S.No.07

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
18.08.2026 AT 10:30 A.M.

IA (IBC)/1932/2024 & IA (IBC)/1931/2024 in
CP(IB) No.276/7/HDB/2018
U/S 7 of IBC

IN THE MATTER OF:
Bank of Baroda **…Petitioner/s**

Vs
Ind-Barath Energy (Utkal) Ltd **…Respondent/s**

C O R A M:-
SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

O R D E R

IA (IBC)/1932/2024

Orders pronounced, recorded vide separate sheets.

In the result, this application is dismissed.

IA (IBC)/1931/2024

Orders pronounced, recorded vide separate sheets.

In the result, this application is dismissed.

Sd/- Sd/-
MEMBER(T) **MEMBER(J)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

I.A.No.1931 of 2024
IN
I.A. No.1932 of 2024
IN
IA No. 882 of 2019
IN
CP (IB) No. 276/7/HDB/2018

IN THE MATTER OF SECTION 60(5)(C) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 READ WITH RULE 11 OF THE NATIONAL COMPANY LAW TRIBUNAL RULES, 2016 AND IN THE MATTER OF IND-BARATH ENERGY (UTKAL) LIMITED

Between:

Chief Engineer / Private Power Projects,

2nd Floor, MLDC Block, 144, Anna Salai,
Tamil Nadu Generation and Distribution Corporation Limited,
Chennai 600 002

...Applicant

AND

M/s. Ind Barath Energy (Utkal) Ltd.,
H. No.8-5-210/43, Plot No.44,
Shiva enclave Old Bowenpally,
Secunderabad, Rangareddy, TG-500011.

...Respondent

Date Of Order:18.08.2026

Coram:
Shri Rajeev Bhardwaj (Hon'ble Judicial Member)
Shri Sanjay Puri (Hon'ble Technical Member)

Counsels Present:
For the applicant: Ms. Dhanalakshmi (Advocate)
For the respondent: Mr. Pratyush Singh (Advocate)

Case of the Applicant:

1. The present application has been filed seeking condonation of a delay of 786 days in filing I.A. No. 1932 of 2024, whereby the Applicant seeks recall, to a limited extent, of the order dated 25.07.2022 passed by this Tribunal in I.A. No. 882 of 2019 in C.P. (IB) No. 276/7/HDB/2018, insofar as the approved Resolution Plan resulted in the extinguishment of the Applicant's claims as an operational creditor. By the said order, this Tribunal approved the resolution plan dated 03.10.2019 submitted by JSW Energy Limited in respect of Ind-Barath Energy (Utkal) Limited (IBEUL).

2. The Applicant submits that arbitration proceedings were pending in respect of its claim and that, in the meantime, the resolution plan came to be approved without the Applicant being duly informed. It is further alleged that material facts were suppressed before this Tribunal and that the Applicant subsequently came to know of the same.

3. The Applicant contends that the delay of 786 days was not wilful and occurred for the reasons stated herein. It is also submitted that sufficient cause exists for condonation of the delay and that no prejudice would be caused to the Respondent, whereas the Applicant would suffer serious prejudice if an opportunity to agitate its claim is denied.

4. Accordingly, the Applicant seeks condonation of the delay of 786 days and consequential reliefs in respect of the resolution plan approved vide order dated 25.07.2022.

Findings:

5. We note that, it is an admitted position that the applicant became aware of the rejection of its claim upon perusing the list of creditors dated 28.05.2023. Despite such admitted knowledge, the applicant chose to file the recall application, i.e., I.A. (IBC) No. 1932/2024, only on 19.09.2024.

6. The applicant was, therefore, required to satisfactorily explain the period of delay, particularly the period intervening between the date on which it admittedly

acquired knowledge of the rejection of its claim and the date on which the recall application came to be filed. In an attempt to explain the delay, the applicant has placed reliance upon the initiation of arbitration proceedings, the approval of the resolution plan in the meanwhile, and the alleged fraud perpetrated upon it.

