S.No.01

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
21.08.2026 AT 10:30 A.M.

IA (IBC)/494/2026 in
Company Petition IB/104/7/HDB/2023
U/s 7 of IBC

IN THE MATTER OF:
IDBI Bank Ltd **…Petitioner/s**

Vs
GVK Energy Limited **…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) 494/2026

Present: Mr. Amir Bavani, Ld. Counsel for the Applicant.

Mr. Y. Suryanarayana along with Ms. Siva Praneetha, Ld. Counsels for the Respondent No.1.

Orders pronounced, recorded vide separate sheets.

In the result, this application is dismissed.

Sd/-
MEMBER(T)

Sd/-
MEMBER(J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

IA (IBC) No.494 of 2026 in
CP (IB) No. 104/7/HDB/2023

In the matter of:

IDBI Bank Limited,
Registered Office at IDBI Tower, WTC Complex,
Cuffe Parade, Mumbai – 400 005 &
Branch Office at:
7th Floor, IDBI Tower, WTC Complex,
Cuffe Parade, Mumbai – 400 005.

....Financial Creditor

Vs

M/s GVK Energy Limited,
Corporate Guarantor of
GVK Power (Goindwal Sahib) Ltd.,
156-159 "Paigah House",
Sardar Patel Road,
Secunderabad – 500 003.

....Corporate Debtor

Between:

M/s Purvah Green Power Private Limited
2A, Lord Sinha Road, First Floor,
Middleton Row,
Kolkata – 700 071.

....Applicant

And

1. Mr Venkata Chalam Varanasi,
   Resolution Professional of GVK Energy Limited,
   Resident of No 12-13-205, Street No 2,
   Tarnaka,
   Secunderabad – 500 017.

2. Committee of Creditors of
   M/s GVK Energy Limited,
   Plot No 10, Paigah Colony,
   Phase-1, Sardar Patel Road,
   Secunderabad – 500 003.

....Respondents

Date of Order: 21.08.2026

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels present:

For the Applicant	:	Mr Avinash Desai, Ld Senior Counsel along with Mr Amir Bavani
For the Respondent 1	:	Mr Y Suryanarayana along with Ms Siva Praneetha
For the Respondent 2	:	Mr Enosh Nithin

1. This application has been filed by M/s Purvah Green Power Pvt. Ltd., (**The Applicant**) a company engaged in generating and trading renewable energy. It is directed against Mr. Venkata Chalam Varanasi, the Resolution Professional (**RP**) and the Committee of Creditors (**CoC**) of M/s GVK Energy Limited the Corporate Debtor (**CD**), which is in CIRP[1]. The application invokes Section 60(5) of IBC[2], read with Rules 11 and 13 of the NCLT Rules[3], and seeks protection and refund in relation to an Earnest Money Deposit (**EMD**) furnished with the Applicant's Resolution Plan.

2. The Respondent No.1, the RP is stated to have published Form G inviting Expressions of Interest (EoI) from Prospective Resolution Applicants (PRAs), which was republished on 24.08.2025 with extended timelines. The Applicant submitted its EoI on 31.08.2025, was included in the list of PRAs on 06.09.2025, and received the Request for Resolution Plan (**RFRP**) on 27.09.2025. It submitted its Resolution Plan on 28.11.2025 and revised it on 04.03.2026. In compliance with the RFRP, it furnished

[1] Corporate Insolvency Resolution Process (CIRP) : initiated by order dated 06.05.2025

[2] Insolvency and Bankruptcy Code, 2016

[3] National Company Law Tribunal Rules, 2016

an EMD of Rs 20 Crore through a Yes Bank Guarantee dated 24.10.2025.

The Application

3. The Applicant submits that the prevailing worldwide geopolitical situation, particularly the ongoing West Asia conflict, has affected global investor sentiment and financial stability. In view of the evolving geopolitical conditions and shifting industry dynamics, the Applicant, after detailed internal deliberations, reassessed its investment strategy and withdrew the Resolution Plan, including all prior versions. It requested the RP, by email and formal letter dated 12.03.2026 to treat the Plan as withdrawn with immediate effect and not place it before the CoC for consideration or voting.

4. Respondent No.1, the RP is stated to have replied on 13.03.2026 that withdrawal constituted a breach of the terms of the RFRP and the commitments undertaken by the Resolution Applicant. According to that reply, the CoC, acting in its purported commercial wisdom under Clause 9(g) of the RFRP, resolved to forfeit, invoke and encash the Rs 20 crore Bank Guarantee. The RP also alleged that the withdrawal caused prejudice to the CIRP, and adversely affected the interests of stakeholders as well as the timelines of the CIRP.

5. The Applicant acknowledges that the RFRP states that a Resolution Applicant shall not withdraw a submitted plan and authorises invocation or forfeiture of the EMD or Performance Bank Guarantee upon withdrawal. It nevertheless contends that "shall" ought to be construed as "may" in the peculiar facts of this case. It invokes the Tribunal's powers under Section 60(5) and Rule 11, arguing that forfeiture is unwarranted where there is no demonstrable loss or prejudice, particularly because its plan had not been placed before the CoC for voting. It alleges that the CoC mechanically invoked the forfeiture clause without properly exercising commercial wisdom.

6. Relying on ***Bright Steel Processors***[4], the Applicant argues that where an offer is withdrawn before CoC voting and approval, the EMD cannot be forfeited and must be refunded. It pleads that the bar against withdrawal applies only after a plan has been approved by the CoC and that its position cannot be equated with that of a successful resolution applicant reneging on an approved plan. It also relies upon ***S. Hari Karthik***[5], in which the appellate tribunal upheld the return of earnest money where a plan was withdrawn before CoC voting and approval.

7. The Applicant further alleges that it was not given an opportunity to explain its position to the CoC before adverse consequences were proposed. In its letter[6] dated 16.03.2026, it reiterated the escalation of hostilities in West Asia and also claimed that it was informed of the challenge process only subsequent to submitting a revised plan, thereby undermining transparency, fairness and a level playing field. It contends that RP should have placed its explanation before the CoC and that failure to do so violated fairness and natural justice. It also invokes Clause 18(f) of the RFRP, which allegedly empowers the CoC to waive conditions, including invocation of the EMD.

8. The Applicant characterises the RFRP as merely a bid document that cannot override applicable law, contract law, public policy or common-law principles. It relies upon the RFRP disclaimer that, in the event of inconsistency, "Applicable Law will always prevail." It also cites Regulation 36B (4) of the CIRP Regulations, under which an RFRP "shall not require any non-refundable deposit" for or along with submission of a resolution plan. Consequently, it argues that an RFRP condition inconsistent with the statutory framework cannot bind it.

9. The Applicant maintains that it acted with bona fide intentions, utmost transparency, fairness and good faith, and that the withdrawal arose

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[4] Bright Steel Processors v. Lohaa Ispaat Limited: 2018 SCC OnLine NCLT 29703 (Mumbai)
[5] S.Hari Karthik vs. Jayaram Chowdhury, 2023 SCC OnLine NCLAT 471
[6] Page 69-70 of the Application

from genuine, unforeseen and unavoidable circumstances rather than deliberate or mala fide conduct. Relying on Kailash Nath Associates[7]., it argues that forfeiture of earnest money cannot be sustained without proven loss or damage. The EMD, it says, was security to demonstrate seriousness and commitment—not a punitive measure. Because other PRAs remained in the process and the asset remained available, the withdrawal allegedly neither stalled the CIRP nor caused grave prejudice.

