

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. IA/4622/2024C.P. (IB)/1398(MB)2020

IN THE MATTER OF

Autade Sugars Private Limited

VS

Fabtech Sugar Limited

U/s 7 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 04.12.2025

CORAM:

SH. MOHAN PRASAD TIWARI
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner: Adv. Rohit Gupta a/w Adv. Niharika i/b Baraka Legal (PH)

For the Respondent:

ORDER

IA/4622/2024: The above IA is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/-

CHARANJEET SINGH GULATI

Member (Technical)

//Zakir//

Sd/-

MOHAN PRASAD TIWARI

Member (Judicial)

**NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

IA (IBC) NO. 4622 OF 2024

Section 60(5) of the Insolvency and
Bankruptcy Code, 2016;

IN

CP (IB) NO. 1398/MB/2020

IN THE MATTER OF

Fabtech Sugar Limited,

J 504, MIDC Bhosari, Pune - 411026
Maharashtra.

... Applicant

Versus

**Maharashtra State Electricity Transmission
Company Limited,**

4th Floor, "A" Wing, Prakashganga, MSETCL,
Plot C-19, E Block, BKC, Bandra (East),
Mumbai 400051.

...Respondent No. 1

Mr. Srigini Rajat Naidu

Resolution Professional of Fabtech Sugar
Limited,

J 504, MIDC Bhosari, Pune - 411026
Maharashtra.

... Respondent No. 2

IN THE ORIGINAL MATTER OF

Autade Sugar Private Limited

Plot No. 17, CTS No. 1620 Giriraj Co-operative
Housing Society, Aundh, Pune - 411007,
Maharashtra.

... Petitioner

Versus

Fabtech Sugar Limited,

J 504, MIDC Bhosari, Pune - 411026
Maharashtra.

... Respondent

Order Pronounced on: 04.12.2025

Coram:

Sh. Mohan Prasad Tiwari, Hon'ble Member (Judicial)

Sh. Charanjeet Singh Gulati, Hon'ble Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: - Adv. Rohit Gupta a/w Niharika Jalan
i/b Baraka Legal

For the Respondents: - Adv. Kinjal Khandelwal
i/b KP Law Associates LLP (PH)(R1)

ORDER

IA (IBC) NO. 4622 OF 2024

1. The present Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), inter alia seeking directions from this Tribunal in relation to the Grid Connectivity earlier granted and subsequently unilaterally and wrongfully cancelled by Respondent No. 1.
2. The Applicant, Fabtech Sugar Ltd., is a company incorporated under the Companies Act, 2013, and is engaged in the business of sugarcane processing.
3. Respondent No. 1, Maharashtra State Electricity Transmission Company Ltd. (MSETCL), is a company incorporated under the Companies Act, 1956 and is responsible for operating the electricity transmission network across Maharashtra.

4. Respondent No. 2, Shri Gini Rajat Naidu, is an Insolvency Resolution Professional registered with the IBBI. He was appointed as the Resolution Professional (“RP”) of the Applicant during its Corporate Insolvency Resolution Process (“CIRP”), which commenced on 13 May 2021 and concluded on 9 February 2024.
5. The present dispute arises out of the cancellation of the Grid Connectivity granted to the Applicant by MSETCL during the subsistence of the CIRP, despite the Applicant having committed no default. It is submitted that the cancellation seriously jeopardises the revival of the Applicant under the resolution plan approved by this Tribunal.
6. The Applicant is a sugarcane processing company. In 2015, it proposed to set up its own Bagasse Biomass Co-generation Plant (“Co-generation Plant”) at Nandur, Mangalweda, Solapur, for generating renewable energy. The electricity generated was to be used for the Applicant’s plant operations, and the surplus was intended to be sold to Maharashtra State Electricity Distribution Company Ltd. (MSEDCL). The project contributes to renewable energy generation and reduces dependence on coal-based power.
7. Accordingly, the Applicant and MSEDCL entered into an Energy Purchase Agreement (EPA) dated 04.08.2015 (Exhibit “A”) for sale of surplus electricity from the Co-generation Plant. One of the preconditions for supply of electricity under the EPA was Grid Connectivity from MSETCL. Therefore, the Applicant applied to MSETCL for the same. To achieve Grid Connectivity, the Applicant was required to construct a 132 KV SCDC line from its plant to the Nimbhoni Sub-Station. Simultaneously, MSETCL was to construct a separate 132 KV line to the same sub-station. Grid Connectivity could only be achieved upon completion of both lines.