7. Having considered the explanation so furnished, we are unable to accept the same. The reasons sought to be relied upon by the applicant, whether considered individually or cumulatively, do not constitute a cogent or satisfactory explanation for the delay. In the absence of sufficient cause being shown for the period of delay, which is a ***sine qua non*** for exercise of the power to condone such delay. Moreover, the allegation of fraud has been made without placing on record any material substantiating such allegation or its bearing on the applicant's inability to approach this Authority within the prescribed period.

8. Thus, the explanations furnished by the applicant do not satisfactorily account for the delay. Consequently, the applicant has failed to demonstrate sufficient cause warranting condonation of the delay of 786 days.

Accordingly, the delay is not condoned.

Sd/-	**Sd/-**
Sanjay Puri **Member Technical**	**Rajeev Bhardwaj** **Member Judicial**

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH – II

I.A. No. 1932 of 2024

In

I.A. No. 882 of 2019

In

CP (IB) No. 276/7/HDB/2018

IN THE MATTER OF SECTION 60(5)(C) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 READ WITH RULE 11 OF THE NATIONAL COMPANY LAW TRIBUNAL RULES, 2016 AND IN THE MATTER OF IND-BARATH ENERGY (UTKAL) LIMITED (now JSW Energy (Utkal) Limited)

Between:

Chief Engineer/Private Power Projects,
Tamil Nadu Generation and Distribution Corporation Limited,
2nd Floor, MLDC Block, 144,
Anna Salai, Chennai – 600 002

…Applicant

AND

M/s. Ind Barath Energy (Utkal) Ltd.,
H. No.8-5-210/43, Plot No.44, Shiva Enclave,
Old Bowenpally, Secunderabad,
Rangareddy, Telangana - 500011

…Respondent

Date of Order:18.08.2026

Coram:
Shri Rajeev Bhardwaj (Hon'ble Judicial Member)
Shri Sanjay Puri (Hon'ble Technical Member)

Counsels Present:
For the applicant: Ms. Dhanalakshmi (Advocate)
For the respondent: Mr. Pratyush Singh (Advocate)

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH – II

I.A. No. 1932 of 2024 In
I.A. No. 882 of 2019 In
CP (IB) No. 276/7/HDB/2018
Date of Order:18.08.2026

A. The Applicant's Case (TANGEDCO)

1. The Tamil Nadu Generation and Distribution Corporation Limited ("TANGEDCO" / "Applicant") is a distribution licensee under Section 2(17) of the Electricity Act, 2003 ("EA 2003"). Pursuant to a Request for Proposal dated 21.12.2012 issued under Section 63 of the EA 2003, Ind-Barath Energy (Utkal) Ltd. ("IBEUL/Respondent") was selected to supply 500 MW of power at a levelised tariff of INR 4.91 per unit. The parties accordingly executed a Power Purchase Agreement dated 08.08.2013 ("PPA") for a period of 15 years.
2. Disputes thereafter arose between TANGEDCO and IBEUL on account of IBEUL’s failure to fulfil its obligations under the PPA. The Scheduled Delivery Date was 01.02.2014, which was extended to 16.12.2015 on account of the delay in obtaining long-term access to the inter-state transmission system. However, IBEUL commenced supply only on 01.09.2016. During such delay, IBEUL supplied power to the Applicant from alternate sources but failed to meet the prescribed Normative Availability requirement and thereafter stopped supplying power from 01.02.2017. Consequently, on 22.02.2018, TANGEDCO invoked IBEUL’s performance guarantee and recovered liquidated damages of Rs 120 crore.
3. The continued shortfall and eventual cessation of supply constituted further defaults under the PPA, for which TANGEDCO raised penalty claims of Rs 107.20 crore under Clause 4.2.5 of Schedule 4 to the PPA.
4. As IBEUL failed to resume the contracted supply, TANGEDCO proceeded to terminate the PPA on 06.09.2018. TANGEDCO also raised a claim of Rs 200 crore towards the termination payment payable under Article 3.4.2 of the PPA.
5. Following the termination, on 02.11.2019, the RP requested TANGEDCO to consider revival of the PPA, contending that IBEUL’s defaults were attributable to the financial distress of its erstwhile promoter. TANGEDCO, however, declined to revive the PPA, having regard to the nature and extent of IBEUL’s defaults.
6. The Respondent was admitted into CIRP on 29.08.2018. Upon becoming aware of the commencement of the CIRP on 05.03.2019, TANGEDCO

submitted its claims as an operational creditor for Rs 307.20 crore. The claims were subsequently revised to Rs 320 crore by communication dated 28.08.2019 and included the aforesaid penalty of Rs 107.20 crore and termination payment of Rs 200 crore.

