IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.301 - IA/21(AHM)2026
in
C.P.(IB)/195(AHM)2025

Under Section 60(5) of IB Code, 2016

IN THE MATTER OF:

Keshav Khaneja RP of Gensol Engineering Limited .....**Applicant**
V/s
HMEL Green Energy Private Limited Through the Chairman & Managing Director .....**Respondent**

Order delivered on: 30/04/2026

C O R A M:
MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

O R D E R
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT– I, AHMEDABAD

IA No. 21(AHM) 2026
In
CP (IB) No. 195 (AHM) 2025

(An application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of: Gensol Engineering Limited

Mr. Keshav Khaneja,
Resolution Professional of Gensol Engineering Limited, available at C-7, Parth Apartment,
Ramdev Nagar, Satellite,
Ahmedabad-380015
Gujarat

.... Applicant

Versus

HMEL Green Energy Private Limited
Through the Chairman & Managing Director
Bearing CIN: U35106PB2023PTC059480
Having Registered Office at:
Village Phulokhari,Taluka Talwandi Saboo,
Raman, Bathinda, T Sabho, Punjab, India, 151301

.... Respondent

Order Pronounced on: 30.04.2026

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant : Mr. Monark Gehlot, Advocate
For the Respondent : Mr. Nandish Y Chudgar, Advocate,

ORDER
(*Per*: Bench)

1. The present Interlocutory Application No. 21(AHM) 2026 filed on 02.01.2026 Vide Inward Diary No. E 3341 is filed by the Resolution Professional of Gensol Engineering Limited ("Corporate Debtor") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (the "Code") against the Respondent, HMEL Green Energy Private Limited ("Respondent"), seeking following reliefs: -

a. *Allow the present application and set aside/recall the letter dated June 26, 2025, vide which the Respondent has terminated the Work Order dated November 14, 2023 between the Corporate Debtor and Respondent as illegal and unsustainable in law;*
b. *To restrain the Respondent from taking any steps in furtherance of the letter dated June 26, 2025;*
c. *Direct the Respondent to permit the Corporate Debtor to complete the Project in accordance with the terms and conditions of the Contract and declare that, subject to the provisions of the Insolvency and Bankruptcy Code, 2016, the Contract continues to remain valid, subsisting and binding upon the Respondent;*
d. *Direct the Respondent to forthwith release the outstanding amount of INR 3.85 Crores due and*

payable to the Corporate Debtor as on the date of initiation of CIRP along with applicable interest, without any further delay;

e. *Direct the Respondent to protect the CPGB bearing No.7241PBG233280001 dated November 24, 2023;*

f. *Direct the Respondent to provide copies of the invoices raised by the vendors under the Contract from the date of termination of contract and confirm the costs incurred to undertake the balance work under the Contract;*

g. *In the alternative, direct the Respondent to pay the damages of INR 5.87 Crores (as per reconciled accounts annexed as Annexure - 11) towards the loss incurred by the Corporate Debtor on account of illegal termination of the Contract;*

h. *Pending the final adjudication of this instant Application, pass an interim stay on the termination of the contract dated November 14, 2023 between the Corporate Debtor and Respondent;*

i. *Pending the final adjudication of this instant Application, pass an interim stay on the encashment of the bank guarantee bearing No. 7241PBG233280001 dated November 24, 2023, and*

j. *Pass such appropriate directions and orders as this Hon'ble Tribunal may deem fit and appropriate in the given facts and circumstances of the case.*

2. The present Application has been filed by the Resolution Professional of Gensol Engineering Limited (Corporate Debtor) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking urgent and necessary directions against HMEL Green Energy Private Limited (Respondent) to restrain it from giving effect to the termination of the Letter of Award dated 25.10.2023 and the Work Order/EPC Contract dated 14.11.2023. It is the case of the Applicant that the termination of the Contract vide letter dated 26.06.2025, effected after commencement of the CIRP of the Corporate Debtor on 13.06.2025, is illegal, arbitrary and contrary to the terms of the contract as well as the settled position of law, and is detrimental to the value maximization and successful resolution of the Corporate Debtor. Facts contained in the Application are stated below:

2.1. The Respondent, in flagrant breach of its contractual obligations and in deliberate disregard of the moratorium under the Code, has failed to settle the outstanding dues payable to the Corporate Debtor and has wilfully failed and/or neglected to extend cooperation, thereby causing grave financial prejudice

to the Corporate Debtor and its stakeholders and jeopardizing the CIRP.

2.2. That the Corporate Debtor is primarily engaged in the business of setting up solar power plants on an EPC basis and leasing of electric vehicles, and the continuation of the EPC Contract is critical for maintaining the Corporate Debtor as a going concern. It is further submitted that the Corporate Debtor is heavily dependent on revenues generated from such EPC contracts, and any unilateral termination thereof would result in the loss of a substantial and central source of cash flow, rendering the Corporate Debtor unviable for prospective resolution applicants and thereby adversely affecting the CIRP. It is submitted that such wrongful termination would have serious ramifications on the prospects of successful resolution of the Corporate Debtor. It is further submitted that value maximization and successful resolution are the core objectives of the Code, and any action during CIRP which undermines these objectives is untenable and liable to be set aside.

2.3. The Corporate Debtor is a company incorporated under the Companies Act, 1956, having its registered office at 15th Floor, A Block, Westgate Business Bay, S.G. Road, Jivraj Park, Ahmedabad, Gujarat – 380051, and is primarily engaged in the business of

setting up solar power plants on an EPC basis and leasing of electric vehicles.

2.4. In the ordinary course of business, the Corporate Debtor submitted a bid for setting up a 13.78 MWp rooftop solar power plant at Guru Gobind Singh Refinery, Bathinda, Punjab, pursuant to Tender bearing No. B760-000-07-41-PG-T7201. Pursuant thereto, the Respondent issued a Letter of Award dated 25.10.2023 in favour of the Corporate Debtor, and thereafter, the parties entered into a Work Order bearing No. 4300000560 dated 14.11.2023 for implementation of the project on an LSTK basis. It is further submitted that the total basic contract value was INR 48,29,13,901/- (exclusive of GST), with the total contract value inclusive of GST being approximately INR 54,95,00,000/-. A copy of the Work Order is annexed hereto as **Annexure–1**.

2.5. It is further submitted that, as per the terms of the Work Order, the Corporate Debtor was required to furnish a Contract Performance Bank Guarantee (CPBG) equivalent to 10% of the Work Order value to secure performance obligations. Accordingly, the Corporate Debtor furnished a CPBG bearing No. 724IPBG233280001 dated 24.11.2023 for an amount of INR 4,82,91,390.00/-, being 10% of the contract value under Clause 2.0 of the Work Order, with an expiry date of 25.07.2025 and claim expiry date of

25.07.2025, issued by Bandhan Bank Limited, Shyamal Cross Road Branch, Ahmedabad, in favour of the Respondent, which continues to remain in its possession. A copy of the CPBG is annexed hereto as **Annexure–2**.

2.6. It is submitted that, in view of the wide scope of the Project and delays encountered during execution, the Corporate Debtor and the Respondent mutually agreed that extensions would be required for completion of the Project. Accordingly, the Respondent granted work permit extensions from time to time, with the last extension being granted up to 31.05.2025.

2.7. It is submitted that, as on 23.06.2025, the Corporate Debtor had successfully supplied all materials in terms of the Contract and commissioned approximately 8.96 MWp. It is further submitted that, as on the date of termination i.e. 26.06.2025, nearly 70% of the contracted capacity stood commissioned and operational with the Respondent, and all materials required for the remaining works had already been made available at the Project site.

2.8. It is submitted that, on 02.06.2025, the Respondent, vide email, raised arbitrary and illegal debit notes alleging a recoverable amount of INR 3,24,76,523/- from the Corporate Debtor. A copy of the email dated

02.06.2025 along with the debit notes is annexed herewith and marked as **Annexure–3 (Colly)**.

2.9. It is submitted that, on 06.06.2025, the Respondent, citing lack of manpower deployment, issued an email cancelling gate passes and disclaiming responsibility for the Corporate Debtor's materials at the Project Site, thereby effectively preventing the Corporate Debtor from accessing the site and completing the remaining works. A copy of the letter dated 06.06.2025 is annexed herewith as **Annexure–4**.

2.10. It is submitted that, on 13.06.2025, this Hon'ble Tribunal admitted Company Petition (I.B.) No. 195/AHM/2025 filed under Section 7 of the Code and passed an order initiating CIRP against the Corporate Debtor. It is further submitted that, pursuant to the said Insolvency Commencement Order, Mr. Keshav Khaneja was appointed as the Interim Resolution Professional and was subsequently confirmed as the Resolution Professional of the Corporate Debtor. A copy of the Insolvency Commencement Order dated 13.06.2025 is annexed herewith as **Annexure–5**.

2.11. It is submitted that, immediately upon initiation of CIRP, on 26.06.2025, the Respondent, through its counsel, issued a Notice of Termination to the Corporate Debtor inter alia citing insolvency under Clause 12.1(g) of the Work Order and alleged material breach of the Contract, and terminated the Contract

with effect from 26.06.2025. It is further submitted that the Termination Letter clearly demonstrates that the primary ground for termination was the commencement of insolvency proceedings against the Corporate Debtor, which is contrary to the objectives of the Code and the settled judicial precedents laid down by the Hon'ble Supreme Court, the Hon'ble NCLAT and this Hon'ble Tribunal.

2.12. It is submitted that, as on the date of issuance of the Termination Letter, the Corporate Debtor had completed supply of all materials under the Contract and had operationalized and commissioned a substantial portion of the solar power plant. A copy of the Termination Letter dated 26.06.2025 is annexed herewith as **Annexure–6**.

2.13. It is submitted that, on 27.06.2025, i.e., a day after issuance of the Termination Letter on the ground of insolvency of the Corporate Debtor, the Respondent submitted an arbitrary claim before the IRP as an operational creditor for an amount of Rs. 1635.10 lakhs. It is further submitted that the said claim, as per its break-up, includes alleged dues towards completion of balance work (Rs. 301.40 lakhs), warranty obligations including 25-year module warranty (Rs. 109.9 lakhs), alleged O&M losses for 10 years due to engagement of third parties (discounted at Rs. 458 lakhs), loss on account of generation

shortfall (Rs. 615.7 lakhs), additional manpower cost (Rs. 105 lakhs), and receivables (Rs. 45.1 lakhs). A copy of the claim in Form B dated 27.06.2025 is annexed herewith as **Annexure–7**, and the summary of claims is annexed as **Annexure–8.**

2.14. It is submitted that, on 29.07.2025, the Applicant, vide letter, informed the Respondent of the initiation of CIRP against the Corporate Debtor on 13.06.2025 and his appointment as IRP, and conveyed his willingness to perform and honour the obligations under the Contract to ensure continuity of the Corporate Debtor as a going concern. It is further submitted that the Applicant requested the Respondent to treat the Work Order as valid and binding and to rescind the termination in accordance with the provisions of the Code, and also sought cooperation in reconciliation and release of outstanding dues amounting to INR 6,97,00,907/- payable to the Corporate Debtor for work executed under the Contract. A copy of the letter dated 29.06.2025 is annexed herewith as **Annexure–9**.

2.15. It is submitted that, on 05.08.2025, the Respondent, through its counsel, issued a reply to the Applicant's letter dated 29.07.2025 stating that the Contract stood terminated on 26.06.2025 and that it had already submitted its claim in Form B dated 27.06.2025. It is further submitted that, contrary to

the contents of the Termination Letter, the Respondent sought to justify the termination on alleged non-insolvency grounds, including delays, abandonment and non-payment to vendors, and further called upon the Applicant to withdraw his letter, cease further demands, and process the Respondent's claim of Rs. 1635.10 lakhs. A copy of the said response dated 05.08.2025 is annexed herewith as **Annexure–10**.