8. While the Applicant completed its portion of work on schedule, MSETCL's work was delayed due to Right of Way (ROW) issues. The Applicant accordingly sought an extension of time vide letter dated 11.01.2018. MSETCL granted the first extension on 31.01.2018 (Exhibits "B" and "C").
9. Further, after utilizing the first extension, the Applicant completed its scope of work. However, as MSETCL continued to face ROW issues, the Applicant requested a second extension on 08.10.2018. MSETCL granted the same on 06.12.2018 and expressly recorded that the Applicant had completed its entire scope of work (Exhibits "D" and "E").
10. The Applicant thereafter addressed a letter on 18.01.2019 (Exhibit "F"), reiterating that its work was complete and that power could be exported immediately upon commissioning. However, commissioning was stalled solely because MSETCL had not completed its line due to ROW issues. The Applicant thus sought extension till MSETCL completed its work. Before MSETCL completed its scope of work, the Applicant was admitted into CIRP on 13.05.2021 (Exhibit "G"). By order dated 02.12.2021, this Tribunal appointed Respondent No. 2 as the RP (Exhibit "H"). During the CIRP, S.M. Autade Pvt. Ltd. submitted a resolution plan, which was approved by the CoC on 08.04.2022 and thereafter by this Hon'ble Tribunal on 09.02.2024 (Exhibit "I").
11. It is submitted that the Resolution Applicant submitted its plan under the bona fide belief that the Grid Connectivity earlier granted was still valid. However, after taking control of the Applicant, the new management discovered that MSETCL had cancelled the Grid Connectivity vide letter dated 07.04.2022—ironically, the day before the CoC approval of the plan. The cancellation was on the ground that the Applicant had not applied for final Grid Connectivity within one year from MSETCL completing its scope of work in March 2021 (Exhibit "J"). This cancellation was never communicated to the Applicant or the RP

during the CIRP. Consequently, the resolution plan was framed based on the assumption that Grid Connectivity continued to subsist. This assumption formed a crucial basis of the financial viability of the resolution plan. The cancellation now threatens to derail the entire revival process.

12. The Applicant has a valid and subsisting EPA with MSEDCL. The right to sell surplus electricity constitutes a valuable asset and an essential source of revenue under the approved resolution plan. Under the Resolution Plan, significant payments are to be made to creditors over a period of three years, and revenue from sale of power is critical to meeting such obligations. The grant of the Grid Connectivity by MSETCL is a mandatory precondition for exporting electricity to MSEDCL under the EPA.
13. The Applicant had completed all its obligations for achieving Grid Connectivity as early as 2018, which MSETCL expressly acknowledged in writing. The only delay was on account of MSETCL's ROW issues. By the time MSETCL completed its work in March 2021, the Applicant was on the brink of insolvency and was admitted into CIRP shortly thereafter. The RP's focus was necessarily on running the CIRP and securing revival, and therefore administrative actions relating to finalization of Grid Connectivity could not be taken.
14. The only reason for non-completion of final formalities related to Grid Connectivity was the ongoing CIRP. There was no lapse on the part of the Applicant. All substantive work having been completed long before CIRP, cancellation merely for not completing final paperwork during CIRP is wholly arbitrary.
15. Under Section 14 of the IBC, no contract, license, permit, or approval granted to the corporate debtor can be terminated during the moratorium. MSETCL's letter dated 07.04.2022 cancelling Grid

Connectivity clearly violates Section 14. In these circumstances, the Applicant prays that the cancellation letter dated 07.04.2022 be quashed and that MSETCL be directed to grant a further extension for completing the Grid Connectivity process.