10. The Applicant ultimately contends that forfeiture would be arbitrary, disproportionate and inequitable, would constitute an excessive consequence and could result in unjust enrichment where no corresponding loss occurred. It asks the Tribunal to allow the application; restrain the Respondents from invoking or encashing Bank Guarantee[8] No. 190BG07252970010 of Rs 20 crores; declare the proposed forfeiture of EMD arbitrary, disproportionate and contrary to the scheme and spirit of the Code; direct refund of the EMD if it has already been encashed in the interests of justice and equity.

RP's Counter-Reply

11. According to Respondent No. 1, the RP, the application is wholly misconceived, devoid of legal or factual merit, and represents an attempt by the Applicant to avoid the consequences of its conscious and unconditional acceptance of the Request for Resolution Plan (RFRP)[9]. According to the RP, the Applicant cannot seek equitable relief contrary to the binding framework under which it participated in the CIRP.

12. The RP states that after the CIRP of GVK Energy Limited commenced pursuant to the Tribunal's order dated 06.05.2025, he issued the public announcement and published Form G inviting Expressions of Interest from Prospective Resolution Applicants. The Applicant submitted its EoI

[7] Kailash Nath Associates v. Delhi Development Authority, (2015) 4 SCC 136
[8] Page 62 to 64 of the Application
[9] Page 68 to 150 of the RP's Counter-Reply

on 31.08.2025 and was included in the provisional list of PRAs.

13. The RFRP was issued on 27.09.2025, pursuant to which the Applicant submitted its Resolution Plan on 28.11.2025, accompanied by a covering letter[10] accepting the terms of the RFRP. After participating in discussions and negotiations with the Core Committee of the CoC, the Applicant submitted a revised Resolution Plan on 04.03.2026. The RP alleges that the Applicant, for reasons best known to it, did not place the RFRP on record with its application.

14. As a mandatory precondition for participating in the resolution process, the Applicant furnished an unconditional Earnest Money Deposit (EMD) of Rs 20 crore through a Bank Guarantee issued by Yes Bank. The RP contends that the Applicant accepted the RFRP provisions under which the Resolution Plan was "irrevocable and binding", withdrawal was prohibited, and the CoC/RP was entitled to invoke, encash or forfeit the EMD upon withdrawal.

15. To further the Code's objective of maximisation of value for stakeholders, the CoC resolved at its 13th meeting on 10.03.2026 to conduct a challenge process under Regulation 39(1A) of the CIRP Regulations and the enabling RFRP provisions. All eligible PRAs, including the Applicant, were informed on 10.03.2026 at approximately 7:30 p.m. that the challenge process would be held on 13.03.2026. The detailed Challenge Process Note was circulated on 12.03.2026 at 10:44 a.m.

16. The RP alleges that, instead of participating in the competitive process or improving its financial offer, the Applicant unilaterally withdrew[11] its Resolution Plan on 12.03.2026 at approximately 2:14 p.m. Although the RP requested it to participate, the Applicant reiterated its withdrawal later that day. The withdrawal was placed before the CoC at its 14th

[10] Page 151 to 153 of RP's Counter-Reply
[11] Page 156-157 of RP's Counter-Reply

meeting[12] on 13.03.2026, where the CoC, in its commercial wisdom, decided to invoke and encash the EMD Bank Guarantee and exclude the Applicant from the further process.

17. The RP disputes the Applicant's reliance on the West Asia conflict and prevailing geopolitical conditions. It characterises those grounds as baseless, vague, wholly irrelevant and an afterthought, unsupported by cogent or contemporaneous material. According to the RP, the relevant geopolitical developments had existed since around 28.02.2026, yet the Applicant continued negotiations, submitted its revised plan on 04.03.2026 and, on 07.03.2026, furnished an ICICI Bank comfort letter for Rs 5,000 crore to establish its financial wherewithal.

18. The timing of the withdrawal, according to the RP, shows that it was not caused by an external or unavoidable circumstance but was a conscious commercial decision taken immediately after receipt of the Challenge Process Document. The RP alleges that the Applicant exited at the precise stage when it was required to compete and potentially improve its bid. Its stated reasons are described as an ex post facto justification to resile from its obligations under the RFRP.

19. On maintainability, the RP argues that Section 60(5) of the IBC cannot be invoked to rewrite binding terms, override the CIRP's commercial framework or grant equitable relief against an agreed consequence. The decision to invoke the EMD was allegedly taken after due deliberation and falls within the commercial wisdom of the CoC, which is not open to judicial review except on limited grounds such as illegality or procedural irregularity. Reliance is placed, inter alia, on ***K. Sashidhar***[13], ***Essar Steel***[14], ***Kalpraj Dharamshi***[15], ***Pratap Technocrats***[16], ***Embassy***

[12] Minutes of 14th CoC Meeting: Page 158 to 163 of RP's Counter-Reply
[13] K. Sashidhar v. Indian Overseas Bank (2019) 12 SCC 150
[14] Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta (2020) 8 SCC 531,
[15] Kalpraj Dharamshi v. Kotak Investment Advisors Ltd. (2021) 10 SCC 401
[16] Pratap Technocrats (P) Ltd. v. Monitoring Committee of Reliance Infratel Limited (2021) SCC Online SC 569

Property Developments[17], ***Ramkrishna Forgings***[18] **and** ***Torrent Power***[19] cases.

20. The RP further relies upon the law governing unconditional bank guarantees. It submits that a bank guarantee constitutes an independent and autonomous contract and that the issuing bank's obligation is absolute and unconditional, irrespective of disputes concerning the underlying transaction. Invocation may be restrained only in cases of egregious fraud or irretrievable injustice, neither of which, according to the RP, has been pleaded or established. Reliance is placed on ***Gujarat Maritime Board***[20] and ***Himadri Chemicals***[21] cases.

21. The RP relies principally upon Clause 9(g) of the RFRP, which prohibits withdrawal of a Resolution Plan "for any reason whatsoever" and "at any stage" of the CIRP after submission. Clauses 10.4 and 10.5 are cited to contend that a submitted plan remains irrevocable and binding. The RP also invokes Clause 16.8(c), under which Resolution Applicants were allegedly required to participate in any negotiation or challenge process, and Clause 15.2, which purportedly permits invocation or forfeiture without prior notice where a plan is withdrawn or attempted to be withdrawn before CoC approval.

22. The RP assails the Applicant's contention that "shall" should be read as "may" in Clause 9(g), arguing that this would rewrite an unambiguous and mandatory condition. It also disputes the contention that withdrawal before CoC voting cannot attract forfeiture, because Clause 9(g) operates at any stage post-submission. The decisions in ***Bright Steel Processors*** and ***S. Hari Karthik*** are sought to be distinguished on the ground that those cases did not involve an express and mandatory clause providing

[17] Embassy Property Developments Private Limited v. State of Karnataka, (2020) 13 SCC 308
[18] Ramkrishna Forgings Limited v. Ravindra Loonkar, Resolution Professional of ACIL Limited (2023 INSC 1013)
[19] Torrent Power Ltd. v. Ashish Arjunkumar Rathi & Others, 2026 INSC 206
[20] Gujarat Maritime Board v. Larsen & Toubro Infrastructure Development Projects Ltd (2016) 10 SCC 4
[21] Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co., (2007) 8 SCC 110

for forfeiture upon withdrawal.

