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

ITEM No.309
IA/487(AHM)2026
in
C.P.(IB)/195(AHM)2025

Under Section 60(5) IBC r/w Rule 11 NCLT

IN THE MATTER OF:

Keshav Khaneja RP Gensol Engineering Limited **.....Applicant**
V/s
Gujarat Urja Vikas Nigam Limited & Anr **.....Respondents**

Order delivered on: 07/09/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

O R D E R
(Hybrid Mode)

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

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

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

IA No. 487 of 2026
IN
C.P. (IB) No. 195/AHM/2025

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

In the matter of:

Indian Renewable Energy Development Agency Limited (IREDA)

... Petitioner/Financial Creditor

VERSUS

Gensol Engineering Limited

... Respondent/Corporate Debtor

MEMO OF PARTIES

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

... **Applicant**

VERSUS

1. **Gujarat Urja Vikas Nigam Limited**
   Sardar Patel Vidyut Bhavan,
   Race Course, Vadodara-390007, Gujarat.

... **Respondent No.1**

2. **Indian Renewable Energy Development**

Agency Limited (IREDA)
India Habitat Centre, East Court, Core 4'A',
1 st Floor, Lodhi Road, New Delhi - 110003.

... **Respondent No.2**

Order delivered on: 07.09.2026

C O R A M:

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

A P P E A R A N C E:

For the Applicant: Mr. Monark Gehlot, Advocate a.w.
Mr. Aditya Bihani, Advocate.

For the Respondents: Mr. Maulik Nanavati, Advocate. a.w.
Ms. Manvi Damle, Advocate for R-1
Ms. Khushboo Sharma, Adv. for R-2

O R D E R
(Per Bench)

1. This Interlocutory Application has been filed on **25.03.2026** by Mr. Keshav Khaneja, Resolution Professional of Gensol Engineering Limited, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code"), seeking directions concerning termination of the BESPA and encashment of the Performance Bank Guarantee ("PBG") with following prayers: -

a. Direct Respondent No.1 to forthwith release and return the Performance Bank Guarantee bearing No.

0024NDDG00089125 dated 25.06.2024 in favour of the Corporate Debtor, without any further delay or encashment thereof; and

b. *In the meantime, direct the Respondent No. 1 to refrain from invoking, encashing, or in any manner acting upon the Performance Bank Guarantee bearing No. 0024NDDG00089125 dated June 25, 2024, during the pendency of the present proceedings before this Hon'ble Tribunal, and to take all necessary steps to facilitate the refund of the said guarantee to the Corporate Debtor; and*

c. *Pass an order declaring the purported termination dated July 15, 2025 of the Letter of Intent dated March 14, 2024 and the Battery Energy Storage Purchase Agreement dated June 24, 2024 as illegal, arbitrary, null, void, and without any effect in law, the same being contrary to the mandatory provisions of the BESPA.*

d. *Pass such appropriate directions and orders as this Adjudicating Authority may deem fit and appropriate in the given facts and circumstances of the case.*

2. The Applicant has placed the facts through the Interlocutory Application as well as through Addl. Affidavit and the documents annexed thereto in the following manner: -

2.1 It is submitted that GUVNL issued RfS No. GUVNL/BESS/Phase-II dated 29.11.2023 for procurement of Battery Energy Storage Systems. The Corporate Debtor submitted its bid pursuant to RfS No. GUVNL/BESS/Phase-II dated 29.11.2023 for setting up a 70 MW/140 MWh Battery Energy Storage

Project at 400 kV Bhachunda Substation, Gujarat. A copy of the RfS has been annexed as **Exhibit-1**.

2.2 In terms of the RfS, a erformance Bank Guarantee dated 23.02.2024 bearing No. 0024NDDG00089125 for Rs. 5,18,00,000 was furnished in favour of GUVNL. GUVNL thereafter issued the Letter of Intent dated 14.03.2024 for development of the 70 MW/140 MWh Project at the 400 kV GETCO Bhachunda GIS Sub Station premises in Gujarat. The Battery Energy Storage Purchase Agreement BESPA was executed between the Corporate Debtor and GUVNL on 24.06.2024. The Letter of Intent and BESPA have been annexed as Exhibit-3 and Exhibit-4, respectively.

2.3 Pursuant to the BESPA, the Corporate Debtor furnished a Performance Bank Guarantee of Rs. 12,95,00,000/- in favour of GUVNL. The Performance Bank Guarantee dated 25.06.2024 has been annexed as **Exhibit-5**. A Right to Use Agreement dated 21.10.2024 was also executed in relation to the premises for the Project.