16. The Applicant apprehends that MSETCL may grant Grid Connectivity to third parties in the region, which would irreversibly prejudice the Applicant. Pending disposal of this Application, such actions should be restrained. The new management assumed control on 12.02.2024 and discovered the cancellation immediately thereafter. The present Application is therefore filed at the earliest opportunity.
17. Grave and irreparable loss will be caused to the Applicant if relief is not granted. The balance of convenience is entirely in favour of the Applicant. The Applicant has filed the present Application seeking: (i) to set aside the letter dated 07.04.2022 issued by MSETCL cancelling the Grid Connectivity granted to the Co-generation Plant, (ii) to direct MSETCL to grant an extension of six months, or such other period as this Hon'ble Tribunal deems fit, for completion of the Grid Connectivity formalities, and (iii) pending the hearing and final disposal of the Application, to restrain MSETCL from taking any steps that may prejudice or foreclose the Applicant's right to obtain Grid Connectivity for the Co-generation Plant.
18. Respondent No. 1, Maharashtra State Electricity Transmission Company Ltd. (MSETCL), was constituted following the restructuring of the erstwhile Maharashtra State Electricity Board (MSEB) under Government Resolution dated 24.01.2005. It is a Government Company and has been notified as the State Transmission Utility (STU) for Maharashtra by the Government on 17.02.2005. In its capacity as STU under the Electricity Act, 2003, MSETCL is required to discharge its statutory functions and duties in accordance with the provisions of the Act, the MERC Regulations, and the State Grid Code.

19. Respondent No. 1 submits that M/s Fabtech Sugar Ltd. applied for Grid Connectivity of 30 MW on 17.02.2017. On 21.07.2017, the STU granted interim connectivity for the Applicant's 30 MW bagasse-based co-generation power plant located at Village Nandur, Taluka Mangalweda, District Solapur, through the proposed 132 kV SCDC line from MSETCL's upcoming 132/33 kV Nimboni Sub-station. This interim connectivity was valid until 20.01.2018.
20. The Applicant, through letter No. 345 dated 11.01.2018 and letter No. 265 dated 08.10.2018, sought the first and second extensions of the interim connectivity. Accordingly, the STU granted the first extension vide letter No. 1186 dated 31.01.2018 and the second extension vide letter No. 12756 dated 06.12.2018, valid until 19.07.2018 and 18.01.2019, respectively. Thereafter, on 18.01.2019, the Applicant requested a further extension until commissioning of the 132 kV Nimbhoni Sub-station, alleging that MSETCL's LILO work was delayed due to Right-of-Way constraints.
21. It is stated that although the validity of both extensions had expired and the Grid Connectivity was otherwise liable for cancellation, the same was not cancelled in view of the pendency of the LILO work on the 132 kV Pandharpur-Mangalvedha line. After the line was commissioned on 31.03.2021, the Applicant was required to apply for final Grid Connectivity along with the necessary documents. However, even after nearly one year from commissioning, no communication was received from the Applicant.
22. Respondent No. 1 further submits that before cancelling the Grid Connectivity, the STU issued a notice dated 23.02.2022 directing the Applicant to apply for final Grid Connectivity within 15 days, along with the requisite documents. As the Applicant failed to respond, the Grid Connectivity was validly cancelled due to the neglect and inaction of the

Company, its erstwhile Directors, and the Resolution Professional, prior to the fresh approval granted in 2024.