23. The RP also relies upon the RFRP's due-diligence and risk-allocation provisions. Clauses 2.5, 3.5 and 5.6 deem the Applicant to have conducted comprehensive due diligence and accepted the process on an "as is where is, as is what is, whatever is available and without recourse" basis. Clause 9(l) is cited to contend that any adverse change, including one arising from force majeure, remains at the Resolution Applicant's risk and does not relieve it of its obligation to implement the plan. Clause 9(o) reserves the CoC's right to employ a challenge method to obtain the best outcome.

24. According to the RP, the withdrawal caused grave, substantial and irreparable prejudice to the CIRP. It weakened 'competitive tension', discouraged upward revision of bids, impaired value maximisation exercise and disrupted the limited CIRP timeline. The RP states that the initial challenge process was materially affected and had to be re-initiated or re-run, resulting in duplication of steps, further deliberations, recalibration of the process and additional expenditure of time and resources by the RP, the CoC, public-sector banks and institutional creditors.

25. The RP therefore denies that invocation of the EMD is arbitrary, disproportionate, punitive or dependent upon proof of actual financial loss. It characterises the EMD as a commercial safeguard, intended to ensure serious and committed participation and deter speculative or opportunistic conduct. The Applicant's reliance on Regulation 36B (4) is disputed on the basis that the provision prohibits a non-refundable deposit as a condition of plan submission, whereas the present EMD was a refundable security liable to forfeiture only upon specified contingencies, including withdrawal in breach of the RFRP.

26. The RP also disputes the Applicant's reliance on ***Kailash Nath Associates***, contending that it concerned a conventional contractual

dispute under Section 74 of the Contract Act and not the distinct, time-bound and sui generis CIRP framework. As regards ***Chaitanya Alloys***, the RP asserts that the portion extracted in the application does not form part of the actual order. It further denies any breach of natural justice, stating that the Applicant's communications were promptly placed before the CoC and that Clause 15.2 permitted forfeiture without prior reference or notice.

27. As to subsequent events, the RP states that the EMD Bank Guarantee was invoked on 14.03.2026, followed by reminders to Yes Bank. The Tribunal's order dated 18.03.2026 merely recorded that invocation would be subject to the outcome of the application and did not restrain invocation or payment. The RP alleges that the Applicant gave Yes Bank a misleading and erroneous interpretation of that order, causing the bank to decline payment, and thereby acted without bona fides or clean hands. On these grounds, the RP prays that IA No. 494 of 2026 be dismissed, with such further orders as the Tribunal deems appropriate.

CoC's Counter-Reply

28. Respondent No. 2, the Committee of Creditors (CoC) characterises the application as an attempt to escape the "express, voluntarily-accepted, and unambiguous contractual consequences" of the Applicant's deliberate breach of the RFRP. It contends that the application is misconceived, without merit, and liable to be dismissed in limine with exemplary costs.

29. The CoC states that the Applicant voluntarily submitted its EoI on 31.08.2025, accepted the RFRP dated 27.09.2025, furnished the Rs. 20 crore Bank Guarantee on 24.10.2025, submitted its initial Resolution Plan on 28.11.2025 and, following negotiations and CoC feedback, submitted a revised plan on 04.03.2026. The Applicant was informed of the proposed Challenge Mechanism on 10.03.2026 and received the Challenge Process document on 12.03.2026. According to the CoC, the

Applicant nevertheless withdrew later that day, declined the RP's invitation to participate and sought refund of its EMD. On 13.03.2026, after due deliberation and in the exercise of its commercial wisdom, the CoC resolved to forfeit and invoke the EMD and debar the Applicant from further participation.

30. The CoC relies principally on Clauses 9(g) and 15.2 of the RFRP. Clause 9(g) prohibits withdrawal of a Resolution Plan "for any reason whatsoever" and "at any stage", while Clause 15.2 authorises invocation or forfeiture where a plan is attempted to be withdrawn or is withdrawn before or after CoC approval, "without making any reference or notice" to the Resolution Applicant and irrespective of any dispute or litigation. The CoC argues that these provisions form a "clear, comprehensive, and binding contractual framework" and that the word "shall" means shall and cannot be read as "may." It denies having acted mechanically, asserting that forfeiture was a deliberate commercial decision based on prejudice to the CIRP, stakeholder interests and timelines, which are "the essence of the Code."

31. The CoC disputes the Applicant's reliance on the West Asia conflict, stating that the conflict had existed since October 2023 and was known when the Applicant submitted its EoI, furnished the Bank Guarantee and submitted both its original and revised plans. It alleges that the withdrawal, made eight days after submission of the revised plan and immediately before the Challenge Process, was a "deliberate, premeditated commercial decision", not the consequence of a sudden or unforeseeable force majeure event. It further argues that commercial impracticability, increased difficulty or reduced profitability does not amount to frustration under Section 56 of the Contract Act. Since GVK Energy Limited is an O&M service provider to a hydro-power project in Uttarakhand, the CoC also says that no causal nexus has been shown between the West Asia conflict and the viability of the proposed investment.

32. The CoC rejects the Applicant's reliance on Regulation 36B(4) of the CIRP Regulations. It distinguishes a prohibited "non-refundable deposit" from the present EMD, which it describes as a "conditional security deposit": fully refundable upon compliance with the RFRP, but forfeitable upon breach of the obligation not to withdraw. According to the CoC, the EMD is a legitimate commercial mechanism intended to ensure that PRAs are "serious, committed, and do not engage in tactical bidding, strategic withdrawal, or market testing exercises" at the expense of the CIRP estate and its creditors.

33. The CoC contends that the authorities relied upon by the Applicant are distinguishable. It states that ***Bright Steel Processors*** did not involve an equivalent express forfeiture clause, extended negotiations, a revised plan incorporating CoC feedback or withdrawal immediately before a Challenge Process. The case of ***S. Hari Karthik*** is said to concern liquidation proceedings and a materially different deposit and regulatory framework. The decision in ***Kailash Nath*** *Associates* arose under general contract law, whereas the IBC is described as a "comprehensive, self-contained, and sui generis code." The ***Chaitanya Alloys*** is distinguished on the grounds that no express forfeiture provision or demonstrable prejudice was established there.

34. The CoC also denies any breach of natural justice. It submits that the RFRP itself gave "advance, comprehensive, and unambiguous notice" of the consequences of withdrawal; the Applicant's withdrawal letter was placed before the CoC; and the Applicant later submitted a further letter dated 16.03.2026 and approached the Tribunal. It argues that the CoC is not a quasi-judicial body and that no personal hearing was required before enforcement of an agreed contractual consequence. Clause 18(f), according to the CoC, merely confers a discretion to waive RFRP conditions and creates no right, entitlement or legitimate expectation in the Applicant. The CoC consciously declined to exercise that discretion in the Applicant's favour.