2.16. It is further submitted that, upon receipt of the Respondent's letter dated 05.08.2025, the RP, in discharge of his duties, held meetings with the Respondent's representatives on 07.08.2025 and 22.09.2025, once again seeking cooperation for completion of the remaining Project by the Corporate Debtor. It is further submitted that the Respondent, in flagrant disregard of the objectives of the Code and settled judicial precedents, refused to cooperate with the Applicant solely on the ground that insolvency proceedings had been admitted against the Corporate Debtor.

2.17. It is submitted that, aggrieved by the Respondent's high-handed conduct, the Applicant addressed a letter dated 22.11.2025 calling upon the Respondent to comply with the provisions of the Code, rescind the termination, release the outstanding amount of INR 3.85 Crores, withdraw the debit note dated

02.06.2025, and return the CPBG. It is further submitted that the Respondent has failed to respond to the said letter, thereby impeding the Applicant in discharging his duties and frustrating the objective of value maximization and successful resolution of the Corporate Debtor. A copy of the letter dated 22.11.2025 is annexed herewith as **Annexure–11.**

2.18. It is submitted that, since the initiation of CIRP, the RP has made continuous and bona fide efforts to cooperate with the Respondent for completion of the Project, recovery of outstanding dues, and protection of the CPBG during the subsistence of the Contract. It is further submitted that, despite such efforts, no positive response has been received from the Respondent till the filing of the present Application.

2.19. It is submitted that the Respondent's unilateral termination of the Contract post commencement of CIRP has gravely prejudiced the commercial viability and prospects of successful resolution of the Corporate Debtor and adversely affected the rights and interests of its stakeholders, and is in contravention of the provisions of the Code. It is further submitted that, being aggrieved by the aforesaid conduct, the Applicant is constrained to file the present Application seeking the reliefs set out herein, on the grounds stated below, without prejudice to each other.

Submissions on behalf of the Applicant

The Respondent's unilateral termination of the EPC Contract during CIRP is patently illegal and in direct violation of the settled principles of law

2.20. It is submitted that value maximization and successful resolution of the Corporate Debtor are the primary objectives of the Code, and any action during CIRP which is contrary to these objectives is untenable and liable to be set aside.

2.21. It is further submitted that it is settled law that a contract entered into by a company undergoing CIRP cannot be terminated if such contract is central to the success of the CIRP and the Corporate Debtor's survival as a going concern. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in ***Gujarat Urja Vikas Nigam Limited v. Amit Gupta & Ors.* (2021) 7 SCC 209**, wherein it has been held that such contracts cannot be terminated during CIRP. The relevant extract of the said judgment is reproduced herein below:-

> *"152. As the above excerpts indicate, but for the subsistence of the PPA, the Corporate Debtor would no longer remain as a 'going concern. Differently stated, by virtue of the PPA with the Appellant being the sheet-anchor of the Corporate Debtor's business and consequently of the CIRP, its continuation assumes enormous significance for the successful completion of the CIRP. The termination of the*

PPA will have the consequence of cutting the legs out from under the CIRP."

2.22. The Gujarat Urja Judgement ratio was reiterated by the Hon'ble Supreme Court in TATA Consultancy Services Limited v. Vishal Ghisulal Jain ((2022) 2 SCC 583) ("Tata Consultancy Judgement").

2.23. It is submitted that the aforesaid judicial precedents clearly establish that a contract which is central to the success of CIRP cannot be terminated during its pendency, particularly where such termination is on account of the insolvency of the Corporate Debtor.

2.24. It is further submitted that, in the present facts and circumstances, the unilateral and arbitrary termination of the Contract by the Respondent post commencement of CIRP, along with invocation of the Bank Guarantee, is contrary to the terms of the EPC Contract, settled judicial precedents, and the objectives of the Code.

2.25. It is submitted that the EPC Contract between the Corporate Debtor and the Respondent, having a value of over INR 54,95,00,000 is a central and significant contract for the Corporate Debtor. It is further submitted that solar EPC contracts constitute one of the primary business activities of the Corporate Debtor, and the instant Contract is critical to its commercial viability and the success of its resolution.

2.26. It is further submitted that the Corporate Debtor had made substantial progress in execution of the Project and supplied the entire material in terms of the EPC Contract. Despite its readiness and willingness to complete the Project within the contractual timeline, the Corporate Debtor addressed repeated communications to the Respondent seeking access to the Project Site; however, the same were not heeded to.

2.27. It is submitted that the EPC Contract is central to the functioning of the Corporate Debtor as a going concern and to the success of its CIRP. It is further submitted that the Corporate Debtor is engaged in EPC services and is heavily dependent on revenues therefrom, and any unilateral termination of such contracts would result in loss of a crucial source of cash flow, render the Corporate Debtor unviable for prospective resolution applicants, and thereby adversely affect the prospects of successful resolution.

2.28. It is submitted that the Corporate Debtor has invested substantial time and resources in execution of the EPC Contract and has duly performed the majority of its obligations thereunder. It is further submitted that the Corporate Debtor is entitled to receive approximately INR 3.86 Crores, along with applicable interest, from the Respondent towards the work already completed, which underscores the centrality

and importance of the EPC Contract to the Corporate Debtor as a going concern.

2.29. It is submitted that the Respondent has terminated the Contract post initiation of CIRP primarily on the ground of insolvency of the Corporate Debtor, as evident from the Termination Letter dated 26.06.2025, followed by submission of a claim on 27.06.2025 for an exaggerated amount exceeding INR 16.35 Crores. It is further submitted that such termination on the ground of insolvency is contrary to the settled judicial precedents. The relevant extract of the Termination Letter is reproduced hereinbelow:

> *"14.De hors the above-cited reasons for invocation of termination, it is also clear from the public domain that Gensol has been admitted into corporate resolution insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 by way of an admission order dated 13.06.2025 passed by the National Company Law Tribunal, Ahmedabad. Thus, this itself is also an available ground for termination of the Work Contract/Tender as per Clause 12.1(g) cited above."*

2.30. It is submitted that an analysis of the aforesaid facts clearly demonstrates that the judgment of the Hon'ble Supreme Court in Gujarat Urja is squarely applicable to the present case, as in both instances a contract central to the Corporate Debtor's functioning as a going concern was terminated during the pendency of CIRP.

2.31. It is submitted that, in view of the foregoing, the termination of the Contract by the Respondent is patently illegal, untenable in law, and contrary to the judgment of the Hon'ble Supreme Court in Gujarat Urja. It is further submitted that the termination of the EPC Contract is liable to be set aside and the Termination Letter deserves to be recalled.

The deliberate and dilatory conduct of the Respondent has gravely endangered the value maximization and successful resolution of the Corporate Debtor

2.32. It is submitted that, as on the date of termination of the Contract, the Corporate Debtor had supplied the majority of the material and commissioned nearly 70% of the solar plant. It is further submitted that the Corporate Debtor had raised invoices amounting to INR 41.63 Crores for work executed, out of which an amount of INR 3.85 Crores remains outstanding and payable by the Respondent as on the date of initiation of CIRP. It is further submitted that, pursuant to discussions between the parties and upon the Applicant's request, the accounts and ledgers pertaining to the Contract were duly reconciled as set out hereinbelow:-

Sr. No.	Particulars	Amount (INR in Crores)
1.	Total Contract Value	55.00
2.	Total eligible invoices raised	41.63

3.	Amount received	35.60
4.	TDS	0.23
5.	Direct Vendor Payment	1.95
	Receivable as on the date of initiation of CIRP	**3.85**

It is submitted that, for the work duly completed by the Corporate Debtor, the Respondent has failed to make payment of the aforesaid outstanding amount, thereby causing grave prejudice to the interests of the Corporate Debtor. A copy of the reconciled accounts is annexed herewith and marked as **Annexure–12.**

2.33. It is submitted that, if the Corporate Debtor is permitted to complete the remaining Project, it would be entitled to receive an additional amount of approximately INR 5.87 Crores from the Respondent.

2.34. It is further submitted that, in view of the illegal termination of the Contract solely on the ground of initiation of CIRP, despite the Applicant's express willingness and readiness to complete the Contract and engage vendors for execution of the balance work, the Respondent's deliberate actions are contrary to the primary objectives of the Code and are aimed at depriving the Corporate Debtor of substantial amounts rightfully due under the Contract.

2.35. It is submitted that the Respondent has further failed to return the CPBG furnished by the Corporate Debtor in terms of the Contract and has withheld the same without any justifiable basis, including by insisting

upon an arbitrary no-objection certificate in respect of the amounts due and receivable by the Corporate Debtor.

2.36. It is submitted that the Respondent's conduct in unlawfully terminating the Contract during CIRP, coupled with its deliberate attempts to deprive the Corporate Debtor of legitimate dues and its continued refusal to cooperate with the Applicant, clearly demonstrates intent to frustrate the successful resolution of the Corporate Debtor.

The RP of Corporate Debtor in pursuance of his duties is desirous to take necessary efforts to complete the EPC Contract in a timely manner.

2.37. It is submitted that, in terms of Section 20 of the Code, the IRP is duty bound to preserve and protect the value of the Corporate Debtor's assets and to manage its operations as a going concern. The relevant extract of Section 20 is reproduced herein below for ready reference:

> *20. Management of operations of corporate debtor as going concern.-*
>
> *(1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.*
>
> *(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority-*

(e) to take all such actions as are necessary to keep the corporate debtor as a going concern

2.38. It is further submitted that, in terms of Section 25 of the Code, the Resolution Professional is duty bound to preserve and protect the assets of the Corporate Debtor, including ensuring continuation of its business operations as a going concern. The relevant extract of Section 25 is reproduced herein below for ready reference:

25. Duties of resolution professional. (1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

2.39. It is submitted that, in discharge of his statutory duties to preserve and protect the assets of the Corporate Debtor and maintain it as a going concern, the RP has made repeated efforts to cooperate with the Respondent for revival and completion of the EPC Contract in terms thereof.

2.40. It is further submitted that, as per information available, the Respondent has continued to engage the same vendors as were engaged by the Corporate Debtor prior to commencement of CIRP, and revival of the Project would not impede or delay its successful completion by the Corporate Debtor.

2.41. It is submitted that the EPC Contract is an essential contract for the Corporate Debtor, and its termination

poses a serious threat to the CIRP and is likely to cause grave and irreparable injury.

2.42. Therefore, in view of the foregoing, it is submitted that the arbitrary and unilateral termination of the Contract by the Respondent is liable to be set aside and the reliefs sought herein deserve to be granted in the interest of successful resolution of the Corporate Debtor and in furtherance of the objectives of the Code.

2.43. The Applicant craves leave to amend the present Application or file a separate application upon receipt of requisite information, and reserves the right to place additional documents on record at a later stage, if required.

2.44. It is submitted that the Respondent's conduct reflects a deliberate and systematic attempt to frustrate the CIRP and deprive the Corporate Debtor and its stakeholders of their legitimate rights. The Respondent cannot be permitted to take advantage of delays caused by itself to terminate the Contract in violation of settled law, and such conduct, being contrary to the objectives of the Code, cannot be sustained.

3. That on issuance of the notice in the Interlocutory Application, the Respondent appeared and filed its reply on 16.02.2026 vide Inward Diary No. 1419 denying various

averments made in the Interlocutory Application. The contentions of the Respondent are mentioned hereunder: -

3.1. It is submitted that I am one of the Directors of HMEL Green Energy Pvt. Ltd., the Respondent herein, and am duly authorized to file the present affidavit in reply. I have perused the present application filed by the Applicant and am well acquainted with the facts and circumstances of the case based on the records and documents maintained by the Respondent in the ordinary course of business. A copy of the authorization in my favour is annexed herewith and marked as **Annexure–R/1**.