7. Thereafter, on 15.03.2020, the Resolution Professional ("RP") invoked arbitration under the PPA and filed a Statement of Claim ("SOC"). According to the Applicant, the disputes raised by the RP in the arbitration including TANGEDCO's claims arising under the PPA, the amount recovered by invocation of the bank guarantee, the penalty claim of Rs 107.20 crore and the termination-payment claim of Rs 200 crore.

8. Notably, the Rs 120 crore towards liquidated damages had already been recovered by TANGEDCO upon invocation of the bank guarantee on 22.02.2018.

9. The Applicant became aware of the arbitration proceedings upon receiving an email from Indian Council of Arbitration (ICA) and, on 01.04.2021, the Applicant raised an objection to the jurisdiction of the arbitral process. In response, the ICA informed the Applicant that the objection would be considered upon constitution of the arbitral tribunal, which was eventually constituted on 08.02.2023.

10. The Applicant thereafter raised a jurisdictional objection under Section 16 of the Arbitration and Conciliation Act, 1996, which was decided against the Applicant.

11. The arbitration proceedings thereafter continued, during which the RP neither responded to the claims submitted by the Applicant in the CIRP nor communicated any decision thereon. Instead, on 29.03.2023, the RP filed an amended Statement of Claims before the Arbitral Tribunal and placed on record the resolution plan dated 03.10.2019 submitted by the SRA and approved by this Authority by order dated 25.07.2022.

12. The Applicant submits that, proceeding on the understanding that its claims for penalty of Rs 107.20 crore and termination payment of Rs 200 crore would be adjudicated in the arbitration, the Applicant filed corresponding counterclaims.

13. However, on 28.05.2023, Respondent/IBEUL placed on record the list of creditors and status of claims maintained by the RP, from which the Applicant came to know that its aforesaid claims had been rejected. The list neither disclosed the date or basis of such rejection nor had any communication to that effect been received by the Applicant. Further, the Applicant submits that the RP was required to collate the claims and communicate his decision thereon, whereupon the Applicant could pursue appropriate remedies before this Authority. According to the Applicant, the RP had no power to adjudicate upon the claims, and the Applicant accordingly remained under the bona fide belief that its claims would be adjudicated in the arbitration initiated by the RP.

14. It is further submitted that Clause 1.4.4 of Part B of the resolution plan contemplated extinguishment of the claims and liabilities of IBEUL. Relying on the said provision and the order dated 25.07.2022 approving the resolution plan, Respondent/IBEUL contended before the Arbitral Tribunal that the Applicant's counterclaims for Rs 107.20 crore towards penalty and Rs 200 crore towards termination payment stood extinguished. The Arbitral Tribunal accepted the said contention and, by its Award dated 10.04.2024, declined to adjudicate the Applicant's counterclaims.

15. It is contended that the Applicant was never informed that its claims of Rs 107.20 crore and Rs 200 crore had been rejected by the RP in the CIRP of the Respondent. TANGEDCO discovered the purported rejection only subsequently, upon perusal of the list of creditors filed by IBEUL before the Arbitral Tribunal on 28.05.2023. TANGEDCO contends that the RP neither had adjudicatory power to determine the validity of the claims nor disclosed their rejection, or the pendency of their adjudication in arbitration, to the Committee of Creditors or to this Authority.