23. As per the Government of Maharashtra's "Methodology for State Renewable Energy Policy 2020" notified on 11.05.2022, regarding the extension of Grid Connectivity and timelines for project execution:

"2. Extension of time: As per the rules laid down by the Maharashtra State Electricity Regulatory Commission, the extension will be given twice, once every six months. If the extension period for the power evacuation system has not been completed and the system has not been implemented as per the approved plan, the approval for grid connectivity will stand cancelled."

24. Even so, on 01.08.2024, Respondent No. 1 granted fresh Grid Connectivity to the Company on the basis of its online application. Further submitted that the present Application has been filed by the Company's ex-Directors after the appointment of the Resolution Professional (RP). Under the Insolvency and Bankruptcy Code, once the RP is appointed, the management of the Corporate Debtor's affairs vests solely in the RP. Therefore, the Ex-Directors were not competent to act on behalf of the Company during the CIRP. Any remedy, if required, against the Respondents ought to have been pursued by the RP before the appropriate authority under Section 86(f) of the Electricity Act, 2003.

25. It is further submitted that the Maharashtra Electricity Regulatory Commission (MERC) has exclusive jurisdiction over intrastate disputes between a generating company and a transmission licensee, as expressly provided under Section 86(f) of the Electricity Act, 2003. It is well-settled that decisions of governmental or statutory authorities cannot be adjudicated under Section 60(5) of the IBC in a manner that conflicts with existing statutory remedies. In support of this contention, reliance is placed on the judgments of the Hon'ble Supreme Court in

Tata Consultancy Services v. Vishal Ghisulal Jain (Civil Appeal No. 3045 of 2020) and **Embassy Property Development Pvt. Ltd. v. State of Karnataka** (2019) 13 SCC 308.

26. Upon consideration of the rival pleadings & submissions and the documents on record, the issues for determination before us are that:

1. **Whether this Tribunal has the jurisdiction to adjudicate the present lis?**
2. **Whether the cancellation of Grid Connectivity by MSETCL vide letter dated 07.04.2022 is in violation of the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016.?**

27. To determine whether this Adjudicating Authority has jurisdiction to deal with the issue at hand it would be apposite to refer Sec. 60 subsection 5 of the Insolvency and Bankruptcy Code 2016-

“60 (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.”

28. Section 60(5)(a) stipulates that the NCLT has the authority to hear any application or proceeding brought by or against a corporate person or corporate debtor. Any claims made for or against the corporation, including its Indian subsidiaries, must also be lodged with the NCLT under clause (b). Section 60(5)(c) grants NCLT residual jurisdiction so far as such issue is in relation to insolvency resolution of the Corporate

Debtor. Even though residuary jurisdictions provide the NCLT broad authority, its jurisdiction cannot conflict with the existing laws. The Hon'ble Supreme Court considered the residuary jurisdiction of the NCLT under Section 60 (5)(c) in the case of **Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531**. The precedent defined the provision as a residuary jurisdiction of the NCLT, which granted the NCLT authority to adjudicate disputes arising from or related to the corporate debtor's insolvency proceedings under the law.

29. Further it would be relevant to note that the Hon'ble Supreme Court in **Gujarat Urja Vikas Nigam Limited v. Amit Gupta & Ors., (2021) 7 SCC 209**, have though held that the jurisdiction conferred under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 is of wide import and empowers the Adjudicating Authority to consider questions of law or fact "arising out of" or "in relation to" the insolvency resolution proceedings, but it also cautions that the NCLT does not have jurisdiction on the issues which are dehors the insolvency and that it cannot usurp powers of other competent courts. The Hon'ble Supreme Court in their said judgement, inter-alia, have observed as under:

"176. Given that the terms used in Section 60(5)(c) are of wide import, as recognized in a consistent line of authority, we hold that NCLT was empowered to restrain the appellant from terminating the PPA. However, our decision is premised upon a recognition of the centrality of the PPA in the present case to the success of CIRP, in the factual matrix of this case, since it is the sole contract for the sale of electricity which was entered into by the corporate debtor. In doing so, we reiterate that NCLT would have been empowered to set aside the termination of PPA in this case because the termination took place solely on the ground of insolvency. The jurisdiction of NCLT under Section 60(5)(c) of IBC cannot be invoked in matters where a termination may take place on grounds unrelated to the insolvency of the corporate debtor. Even more crucially, it cannot even be invoked in the event of a legitimate termination of a contract based on an ipso-facto clause like

Article 9.2.1 (e) herein, if such termination will not have the effect of making certain the death of the Corporate Debtor. As such, in all future cases, NCLT would have to be wary of setting aside valid contractual terminations which would merely dilute the value of the Corporate Debtor, and not push it to its corporate death by virtue of it being the corporate debtor's sole contract (as was the case in this matter's unique factual matrix)."

30. From the above principles laid down by the Hon'ble Supreme Court, it is clear that jurisdiction under Section 60(5)(c) can be invoked and the power to restrain or set-aside, termination is confined to the cases where: –
- (i) The termination is solely on account of insolvency (for example by an *ipso-facto* clause); and
 - (ii) Such termination would inevitably result in the corporate death of the debtor by depriving it of its sole or central contract essential to the success of the CIRP.
31. The Hon'ble Supreme Court cautioned that NCLT must refrain from interfering with valid contractual terminations, based on breaches unrelated to insolvency.
32. In the present case Energy Purchase Agreement ('EPA') between Fabtech Sugar Ltd and MSEDCL was entered into on 04.08.2015 and there were preconditions of completion of grid connectivity infrastructure by both the parties to the EPA. It is undisputed that such grid connectivity infrastructure was not complete till March, 2021 and extensions as were requested by Fabtech Sugar Ltd was granted by MSEDCL time to time. Finally, when the grid connectivity infrastructure was completed in March, 2021, it was for Fabtech Sugar Ltd to complete the grid connectivity formalities and put in force and effect to the EPA. However, the same was admittedly not done and thereafter the Respondent No. 1 issued notice dated 23.02.2022 calling upon the

Applicant to submit requisite documents for final Grid Connectivity within 15 days. As no response was received, the Grid Connectivity was cancelled on 07.04.2022 on the ground of failure to apply for final approval. Both parties acknowledge these facts.

33. It is the case of the applicant that the failure to obtain final approval occurred during the subsistence of the CIRP, which had commenced on 13.05.2021, and that the Corporate Debtor was under severe operational and administrative constraints owing to the moratorium and resolution process. Also, the Resolution Plan was submitted, evaluated by the CoC, and approved by this Tribunal on 27.07.2022 and 09.02.2024 respectively and this application was filed on by the SRA in the capacity of the Fabtech Sugar Ltd on 23.08.2024 after it took possession and control of the Fabtech Sugar Ltd on 12.02.2024.
34. Under the facts and circumstances, and when viewed from the observation of the Hon'ble Supreme Court in **Gujarat Urja Vikas Nigam Limited v. Amit Gupta & Ors.** (Supra) it is clear that:
- (i) EPA is not in centrality in the present case for success of the CIRP as the EPA only was an added facility to evacuate surplus power into the grid and further such termination has admittedly not led to the corporate debtor's death, rather the Resolution Plan has been approved and implemented and so much so the process of CIRP has been concluded in its totality.
 - (ii) Further, in the facts of the case it cannot be said that the termination of the EPA was solely on the grounds of Insolvency, as in this case termination happened on account of failure of the part of Fabtech Sugar Ltd to obtain final grid connectivity along with failure to submit necessary documents.
 - (iii) As in the present case CIRP has already been concluded and the Applicant is no more the corporate Debtor. Also, though in this case termination of the EPA took place on 07.04.2022, and the Plan was approved by the CoC on 27.07.2022, the RP or the CoC

did not take any action either to approach this Authority or any other Competent Authority against such termination of the EPA. It is also noteworthy that this Authority approved the Resolution Plan only on 09.02.2024 and even before this date no action was taken by the RP/CoC.