3.2. It is submitted that, save and except the statements and averments expressly admitted herein, all other statements, averments and contentions in the application are denied and disputed by the Respondent as if specifically traversed. It is further submitted that non-dealing with any averment at this stage shall not be construed as an admission thereof. The Respondent reserves the right to file a detailed para-wise reply to the application, if required at a later stage.

3.3. It is submitted that the present application is devoid of merits and is liable to be rejected. It is further submitted that the termination of the Contract by the Respondent is valid, lawful and in accordance with

the terms of the Contract, particularly Clause 12 of the Work Order. It is submitted that the termination is not on account of initiation of CIRP but is due to material breaches by the Corporate Debtor, including delays in execution, failure to adhere to timelines, and abandonment of work, which adversely impacted the Project and necessitated termination to mitigate losses.

3.4. It is submitted that the present proceedings involve disputed questions of fact requiring detailed evidence, including examination and cross-examination of witnesses, which cannot be adjudicated in the summary jurisdiction of this Hon'ble Adjudicating Authority and are more appropriately adjudicated by a Civil Court or through arbitration as agreed between the parties. It is further submitted that this Hon'ble Authority lacks jurisdiction to adjudicate such disputes, particularly as the termination of the Contract has no nexus with the initiation of CIRP of the Corporate Debtor.

3.5. It is submitted that the Applicant has failed to place true and material facts before this Hon'ble Adjudicating Authority and is guilty of suppressio veri and suggestio falsi, and the present Application is liable to be dismissed on this ground alone.

3.6. It is further submitted that the Respondent places on record the true and correct facts and circumstances

relevant to the present proceedings, which are briefly set out hereunder:

Factual Matrix

3.7. It is submitted that the Respondent, HMEL Green Energy Pvt. Ltd. ("HGEPL"), is a wholly owned subsidiary of HPCL-Mittal Energy Ltd. ("HMEL"). It is further submitted that HMEL is engaged in petroleum refining and production of BS-VI compliant petroleum products and is a joint venture of Hindustan Petroleum Corporation Ltd. and Mittal Energy Investments Pvt. Ltd. It is submitted that HGEPL has been established to spearhead the green energy transition, with a focus on solar PV, renewable power, green hydrogen and allied projects, and HMEL operates its refinery and related facilities at Bathinda, Punjab.

3.8. It is submitted that, in August 2023, HGEPL/HMEL floated a tender for setting up a rooftop solar energy facility at its Bathinda (Punjab) campus on a Lump Sum Turn Key (LSTK) basis. The Corporate Debtor, Gensol, participated in the tender and, being the lowest bidder, was awarded the Project vide Letter of Award dated 25.10.2023. Thereafter, a Work Order dated 14.11.2023 was issued to Gensol for execution of the Project on LSTK basis **(Annexure–R/2).**

3.9. It is further submitted that, as per the tender terms, the Project was to be completed within 5 months from

the date of LOA, i.e., by 24.03.2024, for a total contract value of INR 48,29,13,901/- (excluding GST), which also included 10 years' operation and maintenance. Gensol furnished a Bank Guarantee of INR 4,82,91,390/- in favour of HGEPL, valid up to 25.07.2025 with claim expiry date of 25.07.2026. It is further submitted that HGEPL paid an amount of INR 5.49 Crores to Gensol as mobilization advance against the said Bank Guarantee, in terms of the agreed payment milestones.

3.10. It is submitted that, pursuant to the LOA dated 25.10.2023, Gensol commenced execution of the Project, which being time-bound, required adherence to agreed milestones. However, from the inception, there were delays and lapses on the part of Gensol. Accordingly, HGEPL issued a letter dated 10.01.2024 **(Annexure–R/3)** highlighting slow progress, noting that as on 28.12.2023, only 25% of the work had been completed against the scheduled 46% within 10 weeks of the 21-week completion period.

3.11. It is further submitted that, during a review meeting held on 06.01.2024, several deficiencies were recorded, including non-dispatch of critical construction materials such as handrails, safety lifelines, walkways and module mounting structures, despite being overdue. A follow-up meeting scheduled

on 11.01.2024 for finalizing the action plan was not attended by the representatives of Gensol.

3.12. It is submitted that Gensol failed to meet its financial commitments towards its vendors/sub-contractors and, vide letter dated 31.01.2024, requested HGEPL to make direct payments to its sub-contractors, including Waaree Energies Ltd. and APAR Industries Ltd. It is further submitted that, in the said letter, Gensol admitted delays in execution of the Project on account of financial constraints and internal issues, and also acknowledged the deficiencies highlighted by HGEPL in its earlier communication dated 10.01.2024. A copy of the letter dated 31.01.2024 is annexed herewith as **Annexure–R/4.**

3.13. It is submitted that HGEPL had identified rooftops and indicated capacity in the tender documents, and bidders, including Gensol, conducted independent site assessments prior to bidding. It is further submitted that, vide letter dated 01.02.2024, Gensol revised its assessment and sought reduction of Solar DC capacity from the originally proposed 13,798.20 kWp to 12,476.36 kWp, along with reallocation of installation areas across refinery and township roofs. A copy of the said letter is annexed herewith as **Annexure–R/4A**.

3.14. It is submitted that, despite the stipulated completion date of 24.03.2024, Gensol failed to complete even

35% of the Project, having achieved only 32% construction and 4.34% commissioning as on that date. It is further submitted that Gensol raised inflated RA bills containing discrepancies and claims for supplies and services not provided or only partially executed. Accordingly, vide letter dated 03.04.2024 **(Annexure–R/5)**, HGEPL rejected 18 such invoices and detailed the discrepancies therein.

3.15. It is submitted that the aforesaid clearly demonstrates Gensol's failure to perform its contractual obligations and its issuance of inflated and incorrect invoices, constituting material breaches of the Contract.

3.16. It is submitted that, on 16.05.2024, HGEPL issued a detailed communication to Gensol highlighting various shortcomings in execution of the Project, including delays, sub-standard services, and non-deployment of adequate resources. A copy of the said letter dated 16.05.2024 is annexed herewith as **Annexure–R/6.**

3.17. It is submitted that, in view of Gensol's failure to adhere to the project timelines, HGEPL, upon Gensol's request dated 21.08.2024, permitted continuation of the Project up to 31.12.2024 vide letter dated 23.08.2024 **(Annexure–R/7 and Annexure–R/8)**. It is further submitted that such permission was granted without prejudice to HGEPL's rights under the

Contract, including the right to claim damages/losses, and did not constitute a formal extension of time.

3.18. It is submitted that, in the interest of completion of the Project, HGEPL, despite delays attributable to Gensol, permitted continuation of the Project on two further occasions pursuant to Gensol's requests dated 23.12.2024 and 17.04.2025, which were allowed vide letters dated 24.12.2024 and 18.04.2025 respectively. It is further submitted that such permissions were expressly granted without constituting any extension of the stipulated completion timeline and without prejudice to HGEPL's rights under the Contract, including levy of PRS, damages and other remedies.

3.19. A copy of the relevant correspondence is annexed herewith as **Annexure–R/9 to Annexure–R/12**.

3.20. It is submitted that, vide letter dated 30.04.2025, a sub-contractor (Gee Aar Enterprise) requested HMEL to make direct payment for executed work **(Annexure–R/13).** It is further submitted that Gensol, vide letter dated 02.05.2025, admitted delays and its inability to make payments to sub-contractors and requested HGEPL to make direct payments aggregating to approximately to Rs. 2,11,09,422/- Crores to multiple sub-contractors **(Annexure–R/14).**

3.21. It is submitted that, in response, HGEPL disbursed an amount of Rs. 1.19 Crores directly to certain sub-vendors from funds available in Gensol's account.

3.22. It is submitted that the Respondent also received a legal notice dated 30.05.2025 from a sub-contractor of Gensol, namely M/s Shree Ganesh Crane & Lifters Pvt. Ltd., claiming an amount of Rs. 41,40,083.86/- towards outstanding dues **(Annexure–R/15)**. It is further submitted that, due to Gensol's inefficiency and financial instability, HGEPL was exposed to unwarranted claims and potential litigation from sub-contractors of Gensol, despite no fault on its part.

3.23. It is submitted that HGEPL, in good faith, had continued to support Gensol based on its representations and assurances, with the expectation of timely completion of the Project.

3.24. It is submitted that, by late May 2025, the pace of work by Gensol had significantly deteriorated, with minimal workforce deployed, and by early June 2025, no personnel of Gensol remained present at the Project Site, resulting in complete cessation of work. It is submitted that such conduct amounts to abandonment of the Project in gross violation of the terms of the Work Order and LOA, without any notice or intimation to HGEPL.

3.25. It is further submitted that, during May and June 2025, HGEPL issued debit notes aggregating to Rs. 5,45,30,996/- towards price reduction schedule (PRS) on account of delays, non-execution of invoiced works,

and non-supply of materials such as modules, spares and inverters, in terms of the Contract.

3.26. It is submitted that, on 06.06.2025, HGEPL issued a letter to Gensol highlighting complete absence of manpower at the Project Site, resulting in a standstill of work, and called upon Gensol to immediately deploy adequate manpower to complete the balance work on priority **(Annexure–R/16)**. It is further submitted that Gensol failed to respond to the said communication and did not redeploy any manpower at the Project Site.

3.27. It is submitted that, on 10.06.2025, HGEPL, in view of Gensol's failure to comply with its earlier communication dated 06.06.2025, cancelled all gate passes issued to Gensol's personnel with immediate effect and disclaimed responsibility for the safety, security and upkeep of Gensol's materials and equipment at the Project Site **(Annexure–R/17).** It is further submitted that Gensol neither responded to the said communication nor raised any objection, thereby indicating its lack of intent to complete the Project.

3.28. It is submitted that HGEPL extended all possible support to Gensol, including permitting continuation of work despite delays and, on multiple occasions, making direct payments to vendors/sub-contractors on behalf of Gensol aggregating to approximately Rs.

8.69 Crores. It is further submitted that, despite the same, HGEPL was exposed to claims and demands from Gensol's vendors, which were solely the responsibility of Gensol.

3.29. It is further submitted that Gensol failed to furnish documents evidencing labour law compliance in respect of personnel deployed at the Project Site, as required under the Contract. It is submitted that such non-compliance exposed HGEPL, as principal employer, to potential liabilities arising from Gensol's failure to adhere to applicable labour laws.