16. In the meantime, the Arbitral Tribunal was constituted on 08.02.2023, and TANGEDCO filed its counterclaims for Rs 107.20 crore and Rs 200 crore. IBEUL resisted the counterclaims on the ground that the same stood extinguished under the Resolution Plan approved by this Authority by order dated 25.07.2022 ("Plan-approval order"). By Award dated 10.04.2024 in ICA

Case No. AC-2227, the Arbitral Tribunal accepted the said objection and declined to adjudicate TANGEDCO's counterclaims on merits.

17. TANGEDCO has therefore approached this Authority seeking limited recall of the Plan-approval order, only to the extent that the Resolution Plan operates to extinguish its claims of Rs 107.20 crore and Rs 200 crore. The principal grievance is that the RP, having himself subjected the said claims to arbitration, failed to disclose their pendency and purported rejection during the CIRP, with the result that claims which were already sub judice came to be treated as extinguished without adjudication, ultimately leaving TANGEDCO remediless.

18. The Applicant principally contends that: (a) the RP had no adjudicatory power under Regulation 13 of the CIRP Regulations to reject TANGEDCO's claims, as recognised in *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17 and *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531; (b) having himself initiated arbitration concerning the very claims, the RP was required to disclose their pendency to the CoC and this Authority and could not treat them as extinguished without awaiting adjudication; (c) the clean-slate principle cannot operate to extinguish claims which were known, crystallised and already the subject matter of pending arbitration; and (d) permitting IBEUL/the successful resolution applicant to pursue its own claims under the PPA while extinguishing TANGEDCO's corresponding claims causes manifest prejudice and leaves TANGEDCO without an effective remedy, contrary to the principles recognised in *Greater Noida Industrial Development Authority v. Prabhjit Singh Soni*, 2024 SCC OnLine SC 122 and *Union Bank of India v. Dinakar T. Venkatasubramaniam*, Company Appeal (AT) (Ins.) No. 729 of 2020.

19. The Applicant accordingly seeks recall of the plan-approval order dated 25.07.2022 to the limited extent that it approves extinguishment of TANGEDCO's claims of Rs 107.20 crore and Rs 200 crore submitted to the RP on 05.03.2019 and revised on 28.08.2019, being claims which had been made the subject matter of arbitration initiated by the RP. The Application is

accompanied by a separate application for condonation of delay (I.A. No. 1931 of 2024).

B. The Respondent's Case (IBEUL)

20. The Respondent contends that TANGEDCO's claims of Rs 107.20 crore towards penalty and Rs 200 crore towards termination payment were considered in the CIRP and were also the subject matter of the arbitration initiated by the RP. The Resolution Plan, which provided for the extinguishment of IBEUL's claims and liabilities, was approved by this Authority on 25.07.2022. According to the Respondent, those claims did not form part of the Statement of Claim filed by the RP and entered the arbitral proceedings only through TANGEDCO's counterclaim dated 27.04.2023.

21. The Respondent submits that, having failed to challenge the Plan-approval order under Section 32 read with Section 61 of IBC, TANGEDCO cannot now seek to reopen the same under Section 60(5) by way of an application for recall.

22. The Respondent therefore submits that the present Application is, in substance, an indirect challenge to the approved Resolution Plan and is not maintainable. Reliance is placed on *Cine Exhibition Pvt. Ltd. v. Collector, District Gwalior*, (2013) 2 SCC 698 and *Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn.*, (2023) 10 SCC 817.

23. The Respondent further contends that the Application is belated, suffers from non-joinder of the RP, and amounts to an abuse of the limited jurisdiction under Section 60(5) of IBC.

24. The Application is further founded on an incorrect factual premise, since the Applicant's claims of Rs 107.20 crore towards penalty and Rs 200 crore towards termination payment were never the subject matter of the Statement of Claim filed during the CIRP and entered the arbitral proceedings only by way of the Applicant's counterclaim filed on 27.04.2023, more than nine months after the Resolution Plan had already been approved on 25.07.2022.

25. The Respondent therefore submits that, as on the date of approval of the Resolution Plan, these claims were not pending adjudication before any forum and there was no suppression by the RP of their alleged pendency. The Impugned Order itself records, at paragraphs 2(f)(4) and 4(q), the pendency of arbitration concerning the Bank Guarantee claim and the Resolution Applicant's undertaking to share 50% of the amount with the secured financial creditors in the event of an award in IBEUL's favour, demonstrating that the arbitration proceedings were within the Authority's consideration.