2.4 The Applicant states that SEBI passed an interim order dated 15.04.2025 during its investigation concerning the Corporate Debtor and thereafter the Corporate Debtor was admitted into CIRP on 13.06.2025. The management of the affairs of the Corporate Debtor thereafter vested with the Applicant as Resolution Professional.

2.5 The Applicant states that GUVNL purportedly terminated the BESPA by letter dated 15.07.2025. The Applicant states that neither the Corporate Debtor nor the Applicant received the said termination letter or any prior correspondence relating to the alleged termination. The Applicant states that knowledge of the alleged termination was received only during the meeting held on 20.02.2026.

2.6 The Applicant states that GUVNL invoked the Performance Bank Guarantee on 02.08.2025, although the Scheduled Commissioning Date under the BESPA was 26.12.2025. The Applicant therefore contends that the invocation preceded the Scheduled Commissioning Date.

2.7 The Applicant further contends that Article 3.2.1 of the BESPA required written notice of at least 30 days before encashment of the Performance Bank Guarantee and termination for non-fulfilment of the Conditions Subsequent. Clause 23.4 of the RfS is also relied upon in this regard.

2.8 The Applicant further relies upon Article 13.3 of the BESPA and states that, in case of an alleged Event of Default, GUVNL was required to issue a Preliminary Default Notice and thereafter observe a Consultation Period of at least 90 days before termination.

2.9 The Applicant states that no Notice of Default,

consultation notice, cure notice, notice regarding non-fulfilment of Conditions Subsequent or Financial Closure, or 30-day notice was received by the Corporate Debtor or the Applicant before the alleged termination and invocation of the Performance Bank Guarantee.

2.10 The Applicant states that he became aware of the alleged termination only during the meeting held on 20.02.2026. Thereafter, by communication dated 23.02.2026, the Applicant requested GUVNL to provide the relevant notices, correspondence, consultation records, termination letter and other documents relating to the BESPA.

2.11 The Applicant states that Respondent No. 1, in its Affidavit-in-Reply dated 02.05.2026, disclosed certain alleged notices dated 12.06.2025, 21.06.2025, 27.06.2025 and 17.07.2025. The Applicant states that these documents were not received before their disclosure in the proceedings.

2.12 The Applicant states that the alleged notices were addressed to Mr. Anmol Singh Jaggi, the erstwhile director, and were sent to the registered office address. The Applicant contends that the notices were not addressed to the Resolution Professional after commencement of CIRP on 13.06.2025 and were not served at the address stipulated under the BESPA.

2.13 The Applicant relies upon the fact that the Performance Bank Guarantee was part of the assets of the Corporate Debtor and submits that its encashment reduced the value available for the CIRP. The Applicant further submits that the BESPA was commercially connected with the Corporate Debtor and its continuation was relevant to value maximisation and the CIRP.

2.14 The Applicant relies upon Gujarat Urja Vikas Nigam Limited v. Amit Gupta & Ors., (2021) 7 SCC 209, concerning termination of a contract during CIRP where the contract was stated to be central to the Corporate Debtor's survival and the CIRP. The Applicant also relies upon Tata Consultancy Services Limited v. Vishal Ghisulal Jain, (2022) 2 SCC 583, stated to have reiterated the relevant principles.

2.15 By the Additional Affidavit, the Applicant placed on record further correspondence pursuant to the directions of this Tribunal dated 30.03.2026. Annexure-1 is the Applicant's email dated 23.02.2026 requesting GUVNL to provide the correspondence and notices relating to the termination and invocation of the Performance Bank Guarantee.

2.16 Annexure-2 is GUVNL's email dated 09.03.2026 stating that communications dated 12.06.2025, 21.06.2025, 27.06.2025 and 17.07.2025 had been issued regarding Financial Closure. Annexure-3 is

GUVNL's letter dated 24.03.2026 addressed to IREDA stating that the Financial Closure requirements were not fulfilled and that action had been taken under the BESPA and RfS.

2.17 In view of the above facts, the Applicant has sought directions for release and return of Performance Bank Guarantee No. 0024NDDG00089125 dated 25.06.2024, restraint against its invocation, encashment or further action, and, by the Amended I.A., a declaration that the purported termination dated 15.07.2025 of the Letter of Intent dated 14.03.2024 and BESPA dated 24.06.2024 is illegal, null and void and has no effect in law, along with such other directions as this Tribunal may deem appropriate.