3.30. It is submitted that Gensol committed material breaches of the terms of the Work Order/Tender by failing to complete the Project, causing substantial losses to HGEPL. It is further submitted that, in view of such breaches, HGEPL invoked Clause 12.1(a), (b), (c), (d) and (k) of the Work Order and issued a Notice of Termination dated 26.06.2025. It is submitted that Clause 18 of the Tender is identical to Clause 12 of the Work Order, the relevant extract of which is reproduced herein below for ready reference;

"12.0 Termination of Contract:

12.1 Without prejudice to the Owner's rights, powers and remedies under this Contract and at law, the Owner may terminate this Contract if one of the following defaults occurs:

(a) The-Contractor materially fails to confirm to the requirements of this Contract; or

(b) The Contractor fails to commence the Works or make progress so as to materially endanger completion of any of the Works or Commissioning in accordance with the Time Schedule; or

c) The Contractor abandons the Works or plainly demonstrates an intention not to continue performance of its obligations under-this Contract, or

(d) The Contractor is in material breach of any of the terms of this Contract; or

(e) The Contractor subcontracts the whole or part of the Works to a third party without prior written consent of the Owner, or

(f) The Contractor does not submit any of the bank guarantees required in accordance with this Contract; or

(g) The Contractor suffers or incurs an Insolvency event including but not limited to a general assignment for the benefit of its creditors, the appointment of a trustee or a receiver for any of the Contractor's property and the filing of a petition by the Contractor to take advantage of any debtor's act, or to reorganise under bankruptcy or similar laws; or

(h) The Contractor suspends the Works for more than a period of 7 days without any lawful excuse under this Contract; or

(k) Has failed to pay its Subcontractors; or

(l) has become untraceable; or

12.2 Upon termination for default, the Contractor shall.

(a) immediately discontinue the execution of the Works on the date and to the extent specified in the notice and place no further sub-contracts to the extent that they relate to the performance of the terminated Works;

(b) Promptly obtain cancellation upon terms satisfactory to the Owner of all sub-contracts, rentals, or any other Contracts existing for performance of the terminated Works or assign those Contracts as

directed by the Owner;

(c) Handover all relevant documents to the Engineer-in-Charge, whether complete or in progress;

(d) Immediately leave the Site.

12.3 The owner on termination of such contract shall have the right to appropriate the Security Deposit, Retention Money and invoke the Bank Guarantee furnished by the contractor and to appropriate the same towards the amounts due and payable by the contractor as per the conditions of Contract and return to the contractor excess money, if any left over.

12.4 The owner shall have the right to carry out the unexecuted portion of work either by themselves or by contractor through other agencies at the cost of the Contractor.

12.5 The contractor within or at the time fixed by the Owner shall depute his authorized representative for taking joint final measurements of the works executed thus far and submit the final bill for the work as per joint final measurement within 15 days of the date of joint final measurement. If the contractor fails to depute their representative for joint measurement, the owner shall take the measurement with their Engineer-in-Charge/Site-in-Charge or any other outside representatives. Such a measurement shall not be questioned by the Contractor and no dispute can be raised by the Contractor for purpose of Arbitration.

12.6 The Owner may enter upon and take possession of the works and all plant, tools, scaffoldings, sheds, machinery, power operated tools and materials of the Contract at the site or around the site and use or employ the same for completion of the work.

12.7 When the contract is terminated by the Owner for all or any of the reasons mentioned above the Contractor shall not have any right to claim compensation on account of such termination.

12.8 Termination by the Owner for convenience (#Optional Termination#) The Owner may, at its option, terminate for convenience this Contract; at any time by giving prior written notice to the Contractor. Such notice shall specify the effective date of such termination, being not less than seven (7) days from the date of such notice."

3.31. It is submitted that, in view of Gensol having abandoned the Project and absence of any manpower at the Project Site, HGEPL, vide Notice of Termination dated 26.06.2025 **(Annexure–R/18)**, directed Gensol

to discontinue all work with immediate effect and restrained it from appointing any further sub-contractors. It is further submitted that Gensol was held responsible for settlement of its sub-contracts and liabilities, and was directed to hand over all relevant documents and vacate the Project Site forthwith, with HGEPL disclaiming any liability in respect of Gensol's sub-contractors.

3.32. It is submitted that the Respondent was constrained to terminate the Contract in view of repeated and material breaches by Gensol, including abandonment of the Project Site in early June 2025 without any intimation and complete failure to respond to requests for deployment of manpower and continuation of work. It is further submitted that Gensol's persistent delays and non-adherence to extended timelines caused significant losses to the Respondent, including generation losses, and the Project, originally scheduled for completion within 5 months from October 2023, remained incomplete even beyond 20–22 months with less than 30% progress as of June 2025.

3.33. It is submitted that, as on 26.06.2025, i.e., the date of termination of the Contract, the status of the Project was as follows:

Capacity	**Capex**	**Current Status**

13.78 MWp	₹54.95 Cr (with GST)	• Capacity commissioned & operational till date: ~8.96 MWp • Work left incomplete (ASRS 40m 1st Roof & Workshop): ~2.82 MWp • No work commenced for balance 2 MWp capacity at ASRS 40 meter 2nd roof • Various punch points including, inter alia, module cleaning system, SCADA, ECS integration etc. were pending for the commissioned capacity • Supply of spares was also pending for smooth operation of the Project

3.34. It is submitted that, subsequent to termination and in terms of Clause 12.4 of the Work Order, HGEPL has engaged alternate contractors for completion of the balance work, who have mobilized at site and made substantial progress, at the risk and cost of Gensol. It is further submitted that HGEPL/HMEL has undertaken extensive efforts to facilitate completion, including ensuring availability of supplies and supervision, and the Project is presently at an advanced stage of completion.

3.35. It is further submitted that HGEPL has filed a claim of INR 1635.10 lakhs, including receivables as per its books of accounts, as an Operational Creditor of

Gensol in its Proof of Claim in Form B dated 27.06.2025.

3.36. It is submitted that, vide letter dated 29.07.2025, the Applicant RP informed HGEPL of alleged recoverable dues of Rs. 6,97,00,907/- under the Contract and sought confirmation thereof, while also requesting HGEPL not to act upon the termination **(Annexure–R/18-A)**. It is further submitted that HGEPL, through its Advocates, replied vide letter dated 05.08.2025 **(Annexure–R/18-B)**, calling upon the Applicant to withdraw the said letter as being devoid of merit and reiterating that it had already filed a claim of Rs. 1635.10 lakhs as an Operational Creditor.

3.37. It is submitted that HGEPL categorically clarified that the termination of the Contract had no nexus with the CIRP of Gensol and that Section 14 of the Code is inapplicable, the termination being based on multiple pre-existing breaches including delays, abandonment and non-payment to vendors.

3.38. It is submitted that the Applicant RP, vide email dated 27.10.2025, sought documents and clarifications for verification and reconciliation of the Respondent's claim filed in CIRP, to which HGEPL duly responded vide letter dated 17.11.2025 **(Annexure–R/19)**.

3.39. It is further submitted that, vide letter dated 22.11.2025, the Applicant requested HGEPL to revive the Project and withdraw the termination notice, and

alternatively sought return of the Contract Performance Bank Guarantee along with damages **(Annexure–R/20).**

3.40. It is submitted that HGEPL, vide letter dated 08.12.2025 **(Annexure–R/21)**, responded to the Applicant's letter dated 22.11.2025, stating that the Contract had been validly terminated and HGEPL cannot be compelled to continue the same in view of Gensol's continued breaches and defaults. It is further submitted that HGEPL rejected the alternative proposal of the Applicant, reiterated its claim of Rs. 1635.10 lakhs as an Operational Creditor, and asserted its entitlement to retain the CPBG in terms of the Contract.

3.41. It is submitted that HGEPL duly replied to the Applicant's letter dated 22.11.2025, and the contrary averment made by the Applicant is incorrect and amounts to suppression of material facts.

3.42. It is submitted that the Applicant RP rejected HGEPL's claim filed in Form B as an Operational Creditor vide email dated 22.01.2026 **(Annexure–R/22)**. It is further submitted that the Respondent has not accepted such rejection and, vide reply dated 11.02.2026, has reserved its rights in accordance with law **(Annexure–R/23)**.

Termination of the Work Order is independent of initiation of CIRP.

3.43. It is submitted that the termination of the Work Order was effected on account of multiple and material breaches by Gensol, including inordinate delay, inadequate workmanship, unsatisfactory execution, and eventual abandonment of the Project, in terms of Clause 12.1(a), (b), (c), (d), (g) and (k) of the Contract. It is specifically denied that the termination was on account of insolvency of Gensol. It is further submitted that the Applicant has misrepresented facts before this Hon'ble Tribunal, which are contrary to the record.

3.44. It is submitted that the grievances regarding delays, inadequate workmanship and failure to adhere to timelines were raised as early as January, April and May 2024, much prior to initiation of CIRP. It is further submitted that Gensol had admitted its slow progress, financial constraints and internal issues, thereby acknowledging its failure to meet contractual timelines.

3.45. It is submitted that permission to continue the work beyond the contractual completion date was granted by HGEPL solely in the interest of completion of the Project, without prejudice to its contractual rights and remedies. It is further submitted that, despite such indulgence, Gensol failed to demonstrate any urgency in completing the Project and, in gross breach of the Work Order and LOA, its personnel abandoned the

Project Site by early June 2025, with no workforce present thereafter.

3.46. It is submitted that, despite the Respondent's letter dated 06.06.2025 calling for immediate redeployment of manpower and revival of work, Gensol failed to respond, thereby clearly evidencing abandonment of the Project.

3.47. It is submitted that, even after cancellation of gate passes on 10.06.2025, Gensol failed to contact or coordinate with the Respondent, thereby demonstrating complete lack of intent to continue the Project and confirming its abandonment.

3.48. It is further submitted that the termination of the Work Order was a consequence of Gensol's admitted financial constraints, internal issues, and persistent delays in execution. It is submitted that, despite a stipulated completion period of five months, Gensol failed to complete the Project even after 20–22 months and had executed less than 70% of the Project as of June 2025.

3.49. It is submitted that, since the Project was being executed within a running refinery, safety considerations were of paramount importance for both on-going and commissioned works. It is further submitted that abandonment of the Project without proper handover posed a serious safety risk, compelling HGEPL to take over the Project and

appoint alternate contractors for completion of the pending works.

3.50. It is further submitted that HGEPL was also exposed to legal notices from vendors/sub-contractors of Gensol seeking recovery of outstanding dues.

3.51. It is submitted that, in these circumstances, and in the interest of safety and completion of the Project, HGEPL was constrained to terminate the Contract and have the work executed through alternate means. It is reiterated that such termination was independent of and not triggered by initiation of CIRP, but was necessitated by Gensol's inefficiency, abandonment, repeated breaches and delays in execution of the Project.

The contract in question is not covered by Moratorium u/s 14 of the IBC.

3.52. It is submitted that the action of the Respondent in terminating the Contract is not hit by the moratorium under Section 14 of the Code. It is further submitted that the Contract pertains to installation and execution of the rooftop solar Project along with its maintenance for a period of ten years to be carried out by Gensol, with HGEPL being the recipient of such services, and therefore, the present case does not involve supply of goods or services to the Corporate Debtor so as to attract the bar under Section 14 of the Code.

3.53. Section 14 of IBC reads as under:

"14. *Moratorium*

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor 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 including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

2[Explanation : For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.]

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

2[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

1[(3) The provision of sub-section (1) shall not apply to-

2[(a) such transactions, agreements or other arrangements as may notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.
(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:
PROVIDED that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

3.54. It is submitted that the present case does not involve recovery of any property by the Respondent as an owner or lessor from the possession of the Corporate Debtor, but pertains to a service contract wherein Gensol was required to execute and maintain a rooftop solar power project for HGEPL, and therefore, the explanation to Section 14(1)(d) is not applicable. It is further submitted that there is no supply of goods or services by HGEPL to the Corporate Debtor and hence Section 14(2) is also not attracted.

3.55. It is submitted that, upon a plain reading of Section 14(1)(a), (b) and (c) of the Code, the same are not applicable to the present case. It is further submitted that the scope of Section 14 of the Code is not as wide as Section 22 of the repealed Sick Industrial Companies Act, and therefore, the moratorium under Section 14 is not attracted to the present facts, and the judgments relied upon by the Applicant are inapplicable.