26. The Respondent further submits that, under Regulation 13 of the CIRP Regulations as it stood at the relevant time, the RP was required to maintain and publish the List of Creditors reflecting the claimed and admitted amounts, which was duly uploaded on the IBBI platform on 30.08.2020 and 31.08.2020. The requirement of individual intimation of non-admission, relied upon by the Applicant, was introduced only subsequently with effect from 18.09.2023 and could not apply retrospectively to the verification of the Applicant's claim or to the plan-approval order.

27. It is submitted that the relief sought by the Applicant, though framed as a prayer for recall, would in substance reopen the approved Resolution Plan and amount to an appeal in disguise. According to the Respondent, TANGEDCO failed to avail itself of the statutory remedy under Section 32 read with Section 61 of IBC. The Respondent relies upon *Greater Noida Industrial Development Authority v. Prabhjit Singh Soni*, (2024) 6 SCC 767, and submits that the power of recall under Section 60(5) read with Rule 11 of the NCLT Rules is to be exercised sparingly and not as a tool to rehear the matter. The allegations of suppression, misrepresentation and fraud are, according to the Respondent, vague and unsupported by material and therefore do not satisfy the requisite legal standard, as held in *Svenska Handelsbanken v. Indian Charge Chrome*, (1994) 1 SCC 502.

28. The Respondent further submits that the Applicant is precluded from reagitating the claims by its own unequivocal position before the Arbitral Tribunal. Paragraphs 31 and 165(viii) of the Award dated 10.04.2024 record that the Applicant accepted that its claims of Rs 107.20 crore and Rs 200

crore stood extinguished pursuant to the Resolution Plan and were accordingly not pressed. Having made that admission in judicial proceedings, and having thereafter challenged the same Award under Section 34 of the Arbitration and Conciliation Act, 1996 before the Hon'ble Madras High Court, the Applicant cannot now seek to revive the identical claims before this Authority.

29. The Respondent accordingly invokes the principles of res judicata and Order II Rule 2 CPC and submits that the Applicant's conduct also constitutes a waiver and operates as an estoppel against the contrary position now sought to be taken, consistent with *Nagindas Ramdas v.* Dalpatram *Ichharam*, (1974) 1 SCC 242. The Application is, in any event, grossly delayed, having been filed 786 days after the Plan-approval order, without any satisfactory explanation, and is therefore liable to be rejected on this ground as well.

30. The Respondent also objects to the non-joinder of the Resolution Professional, since the allegations in the Application concern the RP's alleged non-disclosure of the pendency of the claims, alleged exercise of adjudicatory powers and alleged suppression before the CoC and this Authority, yet the RP has not been impleaded, rendering the Application defective for non-joinder of a necessary party in terms of *Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre and Hotels Pvt. Ltd.*, (2010) 7 SCC 417.

31. The Respondent submits that, having taken over the corporate debtor only upon approval of the Resolution Plan, it had no role in the verification or rejection of claims or in communications between the RP and creditors or representations made to the CoC or the Authority. Without prejudice to the foregoing, the Respondent submits that the claims sought to be revived stand extinguished by operation of the clean-slate principle under Section 31(1) of IBC, as recognised in *Ghanshyam Mishra v. Edelweiss Asset Reconstruction Co.*, (2021) 9 SCC 657, *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531 and *Arun Kumar Jagatramka v. Jindal Steel & Power Ltd.*, (2021) 7 SCC 474.

32. Accordingly, the Respondent submits that the present Application is a mere afterthought and an abuse of process of law by TANGEDCO. Accordingly,

there is no merit in the Application and therefore, the Application is liable to be dismissed with costs.