(iv) It also noteworthy that basis an on application by the SRA, fresh grid connectivity has been granted to the SRA on 01.08.2024.

35. Further, in terms of the judgments relied upon by Respondent No. 1, namely ***M/s Embassy Property Developments Pvt. Ltd. v. State of Karnataka, (2019) 13 SCC 308***, and ***Tata Consultancy Services v. Vishal Ghisulal Jain, Civil Appeal No. 3045 of 2020***, the NCLT would lack jurisdiction over disputes arising solely under special statutes or purely contractual issues unconnected with insolvency.
36. Under the facts and circumstances of the case it is clear that the process of the CIRP has since been closed. Further the termination of the EPA dated 04.08.2015 is on the grounds unrelated to the insolvency and this EPA neither was it at centrality of the Corporate Debtor nor cancellation of it has led to the corporate death of the Corporate Debtor. It was a termination for non-performance and on failure to connect to the grid and obtain necessary approval, falling outside the jurisdiction of NCLT under Section 60 (5)(c) of the IBC. Hence this Authority cannot be said to have jurisdiction on the issue raised.
37. Once, it is arrived that this Authority does not have jurisdiction over the issue raised in the Application, the other contention regarding violation of Moratorium under section 14 becomes academic in nature. However, for the purposes of completeness, we are inclined to deal with the same. It is stated that the EPA dated 04.08.2015 did not create any Estate, proprietary right or transferable rights and at best it was a contractual permission and not an “*interest in property*” within the meaning of Section 14(1)(d) of IBC. It is not in dispute that the

Corporate Debtor is entitled to the protection of Section 14 of the IBC which mandates that on the insolvency commencement date, the Adjudicating Authority shall by order declare a moratorium prohibiting, *inter-alia*:-

- a. the institution or continuation of suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any Court of law, Tribunal, Arbitration Panel or other Authority;
- b. the transfer encumbrance, alienation, or disposal by the Corporate Debtor of any of its assets or any legal right or beneficial interest therein;
- c. any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property; and
- d. the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

38. The object of Section 14 of the IBC is to maintain the Corporate Debtor's asset as a going concern and to preserve its assets so as to facilitate resolution. The term "*Property*" under Section 3(27) of IBC is defined in the widest term, however, for the purposes of the Section 14, only such property or assets which form part of the Corporate Debtors Estate as on the insolvency commencement date are protected. Mere expectant contingent or un-crystalized contractual rights do not constitute "*Assets*" within the meaning of the Code. Further, not every executory or conditional contract amounts to an asset. The EPA as such is nothing but a contractual permission for evacuation of surplus power generated and as in the facts of the present case the EPA was not put into use or was put in force owing to the factors of non-completion of related grid connectivity infrastructure it at best gave an un-crystalized contractual rights in favour of the Corporate Debtor and could therefore, not fall within the definition of "*assets*" of the Corporate Debtor. Further, Section 14(1) of the IBC only prohibits termination or suspension of *any license, permit, registration, or approval* in favour of the Corporate

Debtor **on the ground of insolvency**, which is not the facts of the present case. In view of the discussion hereinabove, and under facts and circumstances of the case, the contention raised by the applicant regarding contravention of moratorium under section 14 of the IBC is not found to be acceptable and is accordingly, **rejected**.

39. Having arrived at the conclusions as above, we deem it appropriate to mention that new grid connectivity has been granted to the Applicant on 01.08.2024 basis their online application, and therefore, the Applicant's substantive issue of termination of EPA has been addressed.
40. In view of the above findings, the present IA is **dismissed** and disposed off.

Sd/-
Charanjeet Singh Gulati
Member (Technical)

Sd/-
Mohan Prasad Tiwari,
Member (Judicial)