The contract in question is neither central nor crucial to the success of CIRP of Gensol

3.56. It is submitted that the Contract in question was not the only or a critical contract for Gensol, as evident from its Annual Report for FY 2023–24 reflecting an order book of approximately Rs. 3,200 Crores, whereas the present Contract constituted a comparatively minor portion thereof. It is further submitted that Gensol was executing multiple significant projects during the relevant period, and substantial payments had already been made under the present Contract with only a limited balance remaining. Accordingly, the termination of the Contract cannot be said to have any material impact on the continuity, viability or CIRP of the Corporate Debtor and the contrary contention of the Applicant is misconceived.

3.57. It is submitted that, in the facts and circumstances of the present case, no interference with the termination of the Contract is warranted, particularly as the termination was effected on 26.06.2025 and the Project is presently being completed by the Respondent through alternate contractors in terms of the Contract and is at an advanced stage of completion.

Applicant is interested in seeking damages as a windfall under the guise of challenge to termination of the contract

3.58. It is submitted that the Applicant, under the guise of seeking setting aside of termination, is in fact claiming damages of Rs. 5.87 Crores, which are neither crystallized nor adjudicated. It is further submitted that such disputed claims requiring detailed evidence, including examination and cross-examination, cannot be adjudicated in summary proceedings before this Hon'ble Authority and are amenable to arbitration as agreed between the parties. Accordingly, the present proceedings are not the appropriate forum for determination of such claims.

" *16.0 DISPUTES RESOLUTION*

i) In the event of any disputes or difference between the Owner/Purchaser and the Contractor arising out of or in connection or relation to this contract/Agreement other than reserved matters for which decision of Engineer-in-Charge shall be final and binding upon the Parties, a Party prior to initiation of any proceedings under this contract/Agreement shall promptly give a written notice to the other Party setting out in clear and concise language the relevant facts, nature and circumstances of the disputes, relief sought including any amount claimed (#Notice of Disputes#).

i) Upon receipt of a Notice of Disputes, representatives of the Owner/Purchaser and the Contractor shall forthwith use their best efforts in good faith to reach a reasonable and equitable resolution of the disputes and produce written terms of settlement thereof.

ii) If the representatives of Owner/Purchaser and the Contractor are unable to produce written terms of settlement and resolve the disputes

within forty-five (45) days of receipt by either Party of a Notice of Disputes, then such unresolved disputes shall be finally settled in arbitration.

iv) In case of any such unresolved disputes, any Party wishing to commence arbitration shall issue a (#Notice Invoking Arbitration#) to the other Party for the appointment of a #Sole Arbitrator#. A Notice Invoking Arbitration shall be different and distinct from Notice of Disputes as mentioned in clause (i) above. Notwithstanding the Notice Invoking Arbitration issued by a Party, the other Party shall have, in addition to its right of pleading or set off, including but not limited to a counter claim in the matter of a claim for damages or not against the claim of a Party issuing the Notice Invoking Arbitration and the Party issuing the Notice Invoking Arbitration shall have no objections in this regard.

v) Upon receiving such a Notice Invoking Arbitration, the other Party shall give its consent or suggest a new/alternate name for appointment of Sole Arbitrator within thirty (30) days from the date of receipt of such Notice invoking Arbitration. In the event both Parties fail to agree to appoint Sole Arbitrator, the Sole Arbitrator shall be appointed in accordance with provisions of the Arbitration and Conciliation Act, 1996, or any statutory modification or re-enactment thereof (said Act#). The award of the arbitral tribunal shall be a reasoned and written award and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy between the Parties regarding, any claims counterclaims, issues or accounting presented or pleaded to the arbitrator.

vi)The provisions of the said Act, shall apply to the arbitration proceedings under this Clause. Indian law, without reference to its conflict of law principles, shall be governing substantive and procedural law of such arbitration.

vii) The seat of arbitration shall be at New Delhi and the proceedings shall be carried-out in English language only.

vii) The seat of arbitration shall be at New Delhi and the proceedings shall be carried-out in English language only.
vii The Parties shall continue to comply with, observe and perform all of their obligations hereunder regardless of the acknowledges and agrees that the balance of convenience is in favour of the Owner/Purchaser as regards timely nature of the disputes and notwithstanding the referral of the disputes to arbitration. In particular Contractor to obtain any injunctive relief in this regard. The Contractor shall completion of the Works on account of time being of the essence in this contract/Agreement, and it shall not be entitled and perform its obligations under the observe nature of the disputes and notwithstanding the referral of the disputes to contract/Agreement regardless of the arbitration.
ix)Subject to the foregoing provisions relating to arbitration, the Courts are New Delhi shall have sole and exclusive jurisdiction in relation to or in connection with his contract/Agreement, including (but not limited to) for the purposes of interim measures under Section 9 of the said Act."

3.59. It is submitted that the termination of the Contract is neither illegal nor in violation of any settled principles of law, but is strictly in accordance with the terms of the Contract, necessitated by Gensol's abandonment of the Project, material breaches, admitted delays and persistent slow progress, arising from its internal issues and financial constraints, which also posed risks to the Project and site safety.

3.60. It is further submitted that the Contract in question is neither central nor crucial to the CIRP of Gensol and cannot be said to be the sole contract for maintaining the Corporate Debtor as a going concern, particularly when Gensol had multiple other contracts of substantial value, whereas the present Contract constituted only a minor portion thereof.

3.61. It is submitted that the Respondent's actions have not adversely affected value maximization or the CIRP of the Corporate Debtor. It is further submitted that the alleged receivable of Rs. 3.85 Crores is denied, and as per the Respondent's reconciliation submitted in CIRP, there is a recoverable amount of approximately Rs. 45 lakhs from Gensol **(Annexure–R/25)**. It is reiterated that, even prior to initiation of CIRP, HGEPL had rejected 18 invoices raised by Gensol amounting to approximately Rs. 24.27 Crores vide letter dated 03.04.2024, on account of inflated and incorrect RA bills. It is submitted that the reconciliation table relied upon by the Applicant is incorrect and not admitted.

The law on the point as clarified/settled by the Hon'ble Supreme Court

3.62. It is submitted that the judgments of the Hon'ble Supreme Court in ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta (2021 (7) SCC 209)*** **and** ***Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain (2022(2) SCC 583)***, relied upon by the Applicant, in fact support the case of the Respondent. It is further submitted that the Applicant has selectively relied upon certain portions of the said judgments while omitting material observations which favour the Respondent.

3.63. It is submitted that the Respondent seeks to place reliance on the observations of the Hon'ble Supreme

Court in *Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain* (2022) 2 SCC 583, wherein relevant paragraphs of the judgment in *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta* (2021) 7 SCC 209 have also been reproduced.

> *"29. It is evident that the appellant had time and again informed corporate debtor that its services were deficient, and it was falling foul of its contractual obligations. There is nothing to indicate that the termination of the facilities agreement was motivated by the insolvency of corporate debtor. The trajectory of events makes it clear that the alleged breaches noted in the termination notice dated 10-6-2019 were not a smokescreen to terminate the agreement because of the insolvency of corporate debtor. Thus, we are of the view that NCLT does not have any residuary jurisdiction to entertain the present contractual dispute which has arisen dehors the insolvency of corporate debtor. In the absence of jurisdiction over the dispute, NCLT could not have imposed an ad interim stay on the termination notice. NCLAT has incorrectly upheld the interim order of NCLT.*
>
> *30 We in the present case, the second issue formulated by this Court has no bearing, we would like to issue a note of caution to NCLT and Nclat regarding interference with a party's contractual right to terminate a contract. Even if the contractual dispute arises in relation to the insolvency, a party can be restrained from terminating the contract only if it is central to the success of CIRP. Crucially, the termination of the contract should result in the corporate death of corporate debtor. In Gujarat Urja this Court held thus: (SCC pp. 309-10, paras 176-177)*

"176. Given that the terms used in Section 60(5)(c) are of wide import, as recognised in a consistent line of authority, we hold that NCLT was empowered to restrain the appellant from terminating PPA. However, our decision is premised upon a recognition of the centrality of 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 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 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 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 corporate debtor, and not push it to its corporate death by virtue of it being corporate debtor's sole contract (as was the case in this matter's unique factual matrix),

177. The terms of our intervention in the present case are limited. Judicial intervention should not create a fertile ground for the revival of the regime under Section 22 of SICA which provided for suspension of wide-ranging contracts. Section 22 of the SICA cannot be brought in through the back door. The basis of our intervention in this case arises from the fact that if we allow the

termination of PPA which is the sole contract of corporate debtor, governing the supply of electricity which it generates, it will pull the rug out from under CIRP, making the corporate death of corporate debtor a foregone conclusion." (emphasis supplied)

31. The narrow exception crafted by this Court in Gujarat Urja must be borne in mind by NCLT and Nclat even while examining prayers for interim relief. The order of NCLT dated 18-12-2019 does not indicate that NCLT has applied its mind to the centrality of the facilities agreement to the success of CIRP and corporate debtor's survival as a going concern. NCLT has merely relied upon the procedural infirmity on the part of the appellant in the issuance of the termination notice i.e. it did not give thirty days' notice period to corporate debtor to cure the deficiency in service. NCLAT, in its impugned judgment, has averred that the decision of NCLT preserves the "going concern" status of corporate debtor but there is no factual analysis on how the termination of the facilities agreement would put the survival of corporate debtor in jeopardy.

32. Admittedly, this Court has clarified the law on the present subject-matter in Gujarat Urja after the pronouncements of NCLT and NCLAT. Going forward, the exercise of NCLT's residuary power should be governed by the above decision."

(emphasis supplied by the deponent)

4. It is submitted that, in view of the aforesaid facts and settled law, the termination of the Contract is neither triggered by nor has any nexus with the initiation of CIRP,

but is solely on account of admitted breaches, inefficiency, persistent delays and eventual abandonment of the Project by Gensol, which also raised safety concerns. It is therefore submitted that no interference is warranted by this Hon'ble Adjudicating Authority and the present Application, being devoid of merits, is liable to be dismissed with costs.

5. Through order dated 20.02.2026, the Respondent sought leave to file an additional affidavit along with supporting documents, which was allowed. Pursuant thereto, the Respondent has filed the additional affidavit on 25.02.2026 vide Inward Diary No. D-1782 through the said additional affidavit, the Respondent has placed on record further particulars evidencing the post-termination developments, including the fact that upon abandonment of the Project by Gensol, the Respondent was constrained to terminate the contract and thereafter segregate and award the balance works to various third-party contractors.

6. The affidavit also encloses copies of the Work Orders/Purchase Orders issued to such contractors **(Annexure R/26 Colly.)**, demonstrating that the remaining

work is being executed through alternate agencies and that the Project has substantially progressed towards completion

7. The Applicant has also filed a rejoinder on 23.03.2026 vide Inward Diary No. D 2498, denying most contentions raised by the Respondent in his reply. The contents of the Rejoinder are reproduced as follows: -

7.1. It is submitted that the Applicant has categorically denied all statements, allegations, insinuations and averments contained in the Reply and the Additional Affidavit, save and except those specifically admitted, and reiterates that the contents of the Application are in consonance with settled principles of law.

7.2. It is submitted that the termination of the contract by the Respondent is illegal, arbitrary and contrary to law, and has been effected solely on account of the imminent insolvency of the Corporate Debtor, under the guise of alleged contractual breaches.

7.3. It is submitted that the contract in question pertains to a rooftop solar power project of 13.78 MWp at Bathinda, Punjab, having substantial contract value, and forms a vital and integral asset for the Corporate Debtor.

7.4. It is submitted that the Corporate Debtor had already executed substantial portions of the contract, including supply of materials and commissioning of approximately 8.96 MWp capacity, which fact stands admitted by the Respondent itself.

7.5. It is submitted that despite alleged delays, the Respondent had consistently granted extensions for completion of the Project, including extension up to 31.07.2025, thereby demonstrating that termination was never contemplated prior to initiation of CIRP.