35. Finally, the CoC alleges that the withdrawal caused demonstrable prejudice by disrupting the Challenge Process, diminishing competitive tension and value discovery, wasting institutional time and resources, and causing delay and additional CIRP costs. It maintains that invocation of the Bank Guarantee is enforcement of a valid contractual remedy, not punishment or unjust enrichment, and that an unconditional bank guarantee is an independent and autonomous undertaking, ordinarily encashable on first demand absent fraud or irretrievable injustice. The CoC also defends the Applicant's debarment as contractually justified and commercially necessary to protect the integrity of the CIRP process. It accordingly seeks dismissal of the application with exemplary costs and refusal of any interim restraint against invocation, encashment or forfeiture of the EMD.

Applicant's Rejoinders

36. The Applicant denies the allegations in both counters and characterises them as misconceived, factually inaccurate and intended to justify retention of the EMD. In response to the assertion that the West Asia conflict had existed since 2023, the Applicant distinguishes the conflict's origin from its later commercial effects. It pleads that the relevant commercial difficulty in the energy sector arose only in 2026, following the targeting of Iran's nuclear facilities by the United States and retaliatory strikes across the Middle East. According to the Applicant, this later escalation materially affected global energy markets, financing conditions, cost of capital and supply-chain stability and prompted a bona fide reassessment of its investment strategy.

37. The Applicant disputes the Respondents' description of the withdrawal as occurring at a "critical stage." It asserts that the challenge mechanism had not commenced, the Resolution Plan had not been placed before the CoC for consideration or voting, and no rights had crystallised. It further states that the CIRP continued with multiple PRAs and did not require the entire process to be restarted. The comfort letter and other documents

relied upon by the Respondents are described as procedural prerequisites accompanying the Resolution Plan, rather than independent or substantive commitments capable of supporting forfeiture.

38. To counter the allegation of delay or disruption, the Applicant relies upon a letter issued by secured financial creditor Phoenix ARC Limited, which is stated to hold a 9.71% voting share. According to the rejoinders, Phoenix ARC objected to the treatment of the assets, cash, cash equivalents and debt of Alaknanda Hydro Power Company Limited, a separate subsidiary of the Corporate Debtor, under certain Resolution Plans. Phoenix ARC allegedly described such plans as non-compliant and called upon the RP and CoC to refrain from proceeding with voting until the alleged irregularities were addressed. The Applicant therefore contends that any need to revisit or delay the process arose from "serious and unresolved disputes" and procedural infirmities within the CIRP, and not from its withdrawal.

39. The Applicant advances additional authorities to answer the contention that acceptance of the RFRP necessarily validates forfeiture. It relies on ***Sudip Bhattacharya v. Ocean Sparkle Ltd***[22] to contend that acceptance of standard terms does not permit mechanical forfeiture where the surrounding circumstances warrant refund, subject to deduction of proved costs. It also cites ***Rajbir Singh***[23] and ***Godrej Projects***[24] to argue that forfeiture of a substantial amount may operate as a penalty and must bear a reasonable relationship to pleaded and proved loss. Since the Respondents have allegedly identified no additional cost or quantifiable loss, forfeiture of the entire Rs. 20 crore is described as a "punitive exaction under the guise of contractual enforcement."

40. In response to the CoC's treatment of the EMD as a conditional security, the Applicant relies upon Clause 15.5 of the RFRP, which provides for

[22] Sudip Bhattacharya v. Ocean Sparkle Limited, 2022 SCC OnLine NCLAT 2273
[23] Rajbir Singh and Anr. v. Jaswant Yadav, [RFA 404 of 2018]
[24] Godrej Projects Development Ltd. v. Anil Karlekar, (2025) 4 SCC 259

return of the EMD of an unsuccessful Resolution Applicant. It contends that this confirms the EMD's essential character as a refundable security, rather than a sum intended for automatic appropriation. Because the Applicant withdrew before consideration or voting, it claims to stand on a footing "no worse than that of an unsuccessful Resolution Applicant." Converting that refundable security into a non-refundable amount, without corresponding loss, is said to confer an "impermissible windfall gain" and result in unjust enrichment.

41. The Applicant clarifies that it has not invoked Section 56 of the Contract Act or pleaded frustration of the RFRP, contrary to the CoC's characterisation. Its case is said to concern fairness and proportionality, namely that Clause 9(g) cannot be enforced rigidly so as to impose penal consequences at a pre-voting stage without demonstrated loss. As regards Clause 18(f), the Applicant does not claim a vested right to waiver; rather, it argues that the existence of a waiver power demonstrates that the RFRP contemplates flexibility and application of mind. The alleged failure to consider the Applicant's letter dated 16.03.2026 and the arbitrary non-exercise of that discretion are said to show a predetermined approach. Relying on ***Lamba Exports***[25], the Applicant submits that the primacy of commercial wisdom does not make every CIRP action immune from scrutiny where statutory illegality or jurisdictional infirmity is alleged.

42. Finally, the Applicant denies misleading or obstructing Yes Bank. It states that the Tribunal's order dated 18.03.2026 recorded that invocation of the Bank Guarantee would be subject to the outcome of the application, and that communicating this order to the Guarantor Bank was compliance with a subsisting judicial direction, not misrepresentation. It argues that unconditional encashment pending adjudication would render its substantive challenge infructuous and

[25] Lamba Exports (P) Ltd. v. Dhir Global Industries (P) Ltd., 2026 SCC OnLine SC 459

therefore seeks maintenance of the status quo. The Applicant also challenges its debarment as arbitrary, excessive and disproportionate, particularly while the alleged breach remains unadjudicated, and reiterates its prayer for restraint against invocation or encashment and for refund of the EMD.

Findings & Decision

43. We have heard the parties at length and perused the material placed on record. Before adverting to the contentious issues, it would be apposite to notice the essential facts which are not in dispute.

44. The CIRP of GVK Energy Limited (the Corporate Debtor) commenced on 06.05.2025. Pursuant to Form G published by the RP, inviting Expressions of Interest (EoIs) from Prospective Resolution Applicants (PRAs), the Applicant submitted its EoI and was admitted to participate in the resolution process. The RFRP was thereafter made available to the Applicant, which submitted its Resolution Plan on 28.11.2025 and a revised Resolution Plan on 04.03.2026. In terms of the RFRP, the Applicant also furnished a Bank Guarantee for Rs 20 crore towards the EMD.

45. However, on 12.03.2026, the Applicant withdrew its Resolution Plan, i.e. a day before the Challenge Process was scheduled for 13.03.2026, in which it had been invited to participate along with the other PRAs. Pursuant thereto as decided by the CoC, the RP proceeded to invoke the Bank Guarantee and forfeit the EMD of Rs 20 crore, giving rise to the present Application. Our findings, on different issues which arise in the contesting pleadings, are elaborated in the succeeding paras, leading to the decision in the final part of this order.

<u>Maintainability of the Application</u>

46. The first and foremost question that arises in this matter is about the maintainability of the present application itself. In this regard we note

that the RFRP was issued in the course of the CIRP; the Applicant furnished the EMD Bank Guarantee as a condition of participation therein; and the impugned decision to invoke and forfeit the EMD was taken by the CoC under the RFRP. The controversy, therefore, bears a direct and proximate nexus with the insolvency resolution of the Corporate Debtor and falls within Section 60(5)(c) of the Code. Accordingly, the present Application is maintainable.

