an admission of liability on the part of the Respondents qua the Appellant. The OM and the letters at best are mere approximation and estimation of accounts without the stamp and seal of verification and final conciliation of the accounts and therefore the reliance placed on them by the Appellant to claim that the outstanding amount qua them had crystallised is not tenable. In view of the above findings, we are also of the view that the ratio of the **RKKR Steels judgment** does not support the submission made by the Appellant as in that case the debt was unequivocally admitted, quantified and supported by documents while the present case is one characterized by pending final bills, unresolved variation approvals, excess payments unadjusted and reconciled amounts requiring documentary compliances.

22. We now advert our attention to the judgement of the Hon'ble Supreme Court in **Gujarat Urja judgement** which has dilated at length on the contours and amplitude of Section 60(5). We may notice the relevant findings of this judgement which is as under:

“42. The primary issue upon which the outcome of this appeal would turn is the nature of the jurisdiction which is exercised by the NCLT under Section 60(5) of the IBC. The provision reads thus:

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of –

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

67.....Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing do, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist.

72. Therefore, we hold that the RP can approach the NCLT for adjudication of disputes that are related to the insolvency resolution process. However, for adjudication of disputes that arise dehors the insolvency of the Corporate Debtor, the RP must approach the relevant competent authority. For instance, if the dispute in the present matter related to the non-supply of electricity, the RP would not have been entitled to invoke the jurisdiction of the NCLT under the IBC. However, since the dispute in the present case has arisen solely on the ground of the insolvency of the Corporate Debtor, NCLT is empowered to adjudicate this dispute under Section 60(5)(c) of the IBC.”

23. In summary, the jurisprudence laid down by this judgement is clear that the Hon'ble Apex Court after examining in details the use of expressions "arising out of" and "in relation to" in Section 60(5) of the IBC has held that NCLT cannot exercise its jurisdiction over matters *dehors* the insolvency proceedings since such matters would fall outside the realm of IBC. While the duty of the Resolution Professional and the jurisdiction of the NCLT cannot be conflated, it was clarified that the Resolution Professional can approach the NCLT for adjudication of disputes which relate to the insolvency resolution process but when the dispute arises *dehors* the insolvency of the Corporate Debtor, the Resolution Professional must approach the relevant competent authority.

24. We have already noticed that the Clauses in the LOI clearly stated that the entire transaction shall be governed with the terms and conditions laid down in Form-A and B of Clauses 21 and 23. Payment of bills was subject to terms and conditions of LOI and the related agreements. Unilateral declaration of "receivables" in accounting entries did not create a legally enforceable liability. In such circumstances, mere entries in the balance sheet of the Corporate Debtor were not sufficient to foist a legally enforceable claim on the Respondents devoid of any substantiation of the same with necessary proof and evidence. Further Clause 38 Form-A clearly provided for arbitration in case of disputes between the parties. Additionally, Clause 38 of the same Form-A provided that any action taken or proceeding initiated on any of the terms of the agreement shall lie within the jurisdiction of the High Court at Allahabad.

25. In the absence of a legally adjudicated or admitted claim, as in the facts of the present case, we are guided by the judicial precedent laid down in **Gujarat Urja judgment** and are of the considered view that the Adjudicating Authority

stood precluded from ordering recovery of claim amount as sought by the Appellant-Liquidator in exercise of Section 60(5) of the IBC. The Liquidator has clearly endeavoured to sidestep and short-circuit the jurisdiction of other authorities and has approached the Adjudicating Authority for the enforcement of the uncrystallized dues of the Corporate Debtor. The trajectory of events makes it clear that insolvency of the Corporate Debtor was not being employed as a ground by the Respondents for not making the payment but the payment was denied on account of contractual disputes surrounding uncrystallised debt which had arisen de hors the insolvency of the Corporate Debtor. In the absence of jurisdiction over the dispute, the Adjudicating Authority has rightly not allowed the prayers of the Liquidator.

26. For the aforesaid reasons stated above, there is no illegality or infirmity in the impugned order passed by the Adjudicating Authority. The impugned order does not need any intervention. The Appeal fails and is dismissed. The Appellant-Liquidator however shall have the liberty to take appropriate steps to file legal proceedings with regard to the contractual dispute and we make it clear that we are not expressing any opinion with regard to the merits of the contractual dispute. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Place: New Delhi

Date: 15.10.2025

Abdul/Harleen