7.6. It is submitted that the Corporate Insolvency Resolution Process (CIRP) was initiated on 13.06.2025 and immediately thereafter, the Respondent issued notices dated 06.06.2025 and 10.06.2025 alleging manpower issues and subsequently terminated the contract on 26.06.2025, clearly establishing a direct nexus between termination and insolvency proceedings.

7.7. It is submitted that the Resolution Professional, upon appointment, made bona fide and repeated efforts to engage with the Respondent, including seeking withdrawal of termination and continuation of the contract; however, the Respondent failed to cooperate and refused to rescind the termination.

7.8. It is submitted that the Respondent's conduct demonstrates lack of bona fides, inasmuch as it has deliberately delayed and avoided cooperation despite

the Applicant's efforts to ensure revival and completion of the Project in the interest of CIRP.

7.9. It is submitted that the contract is central and critical for maintaining the Corporate Debtor as a going concern and for ensuring successful resolution under the IBC, and its termination has far-reaching adverse consequences on the CIRP.

7.10. It is submitted that the Respondent's contention that the Corporate Debtor has a wide project footprint and substantial order book is wholly misconceived and irrelevant, as the present contract itself holds substantial value and is crucial for the Corporate Debtor's survival and turnaround.

7.11. It is submitted that the Respondent has incorrectly interpreted and selectively relied upon the judgments of the Hon'ble Supreme Court in ***Gujarat Urja Vikas Nigam Ltd. vs. Amit Gupta*** and ***Tata Consultancy Services Ltd. vs. Vishal Ghisulal Jain,*** whereas the correct interpretation of the said judgments squarely supports the Applicant's case that termination of contracts central to CIRP is impermissible.

7.12. It is submitted that the Respondent's reliance on past correspondence alleging delays is misplaced, as contemporaneous documents clearly show that extensions were granted and no intention to terminate the contract existed prior to CIRP.

7.13. It is submitted that the termination of the contract was a sudden, calculated and mala fide act undertaken only after initiation of CIRP and during subsistence of granted extensions, thereby rendering the termination unsustainable in law.

7.14. It is submitted that the Respondent has failed to cooperate with the Resolution Professional despite multiple communications, and has instead resorted to raising baseless and frivolous allegations against the Applicant.

7.15. It is submitted that the Respondent's claim of having awarded balance works to third-party contractors post-termination is vague, unsupported by material particulars, and does not establish actual progress or completion of the Project.

7.16. It is submitted that several of the alleged third-party engagements pertain either to pre-existing subcontractors of the Corporate Debtor or to ancillary services such as insurance, and do not substantiate the Respondent's claim of completing the balance scope of work.

7.17. It is submitted that the dispute raised by the Applicant is not merely contractual or technical in nature but directly concerns the impact of termination on the CIRP and the ability of the Corporate Debtor to continue as a going concern, thereby falling squarely within the jurisdiction of this Hon'ble Tribunal.

7.18. It is submitted that the allegations of abandonment of the Project by the Corporate Debtor are false, baseless and denied, and the termination has been wrongfully justified on such incorrect assertions.

7.19. It is submitted that the Respondent has acted with mala fide intent and lack of bona fides by making scandalous and unfounded allegations against the Applicant and attempting to justify an otherwise illegal termination.

7.20. It is submitted that the Respondent cannot substitute its own commercial wisdom or assessment regarding the centrality of the contract in place of the determination made by the Resolution Professional and the Committee of Creditors.

7.21. It is submitted that the termination of the contract, being directly linked to the initiation of CIRP and having the effect of frustrating the insolvency resolution process, is liable to be set aside.

7.22. It is submitted that the Respondent's actions defeat the very object and purpose of the Insolvency and Bankruptcy Code, 2016, which is to ensure resolution of the Corporate Debtor as a going concern.

8. In compliance with the Order dated 20.02.2026, this Tribunal directed both parties to file their written submissions. Pursuant thereto, the **Applicant** filed its

written submissions on 23.03.2026 vide Inward Diary No. D-2616, the contents whereof are reproduced hereunder: -

i. *Gujarat Urja Vikas Nigam Limited v. Amit Gupta & Ors. [(2021)7SCC 209]*

ii. *TATA Consultancy Services Limited v. Vishal Ghisulal Jain [(2022) 2 SCC 583]*

iii. *Swiss Ribbons vs. Union of India, (2019) 4 SCC 17 [para 27]*

iv. *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta (2020) 8 SCC 531 [para73]*

9. Further, the Respondent, i.e., HMEL Green Energy Private Limited, has also filed its **Written Submissions** on 24.03.2026, vide Inward Diary No. D 2615, wherein the Respondent has placed reliance upon the following judgments:-

i. *TATA Consultancy Services Limited v. SK Wheels Pvt. Ltd. Resolution Professional, Vishal Ghisulal Jain [(2022) 2 SCC 583]*

10. We have heard the counsel for the applicant and the Respondent and have perused the material on record. For proper adjudication the following issues arise for consideration: -

I. **Issue No.1: -** Whether the present Application under Section 60(5) of the Insolvency and Bankruptcy Code,

2016 is maintainable in the facts and circumstances of the case?

II. **Issue No.2:** - Whether the Work Order dated 14.11.2023 is central or indispensable to the Corporate Debtor being maintained as a going concern?

III. **Issue No.3:** - Whether the termination of the Work Order vide notice dated 26.06.2025 was solely on account of initiation of CIRP or attributable to pre-existing contractual breaches and performance deficiencies?

IV. **Issue No.4:** - Whether, in the facts and circumstances of the case, the Applicant is entitled to any relief for setting aside the termination and seeking continuation of the Work Order?

Observation and Directions of this Tribunal: -

11. The present Interlocutory Application No. 21 of 2026 has been filed by the Applicant, Mr. Keshav Khaneja, Resolution Professional of Gensol Engineering Limited (hereinafter referred to as the "Corporate Debtor"), under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("the Code"), seeking, inter alia, appropriate directions against the Respondent, HMEL Green Energy Private Limited, including restraining the Respondent from giving effect to the termination of the Engineering, Procurement and Construction (EPC) Contract dated 14.11.2023 and for restoration of the said contract.

12. The facts, in brief, are that pursuant to a Letter of Award dated 25.10.2023, the Respondent awarded to the Corporate Debtor a contract for the execution of a 13.78 MWp rooftop solar power project at the Guru Gobind Singh Refinery, Bathinda, Punjab, on an LSTK (Lump Sum Turnkey) basis. Thereafter, a formal Work Order dated 14.11.2023 came to be executed between the parties, stipulating the terms, scope, timelines, and obligations governing the execution of the said project. Total value of work order was of Rs 48,29,13,901. The Corporate Debtor was also to maintain the installed project for 10 years.

13. It is the case of the Applicant that the Corporate Debtor had commenced execution of the project; however, during the subsistence of the contract, the Corporate Debtor was admitted into Corporate Insolvency Resolution Process ("CIRP") by this Adjudicating Authority vide order dated 13.06.2025 passed in Company Petition (IB) No. 195 of 2025, and the Applicant herein came to be appointed as the Interim Resolution Professional, who was subsequently confirmed as the Resolution Professional.

14. Thereafter, the Respondent, vide its Termination Letter dated 26.06.2025, terminated the aforesaid EPC Contract. The Applicant has assailed the said termination on the ground that the same is illegal, arbitrary, and in violation of the provisions and objectives of the Code, particularly since the termination was affected during the subsistence of CIRP and is alleged to be detrimental to the value maximisation of the Corporate Debtor.

15. Per contra, the Respondent has contended that the termination of the contract was not on account of initiation of CIRP, but was a consequence of persistent and material breaches committed by the Corporate Debtor, including inordinate delays in execution, failure to adhere to contractual timelines, non-deployment of adequate manpower and resources, financial incapacity, and eventual abandonment of the project site, despite repeated communications and opportunities granted to cure the defaults. The Respondent thus submits that the termination is strictly in terms of the contractual provisions and is valid in law.

16. **Findings on Issue No.1:** Whether the present Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 is maintainable in the facts and circumstances of the case?

16.1. This Adjudicating Authority has considered the submissions advanced by the Learned Counsel for the parties and perused the material available on record.

16.2. It is not in dispute that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process ("CIRP") vide order dated 13.06.2025 passed in CP (IB) No. 195 of 2025, and the Applicant herein is the Resolution Professional of the Corporate Debtor.

16.3. Subsequently, the Respondent issued a termination notice dated 26.06.2025, thereby terminating the aforesaid Work Order. The present Application has been filed challenging the said termination; primarily on the ground that such termination during the subsistence of CIRP is impermissible and adversely affects the Corporate Debtor as a going concern.

16.4. At the outset, it is necessary to examine the scope of jurisdiction of this Adjudicating Authority under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016, which empowers this Tribunal to entertain or dispose of

> *"any question of law or fact arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor."*

16.5. It is well settled that this Adjudicating Authority is empowered to entertain or dispose of any such question; however, such jurisdiction is not unbridled and cannot be invoked to adjudicate purely contractual disputes de hors insolvency, unless such disputes have a direct and proximate nexus with the CIRP of the Corporate Debtor.

16.6. In the present case, the dispute between the parties arises out of an Engineering, Procurement and Construction (EPC) contract and involves allegations and counter-allegations relating to:

i. delay in execution of the project;
ii. non-achievement of contractual milestones;
iii. financial constraints and inability to perform obligations;
iv. disputes regarding invoices and payments;
v. And the circumstances leading to termination of the contract.

16.7. The material placed on record indicates that issues concerning performance under the Work Order had arisen much prior to the initiation of CIRP. The Respondent had, as early as January 2024 (letters of 10.01.2024, 16.05.2024 and meetings of 6.1.2024 and 10.01.2024) , raised concerns regarding slow progress of the project and deficiencies in the work, followed by further communications dated 31.01.2024, and 01.02.2024, highlighting delays and

deficiencies in execution. The record further reflects that the Corporate Debtor itself had, during the subsistence of the contract, acknowledged financial constraints and sought certain relaxations, including requests for direct payments to subcontractors.

16.8. The sequence of events also reveals that the project suffered from continued delays and performance issues during the period 2024–2025. The project was to be completed in 5 months from the date of letter of award of 25.10.2023. The due date of completion was 24.03.2024. first extension was granted up to 31.12.2024. The non-deployment of resources and other issues culminated in substantial slowdown of work and eventual non-deployment of manpower at the project site in June 2025, immediately prior to the initiation of CIRP on 13.06.2025.

16.9. In view of the above, it is evident that the disputes between the parties are rooted in contractual performance and alleged breaches which predate the commencement of CIRP. Such disputes, by their very nature, involve detailed factual examination and are ordinarily amenable to adjudication in appropriate contractual or arbitral proceedings. This Adjudicating Authority refrains from adjudicating the merits of such contractual disputes and refers to the factual matrix only to the limited extent necessary to examine its nexus with the CIRP.

16.10. However, at the same time, it cannot be lost sight of that the present Application has been filed by the Resolution Professional in the context of CIRP, and the grievance raised pertains to the impact of termination of the Work Order on the Corporate Debtor as a going concern. To that limited extent, the present Application raises questions which can be said to arise "in relation to" the insolvency resolution process.

16.11. Accordingly, while this Adjudicating Authority would not be inclined to adjudicate upon disputed questions of contractual performance or determine the correctness of claims and counter-claims arising under the EPC contract, it is competent to examine whether the termination of the Work Order has any bearing on the CIRP of the Corporate Debtor and whether any limited interference is warranted within the framework of the Code.

16.12. Therefore, this Adjudicating Authority holds that the present Application is maintainable to the limited extent of examining the impact of the impugned termination on the Corporate Debtor during CIRP, without entering into a detailed adjudication of contractual disputes.