47. Section 60(5)(c) however does not confer any uncharted or free-standing equitable jurisdiction upon this Tribunal to rewrite the RFRP or substitute its commercial assessment for that of the CoC. Our scrutiny is therefore confined to determining whether the impugned action is authorised by the RFRP and conforms to the IBC, the CIRP Regulations and other applicable law. The objection to maintainability is therefore rejected, leaving the legality and enforceability of the forfeiture to be examined on merits.

<u>Applicant's Right to withdraw the Resolution Plan</u>

48. In considering the legality and enforceability of the forfeiture of EMD, at the threshold itself it is necessary to decide whether a Resolution Applicant may withdraw its Resolution Plan before the Plan is placed before the CoC for consideration or voting. Here it is noteworthy that neither the Code nor the CIRP Regulations give the Resolution Applicant an affirmative statutory right to withdraw a Plan at any stage, including before it is placed before the CoC. In the absence of such a statutory right, the question of whether, and on what terms, a Resolution Applicant may withdraw before that stage falls to be determined by reference to the governing RFRP, subject to applicable law, and to the terms on which the Applicant participated in the process.

49. In this regard, it is important to take into account the effect of the Applicant's acceptance of Clauses 9(g), 10.4, 10.5 and 15.2(b), and 16.8 (c) of the RFRP, given that these clauses declare the Plan "irrevocable and

binding" and bar withdrawal "for any reason whatsoever" and "at any stage". Also important is to consider whether the word "shall" in Clause 9(g) is mandatory or confers discretion in the matter of forfeiture of EMD. These clauses are reproduced as below:

> 9(g) No Resolution Applicant is allowed to withdraw the resolution plan once submitted, for any reason whatsoever, at any stage of the CIRP of the Corporate Debtor. If for any reason the Resolution Applicant seeks to withdraw its resolution plan at any stage, the CoC/ Resolution Professional shall have the right of invocation/encashment/ forfeiture of the Earnest Money and/ or the Performance Bank Guarantee and any other rights as available under Applicable Laws against such Resolution Applicant."
>
> 10.4: Plan Validity Period: A Resolution Plan once submitted shall be binding on the Resolution Applicant and shall remain valid at all time unless implementation of resolution plan of SRA. …
>
> 10.5: A Resolution Plan submitted by a Resolution Applicant(s) shall be irrevocable and binding on the Resolution Applicant(s). No modification, alteration, amendment or change may be made to a Resolution Plan submitted by a Resolution Applicant(s) except as specifically provided in this RFRP or permitted by Resolution Professional / CoC and/or pursuant to a request for additional information or clarification issued by Resolution Professional. The Resolution Applicants shall not be allowed to reduce the overall value of the Resolution Plan pursuant to negotiations with the CoC.
>
> 15.2: <u>Invocation / Return of Earnest Money to the Resolution Applicant</u>
>
> The Resolution Professional, acting on the instructions of the CoC, shall have the right to invoke/forfeit the Earnest Money BG by issuance of a written demand to the bank which has issued the Earnest Money BG or

forfeit and realize the demand draft or adjust the amount deposited as Earnest Money. The Earnest Money can be invoked and / or the demand draft can be realized or deposit can be forfeited, without making any reference or notice to the Resolution Applicant, and irrespective of any ongoing dispute or litigation, upon occurrence of any of the following conditions:

…

(b) if the Resolution Plan is attempted to be withdrawn/ withdrawn or unilaterally modified before CoC approval or after CoC approval (in case the Resolution Applicant is identified as Successful Resolution Applicant)

16.8 (c) The CoC and/or the Resolution Professional (acting on the instructions of the CoC) may, at their sole discretion, decide any method or process for negotiation, finalization and determination of the Successful Resolution Applicant including an e-auction process/open challenge process/ Swiss challenge process/one-on-one negotiations etc. and each Resolution Applicant shall be bound by the terms governing such a process, which shall be decided by the CoC. The Resolution Applicant shall not object to, and must participate in, the implementation of such negotiation process. By submitting the Resolution Plan, the Resolution Applicant shall be deemed to have unequivocally agreed that any process of negotiation adopted by the CoC shall be binding on them and that they have no objection in following any such process.

50. Clause 9(g) expressly provides that no Resolution Applicant is permitted to withdraw its Plan, “for any reason whatsoever, at any stage of the CIRP”, and reserves for the CoC/RP the right to invoke, encash or forfeit the EMD upon such withdrawal. Clauses 10.4 and 10.5 describe a submitted Plan as “irrevocable and binding,” while Clause 15.2 specifically contemplates invocation of the EMD where a Plan is withdrawn or attempted to be withdrawn before CoC approval. Clause

16.8(c) further obliges the Resolution Applicant to participate in any negotiation or challenge process. Having submitted its Plan and accepted these conditions, the Applicant cannot claim an absolute right to withdraw without attracting the consequences reserved under the RFRP.

51. The expression “shall have the right” in Clause 9(g), however, must be understood in its textual setting. While it mandatorily confers upon the CoC/RP the contractual right to invoke, encash or forfeit the EMD upon withdrawal of a Resolution Plan; it does not make forfeiture an automatic or compulsory consequence in every case. The exercise of that right remains a matter for the CoC to decide, as is also evident from the waiver contemplated under Clause 18(f), according to which:

> 18 (f) Notwithstanding anything contained in this RFRP, the CoC retains the right to waive any of the conditions set out in the RFRP, unless contrary to provisions of the IB Code and any such waiver of the conditions set out in this RFRP shall be the absolute decision of the CoC.

Clause 18(f) does not confer upon a Resolution Applicant any corresponding right to demand waiver; it merely confirms that the ‘absolute decision’ whether to waive a stipulated condition rests with the CoC. We accordingly hold that, although the Applicant’s withdrawal prevented its Plan from proceeding for consideration, it did not absolve the Applicant from the consequence expressly stipulated for such withdrawal, including invocation or forfeiture of the EMD where the CoC decided to exercise the right reserved under the RFRP

<u>Geopolitical Argument</u>

52. The Applicant attributes the withdrawal of its Resolution Plan to the prevailing geopolitical situation, particularly the ongoing conflict in West Asia, and the consequent need to reassess its investment strategy. This explanation, however, must be evaluated against the Applicant’s contemporaneous conduct. The Applicant submitted a revised Resolution Plan on 04.03.2026, provided Bank comfort letter dated 07.03.2026 of

Rs 5000 crore, and continued to participate in the resolution process until it was informed of the Challenge Process on 10.03.2026. It communicated its withdrawal only thereafter, on 12.03.2026.

53. This sequence of events does not suggest that the commercial basis of the Resolution Plan had become unviable before the proposed Challenge Process. On the contrary, it supports the Respondents' contention that the withdrawal was a considered commercial decision taken after the terms of the Challenge Process became known to the Applicant. The Applicant's assertion that no "binding intent" can be inferred from the submission of the comfort letter and compliance with other procedural requirements—on the ground that these were merely prerequisites for participation—is equally unpersuasive. These were not empty procedural formalities, but substantive and necessary steps undertaken to facilitate the Applicant's continued participation in the resolution process of the Corporate Debtor.

54. It is also relevant, as mentioned by the Respondent's Counsel during oral hearing, that during substantially the same period, the Applicant continued to pursue substantial investments in the renewable-energy sector, including securing a 300 MW wind-solar hybrid project through tariff-based competitive bidding and thereafter entering into a long-term power purchase arrangement[26]. Although every project carries a distinct commercial and risk profile, this contemporaneous conduct is difficult to reconcile with the Applicant's broad assertion that geopolitical developments had compelled it to "pause its participation" and substantially alter its investment strategy. At the least, it required the Applicant to establish, through contemporaneous records, a specific causal nexus between the geopolitical developments relied upon and the alleged loss of commercial viability of the present Resolution Plan.