33. We have heard the learned counsel for both the parties and have perused the material on record.

Written Submissions of the Applicant:

34. The Applicant has reiterated its contentions regarding condonation of delay, the RP's statutory obligation to maintain the list of claims, alleged suppression of the pending arbitration, and the consequent fraudulent concealment. It is also stated that fraud vitiates all solemn acts and an order obtained by playing fraud on this authority is a nullity and non-est in the eyes of law.

35. It is the case of the Applicant that *audi alteram partem* is a fundamental principle of natural justice applicable to the CIRP framework and that extinguishment of its claims without notice or opportunity to participate in the CIRP amounts to a gross violation of the said principle.

36. It is further alleged that the Information Memorandum and Resolution Plan did not include the Applicant's claims and that the Plan-approval order, having been passed without affording the Applicant an opportunity of being heard and having grave civil consequences, is unsustainable in law and renders the Resolution Plan non-compliant with Section 30(2)(e) of the IBC.

37. The Applicant contended that this Authority is vested with inherent powers under Rule 11 of the NCLT Rules to prevent abuse of its process and prays that the Impugned Order may be recalled to uphold the majesty of law and prevent injustice.

Written Submissions On Behalf Of Respondent:

38. The Respondent contends that the application is barred by limitation. Even assuming that TANGEDCO became aware of the non-admission of its claims on 29.03.2023, the applications were filed after an unexplained delay of 539 days.

39. It is further submitted that the Resolution Plan has already been implemented, and the successful resolution applicant has already taken over the corporate debtor. In this regard, reliance is placed on *Torrent Power Ltd. v. Ashish Arjunkumar Rathi & Ors.*, (2026) 5 SCC 1 (Para 76), wherein it was held that once a plan is approved and implemented, finality and commercial certainty under the IBC cannot be disturbed by a stakeholder who did not challenge the approval order within time.

40. It is also submitted that the Resolution Plan was approved by the CoC with 82.70% voting share on 14.10.2019, and that the commercial wisdom of the CoC, once culminated into an approved and implemented Resolution Plan, is not open to collateral reopening in the present proceedings, reliance being placed on *Torrent Power*, (2026) 5 SCC 1 (Paras 70-74).

41. Reliance is further placed on the judgment dated 09.07.2025 of the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 684 of 2025, *Joint Commissioner of State Taxes & Excise (SEZ) Parwanoo v. M/s Radiant Castings P Ltd. & Anr.*, wherein a similar application seeking recall of an order approving a resolution plan was rejected and the said judgment was upheld by the Hon'ble Supreme Court.

42. Further, reliance is placed on the recent judgment dated 30.07.2026 of the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 399 of 2026, *UOI v. Rolta India Ltd. & Ors.*, wherein it was held that a party which never challenged rejection of its claim by the RP and even failed to file an appeal against the same cannot raise old issues after the plan has been approved and fully implemented.

43. It is therefore submitted that the applications, having been filed with significant and unexplained delay, seek to reopen a concluded CIRP, unsettle an implemented Resolution Plan, and revive claims already extinguished and expressly abandoned by TANGEDCO itself. Thus, the applications deserve to be dismissed with costs.

Findings:

44. The present application bearing I.A. No. 1932 of 2024 has been filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, seeking recall of the order dated 25.07.2022 passed in I.A. No. 882 of 2019 in C.P. (IB) No. 276/7/HDB/2018, to the extent that the approval of the Resolution Plan resulted in the extinguishment of TANGEDCO's claims of Rs 107.20 crore and Rs 200 crore arising under the Power Purchase Agreement dated 08.08.2013.

45. Thus, we examine the effect of the order dated 25.07.2022 and, in particular, whether the claims extinguished upon approval of the Resolution Plan can now be revived through an application for recall.

46. In this regard, it is not in dispute that the Resolution Plan submitted by the Successful Resolution Applicant, JSW Energy Limited, was approved by the Committee of Creditors and thereafter approved by this Authority by order dated 25.07.2022 in I.A. No. 882 of 2019 in C.P. (IB) No. 276/7/HDB/2018. Further, the said order has attained finality.

47. Once the Resolution Plan has been approved by this Authority and the approval order has attained finality, the effect of such approval upon the claims of creditors is required to be considered in the context of the statutory scheme of the Insolvency and Bankruptcy Code, 2016.