17. **Findings on Issue No.2:** Whether the Work Order dated 14.11.2023 is central or indispensable to the Corporate Debtor being maintained as a going concern?

17.1. This Tribunal has considered the submissions advanced by the learned counsel for the parties and perused the material placed on record. The Applicant has contended that the EPC Contract pertaining to the 13.78 MWp rooftop solar project at Bathinda, Punjab, awarded pursuant to the Letter of Award dated 25.10.2023 and Work Order dated 14.11.2023, is central to the Corporate Debtor's business and is essential for maintaining it as a going concern during the Corporate Insolvency Resolution Process (CIRP).

17.2. At the outset, it is noted that the project was required to be completed within a period of five months from the date of Letter of Award dated 25.10.2023, i.e., by 24.03.2024. However, from the material placed on record, including the Respondent's communications dated 10.01.2024, 31.01.2024, 03.04.2024 and 16.05.2024, it is evident that the execution of the project was affected by persistent delays and deficiencies from the very inception.

17.3. It is specifically recorded in the communication dated 10.01.2024 (Annexure R/3) that as on the 28th week of December 2023, the Corporate Debtor had achieved only about 25% progress as against the scheduled progress of approximately 46%, thereby reflecting a substantial lag in execution within the first two months of the project itself. The relevant extract of the said email is reproduced below:-

timeframe.

Regrettably, as of today, 10 weeks have elapsed out of the 21-week completion period, and the progress achieved by M/s Gensol is significantly behind the promised schedule (Progress of 25% Vs schedule of 46% as of 25th December 2023). The current pace raises serious concerns about the successful completion of the remaining work within the agreed completion period of 31st January'2024, which would enable the 1% incentive on the project cost to GENSOL.

HMEL Green Energy Limited

17.4. Further, during site reviews conducted in the presence of representatives of the Corporate Debtor, several deficiencies were noted, including non-deployment of adequate manpower, improper handling and mounting of structures, deficiencies in installation practices, and lack of adherence to agreed timelines and milestones.

17.5. Subsequently, vide letter dated 31.01.2024 (Annexure R/4), the Corporate Debtor itself acknowledged delays in execution, attributing the same to financial constraints and internal issues, thereby admitting its inability to meet the contractual milestones.

17.6. Thereafter, the Respondent, vide communication dated 03.04.2024 (Annexure R/5), rejected multiple invoices raised by the Corporate Debtor on account of discrepancies and claims for works either not executed or partially completed. This was followed by a detailed communication dated 16.05.2024 (Annexure R/6), wherein the Respondent once again recorded shortcomings in project execution, including

continued delay in progress, non-deployment of requisite resources, and sub-standard performance.

17.7. The aforesaid contemporaneous record clearly demonstrates that the project suffered from systemic delays, performance deficiencies, and failure to adhere to contractual timelines well prior to the stipulated completion date.

17.8. It is further noted that the Corporate Debtor, vide its letter dated 31.01.2024 (Annexure R/4), admitted delays in execution on account of financial constraints and internal issues. Significantly, the Corporate Debtor requested the Respondent to make direct payments to its subcontractors, including Waaree Energies Ltd. and APAR Industries Ltd. This conduct, in the considered view of this Tribunal, clearly reflects the inability of the Corporate Debtor to independently execute the project in terms of the contract and indicates that the project execution had already deviated from the original contractual framework.

17.9. The record further reveals that even upon expiry of the contractual completion period on 24.03.2024, the project remained substantially incomplete. As per the material placed on record, the Corporate Debtor had achieved only about 32% of the construction work and approximately 4.34% of the commissioning work as on the said date. This clearly indicates that the progress of the project was significantly short of the contractual

milestones. Subsequent correspondence on record also reflects continued delays, non-performance, and failure to adhere to the agreed timelines.

17.10. The Respondent has specifically contended that by early June 2025, the project site was found to be devoid of manpower deployed by the Corporate Debtor. The Respondent, vide its letter dated 06.06.2025 (Annexure R/16), specifically highlighted the absence of manpower and the resultant standstill of the project. Despite such communication, no effective steps were taken by the Corporate Debtor to resume or expedite the work, thereby demonstrating abandonment of the project in substance. On the date of termination of work, about 70% of the work was completed and only 30% remained to be done. The relevant extract of the said email is reproduced hereinbelow: -

06.06.2025

To,
Mr. Lalit Solanki
Gensol Engineering Ltd.
15th Floor, Block - A Westgate Business Bay, Makarba, Ahmedabad - 380051, Gujarat

Subject: Urgent Request for Mobilization of Manpower at Site

Dear Mr. Lalit,

We would like to bring to your attention that your manpower has not been available at the project site for the past two days without any prior intimation. This absence is causing delays in the progress of the project.

We kindly request you to mobilize your manpower immediately to the site so that the balance work can be completed on priority as per the project schedule.

Your prompt action in this regard will be highly appreciated to avoid any further delays.

17.11. Further, from the Additional Affidavit filed by the Respondent along with Annexure R/26 (Colly.), it is evident that subsequent to the termination dated 26.06.2025, the Respondent has segregated the balance scope of work into various components and awarded the same to different contractors for completion of the project. The details of the contractors as placed on record, are reproduced below for ready reference:-

Sr. No	Purchase Order No.	PO date	Vendor	Description	Remarks
1	1200000224	10.11.2025	Steag Energy Services Pvt Ltd.	O & M Rooftop Solar	Interim limited scope maintenance arrangement under Gensol's responsibility pending handover of full project



2	1200000247	23.07.2025	Hemitraa LLP	Balance AC/DC works for Polar projects	Unfinished Project Work under Gensol's Scope
3	1200000252	25.07.2025	Kartar Singh Construction & Co.	Balance Mechanical W Solar Project ASRS	Unfinished Project Work under Gensol's Scope
4	1200000254	28.07.2025	Enn Kay Heavy Construction Pvt Ltd.	Hiring of tyre mounted crane	Unfinished Project Work under Gensol's Scope
5	8100010476	12.02.2026	ICICI Lombard GIC Ltd.	Rooftop Solar EAR Refinery	Insurance of Project work under progress
6	8100010475	03.01.2026	The New India Assurance Co. Ltd.	Rooftop Solar IAR Refinery & township	Insurance of the operating portion of the Plant. Under Gensol's responsibility pending hand over of the complete project
7	1200000471	22.12.2025	Steag Energy Services India Pvt. Ltd.	O & M Rooftop Solar	Extension of interim limited scope maintenance arrangement under Gensol responsibility pending handover of full project
8	1200000533	05.02.2026	Suryalogix Pvt. Ltd.	Suryalogix commissioning SACDA & CMS	Unfinished Project work under Gensol's Scope

17.12. It has also been brought on record that the project has progressed to an advanced stage of completion through such arrangements, thereby demonstrating that the execution of the project is no longer dependent upon the Corporate Debtor.

17.13. Another important aspect which cannot be overlooked is that the Applicant has not placed any material to demonstrate that the subject contract constitutes the sole or primary source of revenue of the Corporate Debtor. On the contrary, the Respondent has specifically asserted that the Corporate Debtor has multiple on-going projects and a substantial order book, which has not been effectively rebutted by the Applicant. This contract was of Rs 48.29 crores and substantial payments were already made to the Corporate Debtor and direct payments to the sub-contractors of the Corporate Debtor. Only 30 percent of the work was remaining and that would mean not a huge sum was receivable that would affect the going concern status of the Corporate Debtor.

17.14. The Respondent has further specifically contended, and placed material on record, that the Corporate Debtor is engaged in multiple on-going projects and possesses a substantial order book running into several thousand crores. In this regard, reliance has been placed on the Annual Report of the Corporate Debtor for FY 2023–24 and supporting documents annexed at Annexure R/24 (Colly.), indicating an order book of approximately Rs.3,200 Crores. In contrast, the value of the present contract remaining is comparatively limited, being less than Rs.12 Crores. It is thus contended that the said contract does not

constitute a substantial or primary source of revenue for the Corporate Debtor. The Applicant has not placed any material to controvert the aforesaid position.

17.15. The test of centrality, as laid down by the Hon'ble Supreme Court, requires that the contract must be so fundamental that its termination would render the Corporate Debtor incapable of functioning as a going concern or result in its corporate death. Mere financial value or contribution to revenue does not satisfy this threshold.

17.16. In the present case, the Corporate Debtor had itself failed to perform substantial obligations under the contract, had sought deviation from the contractual payment mechanism by requesting direct payments to subcontractors, and had effectively ceased execution of the project. The fact that the project is being completed through alternate contractors further negates the contention that the contract is indispensable.

17.17. In view of the foregoing, this Tribunal is of the considered opinion that the Applicant has failed to establish that the subject EPC Contract is central to the Corporate Debtor's operations or for its survival as a going concern that its continuation is necessary for maintaining the Corporate Debtor as a going concern during CIRP.

17.18. Accordingly, Issue No. II is answered against the Applicant.

18. Findings on Issue No.3: Whether the termination of the Work Order vide notice dated 26.06.2025 was solely on account of initiation of CIRP or attributable to pre-existing contractual breaches and performance deficiencies?

18.1. The case of the Applicant is that the termination of the EPC Contract vide notice dated 26.06.2025 was effected solely on account of the commencement of CIRP against the Corporate Debtor on 13.06.2025, and is therefore liable to be set aside as being contrary to the provisions of the Insolvency and Bankruptcy Code, 2016. It is the contention of the Applicant that the termination is intrinsically linked to the insolvency of the Corporate Debtor and not to any independent contractual default.

18.2. Per contra, the Respondent has contended that the termination was not on account of initiation of CIRP, but was preceded by a series of events evidencing continuous delay in execution, failure to achieve contractual milestones, raising of disputed invoices, financial incapacity, and eventual abandonment of the project site by the Corporate Debtor. It is submitted that such breaches were recorded through contemporaneous correspondence exchanged between the parties since January 2024 onwards, much prior to the initiation of CIRP, and that the termination

dated 26.06.2025 was a culmination of such pre-existing defaults and non-performance.

18.3. From the record, it is evident that issues relating to delay and deficient performance arose at a very early stage of the project. As reflected from the contemporaneous correspondence on record, including documents dated 10.01.2024 (Annexure R/3) and 31.01.2024 (Annexure R/4), the Respondent had flagged slow progress and deficiencies in execution within the initial months itself. Notably, the Corporate Debtor, vide its communication dated 31.01.2024 (Annexure R/4), acknowledged delays in execution on account of financial constraints and internal issues, stating that "we are facing financial constraints and internal issues".

In this regard, we appreciate the collaboration between our companies on the [illegible] support extended by your team.

1. Regrettably, we must bring to your attention an issue affecting the progress of the Project. Due to unforeseen challenges at our end, including financial constraints and internal issues, we are facing delays in executing the Said Project. We understand the importance of adhering to project timelines and recognize the impact that this delay may have on the overall schedule.

2. We admit and duly acknowledge that the progress of the job continues to fall significantly behind, and the commitments made during the Said Project meetings have not been met. We have also seen the enclosures along with your above refered letter dated 10.01.2024 listing out some of the long-pending issues that need immediate and urgent attention / action.

18.4. The record further reveals that disputes relating to execution and billing persisted thereafter. In particular, vide communication dated 03.04.2024 (Annexure R/5), the Respondent raised objections to invoices submitted by the Corporate Debtor on the ground that the same included claims for works not executed or not substantiated by site progress, and accordingly declined to process such invoices. The said communication reflects that the billing raised by the Corporate Debtor was not commensurate with the actual progress of work at site.