[26] https://www.business-standard.com/markets/capital-market-news/cesc-awards-600-mw-wind-solar-hybrid-power-contracts-signs-25-year-ppas-126031800412_1.html

55. In the absence of any contemporaneous Board resolution, investment-committee assessment, financing withdrawal, revised feasibility analysis or other material demonstrating such a causal nexus, brought on record by the Applicant, the generalized reference to geopolitical uncertainty cannot constitute a sufficient justification for withdrawal. We are, therefore, unable to accept that the withdrawal resulted from any genuine, unforeseen and material circumstance; the surrounding facts instead indicate that it was a deliberate commercial decision taken by the Applicant after receipt of the Challenge Process document.

Regulation 36B(4) of the CIRP Regulation

56. The Applicant relies upon Regulation 36B (4) of the CIRP Regulations to contend that the CoC has impermissibly converted the EMD, which was refundable in nature, into a non-refundable deposit with a view to penalising the Applicant. According to the Applicant, such forfeiture is contrary to Regulation 36B (4). We are unable to accept this contention.

57. Regulation 36B (4) provides that an RFRP shall not require any non-refundable deposit for the submission of, or along with, a Resolution Plan. The provision is directed against a deposit which, by its very terms, is irrecoverable merely upon submission of the Resolution Plan. It does not prohibit the furnishing of an earnest money deposit or other security which is ordinarily refundable but may be forfeited upon the occurrence of an event expressly stipulated in the RFRP.

58. In ***Rakesh Ranjan v. Fanendra Harakchand Munot***[27], the NCLAT upheld a requirement for furnishing a bank guarantee along with the Resolution Plan, noting that the RFRP did not require any non-refundable deposit and that the bank guarantee was intended to ensure the seriousness of the Resolution Applicants. The decision, therefore,

[27] Rakesh Ranjan v. Fanendra Harakchand Munot, 2023 SCC OnLine NCLAT 2292

recognises that the mere requirement of an EMD or bank guarantee does not, without more, offend Regulation 36B (4).

59. In the present case, the RFRP, read as a whole, does not render the EMD non-refundable *ab initio*. Clause 15.5 expressly provides for the return of the EMD to an unsuccessful Resolution Applicant, whereas Clause 15.2 provides for its invocation or forfeiture upon the occurrence of specified events, including the withdrawal or attempted withdrawal of a submitted Resolution Plan. The EMD was thus in the nature of a conditionally refundable security intended to ensure serious and committed participation in the time-bound CIRP. The circumstance that it becomes liable to forfeiture upon the occurrence of a stipulated event does not retrospectively alter its original character or convert it into a "non-refundable deposit" prohibited by Regulation 36B (4).

60. The Applicant's reliance upon Clause 15.5 is also misplaced. That clause governs the return of the EMD to an unsuccessful Resolution Applicant, namely, an applicant whose Resolution Plan remains available for consideration under the prescribed process but is ultimately not selected or approved. A Resolution Applicant which voluntarily withdraws its Plan and thereby removes it from consideration does not stand on the same footing. Clause 15.5 cannot, therefore, be invoked to neutralise the distinct consequence expressly stipulated in Clause 15.2 for withdrawal or attempted withdrawal of a submitted Resolution Plan.

61. The decision in ***S. Hari Karthik v. Jayaram Chowdhary***[28], does not advance the Applicant's case. In that matter, the RFRP permitted forfeiture of the EMD where the Resolution Applicant had made a false or misleading representation. The Resolution Applicant was subsequently found ineligible under Section 29A, but there was no material establishing that he had made any false or misleading representation or had deliberately attempted to derail the CIRP. The NCLAT accordingly

[28] 2023 SCC OnLine NCLAT 471

directed refund of the EMD because the contractually stipulated event of forfeiture had not been established. The decision does not hold that an EMD furnished with a Resolution Plan is incapable of forfeiture; rather, it affirms that forfeiture must be founded upon an event expressly contemplated by the governing process document and proved on the facts. The decision is therefore distinguishable.

62. In the present case, Clause 15.2 of RFRP expressly identifies withdrawal or attempted withdrawal of the Resolution Plan as an event of forfeiture, and the Applicant admittedly communicated its withdrawal on 12.03.2026. We accordingly hold that the EMD does not cause any offence to Regulation 36B (4) merely because it became liable to invocation or forfeiture upon the occurrence of a stipulated event.

<u>Forfeiture of EMD: Whether unjust enrichment?</u>

63. We now come to the Applicant's contention that the invocation and forfeiture of the entire EMD of Rs 20 crore is contrary to the IBC, the CIRP Regulations, the terms of the RFRP and Section 74 of the Indian Contract Act, 1872. This requires us to consider whether proof of actual loss or damage is a prerequisite to forfeiture and whether, in the facts of the present case, such forfeiture operates as a legitimate commercial safeguard or as an arbitrary, disproportionate and penal imposition resulting in unjust enrichment. It is in this context that the applicability of, and the distinctions between, the authorities relied upon by the parties must be examined.

64. The Applicant has strongly relied upon the case of ***Kailash Nath Associates***[29] where the Hon'ble Supreme Court had held that Section 74 of the Contract Act permits only reasonable compensation not exceeding the amount stipulated in the contract. Loss or damage resulting from the breach is a necessary foundation for such compensation. Where the loss is capable of proof, such proof cannot be dispensed with; where, however,

[29] Kailash Nath Associates v. Delhi Development Authority, (2015) 4 SCC 136, Section 74

the nature of the loss makes precise proof difficult or impossible, the Court may award reasonable compensation with reference to the stipulated amount, provided that the amount represents a genuine pre-estimate and is not penal.

65. However, these principles must be applied having regard to the distinctive character of the CIRP, which is a time-bound and creditor-driven process. The prejudice caused by the withdrawal of a Resolution Plan may not be confined to readily quantifiable expenditure. Depending upon the stage and circumstances of withdrawal, it may include disruption of negotiations, impairment of the competitive process, duplication of deliberations, loss of time and the expenditure of additional professional and institutional resources. Such consequences, particularly where withdrawal occurs immediately before a scheduled Challenge Process, are real, even if they cannot be precisely quantified.

66. The amount of Rs 20 crore was stipulated in advance under the RFRP as process security, and was neither determined nor enhanced after the alleged default. Its quantum must be viewed in the context of the scale of the proposed resolution, including the Applicant's own comfort letter reflecting funding arrangements of up to Rs 5,000 crore, and cannot be regarded as manifestly disproportionate thereto. The prejudice resulting from withdrawal immediately before commencement of the Challenge Process—through loss of competition, possible impairment of value discovery, disruption of the process and the need for its recalibration—is inherently incapable of precise monetary computation.