48. In this context, we place our reliance on the ruling of the Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531***, wherein it was held that:

> *"67. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with 'undecided' claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully*

takes over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count."

49. The same principle was reaffirmed in ***Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657***, wherein it was held that once a resolution plan is duly approved by the Adjudicating Authority under Section 31(1), all claims which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of a claim which is not part of the resolution plan.

50. Now, we proceed to examine whether the claims of TANGEDCO, which are stated to have been extinguished pursuant to the approved Resolution Plan, could thereafter be revived or adjudicated upon, as sought by the Applicant in the present proceedings.

51. Upon perusal of the approved Resolution Plan, we find no provision preserving the Applicant's penalty claim of Rs 107.20 crore or its termination-payment claim of Rs 200 crore. The subsequent decision in the arbitral proceedings cannot, by itself, furnish a ground for recalling the order dated 25.07.2022.

52. Moreover, the Respondent specifically asserted that TANGEDCO's claims for Rs 107.20 crore towards penalty and Rs 200 crore towards termination payment were raised in the arbitral proceedings for the first time by way of TANGEDCO's counterclaim dated 27.04.2023. The Applicant neither controverted this assertion nor placed any material before us to demonstrate that either claim was pending adjudication in the arbitration as on 25.07.2022. We therefore find that the two claims were not pending adjudication before the Arbitral Tribunal when the Resolution Plan was approved. Their subsequent inclusion in the arbitration could not retrospectively alter their status on the date of approval of the Resolution Plan.

53. The Applicant contends that the treatment of its claims during the CIRP was not disclosed to it or brought to the notice of this Authority. It is settled that the power of recall is distinct from the power of review and may be exercised only where the order sought to be recalled is vitiated by fraud, material suppression, want of jurisdiction, absence of notice or another fundamental procedural irregularity. In the present case, the Applicant has not placed any material before us to establish that the order dated 25.07.2022 was obtained by fraud or suppression of a material fact. As found above, TANGEDCO's claims for Rs 107.20 crore and Rs 200 crore were not pending adjudication in the arbitration when the Resolution Plan was approved.

54. The Respondent's assertion that the list of creditors reflecting the claimed and admitted amounts was published on the IBBI platform on 30.08.2020 and 31.08.2020 has not been controverted. Further, the Applicant has not demonstrated that, under Regulation 13 as applicable at the relevant time, the RP was required individually to communicate the non-admission of its claims. The subsequent introduction of such a requirement with effect from 18.09.2023 cannot govern the treatment of claims undertaken before approval of the Resolution Plan.

55. The mere non-admission of those claims by the RP, or the Applicant's alleged lack of individual communication concerning their treatment, does not, without proof that a material fact was withheld from this Authority in a manner that vitiated the approval proceedings, furnish a ground for recall. The relief sought would, in substance, require us to reconsider the treatment and extinguishment of the Applicant's claims under the approved Resolution Plan. Such an exercise would amount to review of the merits of an order that has attained finality and cannot be undertaken through the power of recall under Section 60(5) of IBC read with Rule 11 of the NCLT Rules, 2016.

56. We therefore find that the Applicant has failed to establish any legally recognised ground for recall of the order dated 25.07.2022. The said order having attained finality, the consequences prescribed by Section 31(1) of IBC and the approved Resolution Plan must follow. TANGEDCO's claims for Rs

107.20 crore and Rs 200 crore, not having been preserved in the Resolution Plan, cannot now be revived.

57. Further, an applicant has been filed bearing I.A. (IBC) 1931/2024 seeking condonation of a delay of 786 days in filing the present application. However, we have decided vide separate order that there are no cogent, satisfactory and convincing grounds to condone the delay. Therefore, this application is also not maintainable on the ground of limitation besides the merits which have been discussed above.

I.A. No. 1932 of 2024 is accordingly dismissed.

Sd/-	**Sd/-**
Sanjay Puri	**Rajeev Bhardwaj**
Member (Technical)	**Member (Judicial)**