18.5. This was followed by a detailed communication dated 16.05.2024 (Annexure R/6), wherein the Respondent once again recorded concerns regarding the slow pace of execution, failure to achieve scheduled milestones, and non-deployment of adequate manpower and resources at site. The said communication also indicates that despite repeated follow-ups, the Corporate Debtor had not taken sufficient corrective measures to align the execution with the contractual timelines.

18.6. In such circumstances, where termination is founded on independent contractual breaches and not on account of insolvency, this Tribunal would not be justified in exercising its jurisdiction under Section 60(5) of the Code to interfere with the same.

18.7. It is also noted that despite the contractual completion date being 24.03.2024, the project remained substantially incomplete, and the Corporate Debtor continued to seek extensions of time. In this regard, letters dated 21.08.2024 (Annexure R/7) and subsequent correspondence indicate that additional time was sought by the Corporate Debtor to complete the project, thereby evidencing its inability to adhere to contractual timelines.

18.8. The material on record further demonstrates that the Respondent, in the interest of completion of the project, permitted continuation of work beyond the contractual completion date. Letters dated 23.08.2024 (Annexure R/8), 24.12.2024 (Annexure R/10) and 18.04.2025 (Annexure R/12) indicate that such permissions were granted without prejudice to the Respondent's contractual rights, including the right to levy damages and take appropriate action in the event of continued default.

18.9. A significant aspect emerging from the record is the financial distress and inability of the Corporate Debtor to discharge its obligations towards subcontractors. The Corporate Debtor itself, vide communication dated 31.01.2024 (Annexure R/4) and thereafter on 02.05.2025 (Annexure R/14), requested the Respondent to make direct payments to

subcontractors, which further evidences its inability to perform the contract in the agreed manner.

18.10. The record further reflects that by May–June 2025, the execution of the project had virtually come to a standstill. In particular, vide communication dated 06.06.2025, the Respondent specifically recorded that there was no deployment of manpower at site, no on-going construction or installation activity, and that the progress of the project had effectively ceased. The said communication also called upon the Corporate Debtor to immediately mobilise adequate manpower and resources and resume execution of the balance work without further delay, failing which appropriate action would be taken in accordance with the contractual terms.

18.11. It is further noted that despite the aforesaid communication highlighting complete inactivity at site, the Corporate Debtor did not take any effective steps to recommence the work or demonstrate mobilisation of resources. No material has been placed on record to show that the deficiencies pointed out in the communication dated 06.06.2025 were addressed or that execution of the project was resumed thereafter. This, in the considered view of this Tribunal, clearly indicates that the project had been effectively abandoned by the Corporate Debtor prior to the initiation of CIRP.

18.12. Thereafter, vide communication dated 10.06.2025 (Annexure R/17), the Respondent proceeded to cancel gate passes issued to personnel of the Corporate Debtor. The relevant extract of the said communication is reproduced below for ready reference:

> **Subject: Cancellation of Gate Passes under Gensol.**
>
> Dear Mr. Lalit,
>
> This is in reference to our earlier communication on 06.06.2025 wherein it was brought to your notice that no manpower from M/s Gensol has been available at site for the past several days.
>
> Despite this notification, we have not received any response or clarification from your end. Furthermore, no representative from M/s Gensol's management has contacted us or visited the site to address the matter.
>
> In view of the continued inaction and absence of response, HMEL is hereby cancelling all gate passes issued under the name of M/s Gensol with immediate effect.
>
> Please also note that HMEL shall not be held responsible for the security, safety, or upkeep of any materials, equipment, or other assets currently lying within the Gensol yard following this notice.
>
> [illegible] feel free to reach out.

The aforesaid clearly demonstrates that the project work had effectively ceased and that the Corporate Debtor had no active presence at site even prior to initiation of CIRP.

18.13. It is an admitted position that CIRP against the Corporate Debtor commenced on 13.06.2025 and termination of the contract was effected on 26.06.2025. However, the sequence of events discussed hereinabove clearly establishes that the defaults, delays, and failure to perform contractual

obligations had arisen much prior to the said date and had continued unabated.

18.14. We note that the Corporate Debtor was granted time till 31.07.2025 but about 30% of the work remained to be completed on the date of termination. The termination of the contract was thereafter effected vide Notice dated 26.06.2025 (Annexure R/18). A perusal of the said notice indicates that the termination was based on grounds including persistent delay, non-performance, failure to meet contractual milestones, and abandonment of the project, in terms of the contractual provisions. It is noted that the work pertained to installation of a rooftop solar project and delay in completion of installation affects generation of power.

18.15. In this regard, it is pertinent to note that the mere temporal proximity between initiation of CIRP and termination does not establish causation, particularly where contemporaneous material evidences pre-existing and continuing contractual breaches. The material on record does not demonstrate a direct nexus between the termination and the insolvency of the Corporate Debtor.

18.16. In the present case, the contemporaneous record, including the sequence of correspondence from January 2024 onwards, clearly evidences that the Corporate Debtor had been in persistent breach of its

contractual obligations, had failed to adhere to timelines, had raised disputed invoices, and had ultimately abandoned the project prior to initiation of CIRP.

18.17. In view of the aforesaid, this Tribunal is of the considered opinion that the termination of the contract dated 26.06.2025 was not triggered by the commencement of CIRP, but was a consequence of pre-existing and continuing contractual breaches, delays, and non-performance on the part of the Corporate Debtor.

18.18. Accordingly, Issue No. III is answered against the Applicant.

19. <u>Findings on Issue No.4:</u> Whether, in the facts and circumstances of the case, the Applicant is entitled to any relief for setting aside the termination and seeking continuation of the Work Order?

19.1. This Tribunal has carefully considered the scope of its jurisdiction under Section 60(5) of the Insolvency and Bankruptcy Code, 2016. It is well settled that while this Adjudicating Authority is vested with wide residuary jurisdiction to entertain questions of law or fact arising out of or in relation to the insolvency resolution process, such jurisdiction is not intended to extend to adjudication of purely contractual disputes involving detailed examination of facts and

evidence, unless such disputes have a direct nexus with the CIRP and impact the Corporate Debtor as a going concern.

19.2. The Hon'ble Supreme Court, in ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta (2021) 7 SCC 209***, has held that while the residuary jurisdiction under Section 60(5)(c) is of wide amplitude, it is confined to matters which arise solely from or are intrinsically connected with the insolvency resolution process of the Corporate Debtor. The Hon'ble Supreme Court has further clarified that interference with contractual rights is warranted only in limited circumstances where the contract is central to the Corporate Debtor's functioning and its termination would have the effect of rendering the Corporate Debtor incapable of continuing as a going concern

19.3. Further, in ***Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain (2022) 2 SCC 583***, the Hon'ble Supreme Court has clarified that such jurisdiction cannot be invoked to adjudicate disputes arising purely out of contractual terms, and that interference with termination of contracts during CIRP is warranted only in limited circumstances where such termination is on account of insolvency and has a direct impact on the Corporate Debtor as a going concern.

19.4. The existence of an arbitration clause or availability of alternate remedies does not ipso facto oust the jurisdiction of this Adjudicating Authority where the dispute has a direct nexus with the CIRP. However, in the present case, as the dispute primarily pertains to contractual performance and does not satisfy the threshold of centrality or insolvency-triggered termination, this Tribunal declines to exercise jurisdiction beyond the limited scope permissible under the Code.

19.5. It is further evident from the aforesaid judgments that the test for interference is one of 'centrality', namely whether the contract in question is so fundamental to the Corporate Debtor that its termination would result in its corporate death or render the CIRP unworkable. In the absence of such circumstances, the Adjudicating Authority would not be justified in interfering with a valid contractual termination.

19.6. Applying the aforesaid principles to the facts of the present case, this Tribunal has already recorded a finding under Issue No. II that the subject EPC Contract has not been shown to be central or indispensable to the Corporate Debtor's operations. The material on record indicates that the Corporate Debtor is engaged in multiple projects, and the subject project itself has been substantially progressed and is being completed through third-

party contractors by the Respondent, thereby negating the contention that continuation of the contract is essential for maintaining the Corporate Debtor as a going concern.

19.7. Further, under Issue No. III, this Tribunal has held that the termination of the contract dated 26.06.2025 was not triggered by the commencement of CIRP on 13.06.2025, but was a consequence of pre-existing and continuing contractual breaches, including persistent delay in execution, failure to achieve contractual milestones, financial incapacity, disputes in billing, and eventual abandonment of the project by the Corporate Debtor.

19.8. In view of the above findings, it is evident that the present dispute arises primarily out of contractual performance issues, including execution delays, measurement and billing disputes, and allocation of responsibility for non-performance. Such issues would necessarily require a detailed examination of evidence, including site records, measurements, invoices, and contractual terms, which falls beyond the scope of the summary jurisdiction of this Tribunal under Section 60(5) of the Code. We do not intend to give any finding on the dispute and considered the material placed before us to decide the issues before us.

19.9. It is also pertinent to note that the Corporate Debtor itself, during the course of execution, had sought

direct payment to subcontractors, thereby indicating its inability to perform the contract in accordance with its terms. The subsequent conduct, including absence of manpower at site and failure to resume execution despite specific communications dated 06.06.2025, further reinforce the conclusion that the Corporate Debtor had failed to perform its contractual obligations.

19.10. In such circumstances, this Tribunal is of the considered view that the present case does not satisfy the threshold for interference under Section 60(5) of the Code. The termination of the contract is neither a consequence of insolvency nor has it been demonstrated that continuation of the contract is essential for the success of CIRP.

19.11. This Adjudicating Authority also notes that the subject contract does not involve supply of essential goods or services to the Corporate Debtor and therefore does not fall within the scope of protection under Section 14(2) of the Code. Accordingly, the plea of moratorium does not assist the Applicant.

19.12. Insofar as the reliefs sought by the Applicant for recovery of alleged outstanding amounts and damages are concerned, the same involve disputed questions of fact arising out of contractual performance and reconciliation of accounts, which cannot be adjudicated in summary proceedings under Section

60(5) of the Code, and are left open to be agitated before the appropriate forum in accordance with law.

19.13. It is settled law that bank guarantees constitute independent contracts between the issuing bank and the beneficiary, and interference with their invocation is permissible only in cases of established fraud or irretrievable injustice, neither of which has been demonstrated in the present case.

19.14. This Tribunal reiterates that it possesses jurisdiction under Section 60(5) of the Code to examine termination of contracts during CIRP in appropriate cases. However, the exercise of such jurisdiction depends upon the facts of each case, and in the present case, the Applicant has failed to satisfy the conditions warranting such interference.

19.15. Accordingly, this Tribunal declines to exercise its limited jurisdiction under Section 60(5) of the Code to set aside the termination of the contract or to grant the reliefs sought by the Applicant. Issue No. IV is, therefore, answered against the Applicant.

20. In view of the findings recorded hereinabove, this Tribunal is of the considered view that the Applicant has failed to demonstrate that the termination of the EPC Contract dated 26.06.2025 is on account of commencement of CIRP or that the said contract is central to the Corporate Debtor

so as to warrant interference under Section 60(5) of the Code. In such circumstances, no case is made out for interference with the termination of the contract.

21. The Applicant has failed to satisfy the twin tests of (i) centrality of the contract to the CIRP, and (ii) termination being attributable to insolvency, as laid down by the Hon'ble Supreme Court. It is further clarified that failure to satisfy either of the aforesaid conditions independently disentitles the Applicant to relief; in the present case, both conditions remain unfulfilled.

22. Accordingly, **Interlocutory Application No. 21 of 2026** in CP (IB) No. 195 of 2025 stands ***dismissed***. No Order as to Costs.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

Aditi/LRA