67. Although the Bank Guarantee acknowledged the right of invocation by the RP/CoC "either in part or in full," that expression merely enabled partial invocation where the circumstances so warranted and did not oblige the RP/CoC to reduce the agreed consequence upon occurrence of an express event of forfeiture. The CoC, after being apprised of the withdrawal and the stage of the CIRP, resolved to invoke the entire EMD

of Rs 20 crore. Having regard to the nature and timing of the breach, the commercial scale of the proposal and the difficulty of quantifying the resulting prejudice, we find that forfeiture of the stipulated amount constitutes a reasonable enforcement of the agreed process-security mechanism and cannot be characterised as penal, manifestly excessive or resulting in unjust enrichment.

68. The authorities relied upon by the Applicant do not suggest any different result.

- In ***Bright Steel Processors v. Lohaa Ispaat Ltd***., the governing terms provided that the deposit would be returned unless the Resolution Plan was finalised by the CoC. Since the applicant withdrew before approval and there was no express contractual provision authorising forfeiture at that stage, refund was directed.
- In ***S. Hari Karthik v. Jayaram Chowdhary***, forfeiture was permissible upon a false or misleading representation, but no material was produced to establish the occurrence of that stipulated event.

These decisions affirm that forfeiture must be supported by the governing process document and by proof of the specified contingency. In the present case, by contrast, Clause 15.2 expressly makes withdrawal or attempted withdrawal an event of forfeiture, and the occurrence of that event is not in dispute.

69. The Applicant also cited ***Sudip Bhattacharya v. Ocean Sparkle Ltd.*** decided by NCLT Mumbai. That decision however was stayed by Hon'ble NCLAT[30] and was eventually settled[31] between the parties without laying any principle of law on the matter. In any event, that case arose from a cancelled e-auction sale process in liquidation and not from the withdrawal of a Resolution Plan during CIRP. Its factual and regulatory setting is therefore materially different.

[30] In Company Appeal (AT) (Insolvency) No. 251 of 2021 dated 31.3.2021
[31] Company Appeals (AT) (Ins.) Nos. 249–251 of 2021

70. In ***Godrej Projects***[32], the Hon'ble Supreme Court examined a consumer real-estate agreement which permitted forfeiture of 20% of the basic sale price and contained materially unequal and one-sided reciprocal obligations. The Court sustained forfeiture only to the extent of 10%. Although that consumer-law setting and the inequality of bargaining power distinguish the case from an RFRP accepted by a commercially sophisticated Resolution Applicant, the broader requirement that forfeiture must remain reasonable and must not operate as a penalty continues to be relevant. Applying that requirement here, and having regard to the scale of proposal, express terms of the RFRP and the nature and timing of the prejudice caused to the CIRP, the forfeiture of Rs 20 crore has not been shown to be unconscionable or manifestly disproportionate.

71. We therefore conclude that the Applicant's deliberate withdrawal, in breach of the RFRP, caused legally cognisable prejudice to the integrity and orderly conduct of the CIRP, the precise monetary consequences of which were inherently difficult to quantify. The forfeiture is referrable to an expressly stipulated contingency and bears a reasonable relationship to the commercial object of the EMD and the prejudice caused. It cannot, in the circumstances of the present case, be characterised as penal, arbitrary or productive of unjust enrichment.

<u>Applicant's Proposed Resolution Plan: Whether a Concluded Contract</u>

72. There is another aspect of the controversy that requires consideration. The Applicant has strenuously sought to bring the forfeiture of the EMD within the ambit of Section 74 of the Contract Act. In our considered view, however, prior to the approval of the Applicant's Resolution Plan by the CoC, no concluded contract for the resolution or acquisition of the Corporate Debtor had come into existence. Until such approval, the Plan

[32] Godrej Projects Development Ltd. v. Anil Karlekar, (2025) 4 SCC 259

remained a commercial proposal capable of being considered, negotiated or rejected by the CoC.

73. It does not follow, however, that the Applicant was absolved of every binding obligation arising from its participation in the resolution process. The RFRP, the submission of the Plan in accordance with its terms, and the furnishing and acceptance of the EMD bank guarantee together constituted a distinct and binding arrangement governing the Applicant's participation in that process. Under this arrangement, the Applicant, through the 'Covering Letter for Submission of Resolution Plan'[33], undertook not to withdraw, or attempt to withdraw, its Plan during the stipulated period and agreed that the EMD could be invoked upon the occurrence of such a contingency.

74. The Applicant unequivocally undertook as follows:

> "We hereby unconditionally and irrevocably agree and accept the terms of the RFRP and that the decision made by the CoC, the Resolution Professional and/or the Adjudicating Authority in respect of any matter with respect to, or arising out of, the RFRP and the Resolution Plan Process shall be binding on us. We hereby expressly waive any and all claims in respect of the Resolution Plan Process."

The breach alleged, therefore, is not of a contract embodied in an approved Resolution Plan, but of an independently binding undertaking intended to secure the integrity and seriousness of the resolution process. This distinction accords with the principle recognised in ***NHAI v. Ganga Enterprises***[34] that the absence of a concluded principal contract does not render a separately accepted bid-security undertaking unenforceable. The Hon'ble Supreme Court held as follows:

> *"There is no term in the contract which is contrary to the provisions of the Indian Contract Act. The Indian Contract Act merely provides that a person can withdraw his offer before its*

[33] Page 151-153 of the RP's Counter-Reply
[34] (2003) 7 SCC 410 (Para 9)

acceptance. But withdrawal of an offer, before it is accepted, is a completely different aspect from forfeiture of earnest/security money which has been given for a particular purpose. A person may have a right to withdraw his offer but if he has made his offer on a condition that some earnest money will be forfeited for not entering into contract or if some act is not performed, then even though he may have a right to withdraw his offer, he has no right to claim that the earnest/security be returned to him. Forfeiture of such earnest/security, in no way, affects any statutory right under the Indian Contract Act. Such earnest/security is given and taken to ensure that a contract comes into existence. It would be an anomalous situation that a person who, by his own conduct, precludes the coming into existence of the contract is then given advantage or benefit of his own wrong by not allowing forfeiture. It must be remembered that, particularly in government contracts, such a term is always included in order to ensure that only a genuine party makes a bid. If such a term was not there even a person who does not have the capacity or a person who has no intention of entering into the contract will make a bid. The whole purpose of such a clause i.e. to see that only genuine bids are received would be lost if forfeiture was not permitted."

The ratio laid down in the above part of the SC judgment applies to the present case also, where although the Applicant's Resolution Plan remained a commercial proposal which had not yet been approved by the CoC, its obligations under the RFRP and the accompanying process-security arrangement stood on a distinct footing.

75. By submitting the Resolution Plan, accepting the RFRP and furnishing the EMD Bank Guarantee, the Applicant undertook not to withdraw the Plan during the stipulated period and accepted that withdrawal or attempted withdrawal before CoC approval would attract the consequence prescribed in Clause 15.2. Therefore, even assuming that the Applicant could withdraw its unaccepted Resolution Plan, such withdrawal did not carry with it a corresponding right to demand return of the EMD. The forfeiture is not founded upon breach of a contract

embodied in an approved Resolution Plan, but upon the occurrence of the contingency expressly secured under the independently binding process arrangement.

76. This conclusion also finds support from ***Westcoast Infraprojects***[35], wherein the Hon'ble NCLAT held that where a process document is framed pursuant to powers conferred by the insolvency regulations, its terms are binding upon a bidder who participates after unconditionally accepting them; and where those terms expressly provide for forfeiture upon default, the authority conducting the process is not required first to institute separate proceedings for recovery of damages under Section 74 of the Contract Act.

77. Although the said decision arose from an e-auction under the Liquidation Process Regulations, its principle applies to the present case to the limited extent that the Applicant, a commercially sophisticated entity, accepted the RFRP, furnished the EMD and submitted its Resolution Plan with full knowledge of Clauses 9(g) and 15.2. Having thereafter triggered the stipulated consequence by withdrawing its Plan, the Applicant cannot contend that forfeiture was unavailable in the absence of a separate suit or prior adjudication of damages. The decision does not, however, exclude scrutiny as to whether the stipulated event occurred or whether the action was illegal or manifestly arbitrary; those questions have already been considered independently in the preceding paras.

78. Additionally, having regard to the autonomous character of the bank guarantee, it could be invoked upon the occurrence of the contingency specified in the RFRP. At the stage of invocation, Section 74 of the Contract Act does not require the guarantor to enquire into, much less adjudicate upon, the actual loss suffered under the underlying arrangement.

[35] Westcoast Infraprojects (P) Ltd. v. Ram Chandra Dallaram Choudhary, 2023 SCC OnLine NCLAT 223

Commercial Wisdom of CoC

79. It has been argued by the Applicant that CoC has mechanically invoked the forfeiture clause without properly exercising its commercial wisdom or considering the fact that the Resolution Plan had not even been placed before it for consideration or voting, and therefore the withdrawal could not have caused any actual loss or disruption to the CIRP.

80. It is trite that the CoC's decision to invoke and forfeit the EMD is not wholly immune from judicial scrutiny merely because it is described as an exercise of commercial wisdom. However, this Tribunal may examine whether the decision was taken within the framework of the IBC, the CIRP Regulations and the RFRP, and as held in ***Lamba Exports***[36], where it suffers from any "*statutory illegality or a jurisdictional infirmity, the matter would naturally be considered in accordance with law*".

81. At the same time, once the decision is shown to have been taken after due deliberation, for considerations relevant to the conduct of the CIRP, the Tribunal cannot substitute its own assessment of the commercial consequences of the withdrawal of its Resolution Plan by the Applicant, for that of the CoC. As held by the Apex Court in ***Pratap Technocrats***[37] that the "*jurisdiction of the adjudicating authority and the appellate authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in its commercial wisdom. Nor is there a residual equity-based jurisdiction in the adjudicating authority or the appellate authority to interfere in this decision, so long as it is otherwise in conformity with the provisions of IBC and the Regulations under the enactment.*"

82. The minutes[38] of the 14th CoC meeting indicate that the Applicant's withdrawal and its communications stating reasons for such withdrawal

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[36] Lamba Exports (P) Ltd. v. Dhir Global Industries (P) Ltd., 2026 SCC OnLine SC 459
[37] Pratap Technocrats (P) Ltd. v. Reliance Infratel Ltd. (Monitoring Committee), (2021) 10 SCC 623 Para 44
[38] Page 158 to 163 of the RP's Counter-Reply

were placed before the CoC, which considered the stage of the process, the impending Challenge Process and the consequences for stakeholders before resolving to invoke the EMD. Withdrawal by a Resolution Applicant immediately before the Challenge Process was capable of diminishing 'competitive tension' and value discovery, besides requiring further deliberations and recalibration of the process, as rightly stated by the CoC and the RP. Such prejudice is not confined to demonstrable monetary expenditure. The continued participation of other PRAs may have enabled the CIRP to proceed, but it does not establish that the Applicant's withdrawal caused no disruption or prejudice whatsoever.

83. The objections attributed to Phoenix ARC Limited[39] may demonstrate disagreement among creditors regarding aspects of the process, but they do not, without more, establish that the majority decision of the CoC was arbitrary or unrelated to legitimate commercial considerations. In the absence of any material showing that the CoC disregarded relevant facts, acted for an extraneous purpose or exercised a power unavailable under the RFRP, its assessment of the prejudice caused to the CIRP does not warrant interference by this Authority. We therefore find no ground to characterise the decision as mechanical or vitiated by non-application of mind.

Natural Justice & Waiver

84. Yet another grievance of the Applicant is that it was denied an opportunity to explain its position to the CoC before adverse consequences were proposed, and that the RP's failure to place its explanation before the CoC violated the principles of natural justice. As another limb of its challenge, the Applicant also relies on Clause 18(f) of the RFRP, which, according to it, empowers the CoC to waive the applicable conditions, including its right to invoke the EMD.

85. The material on record indicates that the Applicant's withdrawal

[39] In its Letter dated 02.04.2026 @ Page 25 of the Applicant's Rejoinders

communications and the reasons stated therein were placed before the CoC at its 14th meeting on 13.03.2026, before the decision to invoke and forfeit the EMD was taken. The Applicant had therefore communicated its explanation in writing, and the substance of its case was available to the CoC for consideration. The requirements of natural justice are context-specific and do not invariably mandate a separate oral hearing, particularly where the affected party has already stated its position and has prior notice of the contractual consequence that may follow.

86. Clause 15.2 of the RFRP expressly authorised invocation or forfeiture of the EMD upon withdrawal or attempted withdrawal of a Resolution Plan “without making any reference or notice” to the Resolution Applicant. Having voluntarily accepted the RFRP and furnished the Bank Guarantee with knowledge of this stipulation, the Applicant cannot claim an independent right to a further show-cause notice before invocation. In the absence of any demonstrated prejudice arising from the want of an additional hearing, the decision cannot be invalidated on the ground of violation of natural justice.

87. Clause 18(f), which enables the CoC to waive compliance with a condition or consequence under the RFRP, indeed confers a discretion upon the CoC, but does not create a corresponding right in favour of the Applicant to demand waiver. The CoC considered the withdrawal and resolved to enforce the stipulated consequence rather than waive it. Unless that decision is shown to be mala fide, discriminatory, based on extraneous considerations or otherwise manifestly arbitrary, the Tribunal cannot compel the CoC to exercise its discretionary power of waiver in a particular manner. No such infirmity has been established in the present case.

Bank Guarantee Invocation

88. So far as the Bank Guarantee in question is concerned, it is an independent, autonomous and unconditional undertaking by the issuing

bank. Its invocation can ordinarily be restrained only upon proof of egregious fraud affecting the foundation of the guarantee or irretrievable injustice of an exceptional nature. Neither ground has been pleaded or established. The order dated 18.03.2026, providing that the invocation would remain subject to the outcome of this application, did not restrain invocation or create any independent right to refund; it merely preserved the Applicant's entitlement to restitution in the event that the forfeiture was ultimately found unlawful.

Conclusion

89. In view of the foregoing discussion, we hold that the Applicant withdrew its Resolution Plan in breach of the binding process obligations undertaken by it under the RFRP, thereby attracting the consequence stipulated in Clause 15.2. The CoC's decision to invoke the Bank Guarantee and forfeit the EMD of Rs 20 crore is valid and cannot, in the facts of the present case, be characterised as arbitrary, penal or manifestly disproportionate. Consequently, no ground exists to restrain the encashment of the Bank Guarantee or to grant refund or any other consequential relief. The prayers sought in the Application are accordingly rejected.

Accordingly, the present application No. IA(IBC)/494/2026 is dismissed.

-Sd-

(SANJAY PURI)
MEMBER (TECHNICAL)

-Sd-

(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

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