3. That on issuance of the notice in the Interlocutory Application, the Respondent appeared and filed its reply on 26.05.2026 vide inward diary no. D-3929 as well as Additional Reply on 13.08.2026 vide inward diary no. D-6856 denying various averments made in the Interlocutory Application. The contentions of the Respondent are mentioned hereunder: -

3.1 The Respondent states that the present I.A. is based on the Applicant's challenge to termination of the Battery Energy Storage Purchase Agreement (BESPA)

and to invocation and encashment of the Performance Bank Guarantee (PBG). The Respondent states that GUVNL entered into the BESPA with Gensol Engineering Limited on 26.06.2024.

3.2 The Respondent states that under the BESPA the contractor was required to establish an energy storage facility for making Battery Energy Storage System charging and discharging available to GUVNL on an on-demand basis. The work was to be completed within 18 months from 26.06.2024.

3.3 The Respondent states that the contract required financial closure within 12 months from 26.06.2024, and the documents for financial closure were required to be submitted at least 14 days before 26.06.2025. Clause 3.2 provided consequences for non-fulfilment, including notice of 30 days and termination.

3.4 The Respondent states that on 12.06.2025 it issued a communication requiring submission of the financial closure documents by 19.06.2025 and informed the contractor that delay in submission could affect verification. The said letter and accompanying email are relied upon as Annexure R-1 and Annexure R-2.

3.5 The Respondent states that the contractor did not submit the required documents or respond to the communication dated 12.06.2025. A further reminder dated 21.06.2025 was issued requiring submission of

the documents and informing the contractor that action would follow under the BESPA. The letter is Annexure R-3 and its delivery record with email is Annexure R-4 Colly.

3.6 The Respondent states that financial closure was not achieved by 26.06.2025. On 27.06.2025, GUVNL issued a 30-day notice under Clause 3.2, permitting the contractor to seek extension or comply with the financial closure requirement, failing which the BESPA would be terminated and the PBG would be encashed.

3.7 The Respondent states that the letter dated 27.06.2025 was sent to the Corporate Debtor at its stated addresses and was also communicated by email. The letter is Annexure R-5 and the tracking report with the email is Annexure R-6 Colly. The Respondent states that no compliance or extension request was received.

3.8 The Respondent states that on 17.07.2025 a further reminder was issued during the notice period, recording that financial closure documents had not been submitted and that the notice period was continuing. The communication is Annexure R-7 and its delivery record with email is Annexure R-8 Colly.

3.9 The Respondent states that the contractor did not submit the required documents during the 30-day

notice period and did not seek extension. According to the Respondent, the contract therefore came to an end on expiry of the notice period, and the contractual consequence of PBG encashment became available to GUVNL.

3.10 The Respondent states that by letter dated 02.08.2025 it invoked the PBG issued by ICICI Bank for **Rs.12,95,00,000/-** and requested credit of the amount to GUVNL's bank account. The said letter is Annexure R-9. The Respondent therefore disputes the prayer for refund of the encashed PBG.

3.11 The Respondent contends that Article 13.3 of the BESPA applies where termination is based on an Event of Default under Article 13. According to the Respondent, the present case arose from non-fulfilment of the conditions under Article 3.1, and Article 3.2 governed the consequence; therefore, the Article 13.3 procedure was not applicable.

3.12 The Respondent further contends that the communications were addressed to Gensol Engineering Limited and not to its erstwhile management in their individual capacity. It states that the communications were delivered to the Corporate Debtor and that the change in management on commencement of CIRP did not invalidate communications already made to the Corporate Debtor.

3.13 The Respondent relies upon Section 25 of the IBC and contends that, after appointment, the Resolution Professional was required to take custody and control of the Corporate Debtor's records and correspondence and to examine its contractual affairs. It states that no impediment to access to such records has been pleaded or shown.

3.14 The Respondent contends that termination was caused by non-compliance with the contractual financial closure requirement and was not connected with commencement of CIRP. It relies upon the decision in I.A. No.21 of 2026, *Mr. Keshav Khaneja v. HEML Green Private Limited*, and refers to *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta*, (2021) 7 SCC 209, concerning the limits of interference with contractual termination during CIRP.

3.15 The Respondent also relies upon *Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain*, (2022) 2 SCC 583; *BMW Financial Services (P) Ltd. v. S.K. Wheels (P) Ltd.*, 2019 SCC OnLine NCLT 28273; *Bharat Aluminium v. JP Engineers*, Company Appeal (AT) (Ins.) No.759 of 2020; *Indian Overseas Bank v. Arvind Kumar*, 2020 SCC OnLine NCLAT 666; and *Vijay Kumar Garg v. Power Grid Corporation of India Ltd.*, (2024) 243 Comp Cas 619.

3.16 The Respondent states that invocation of the PBG is not barred by Section 14 of the IBC because a

performance bank guarantee is not security interest in the Corporate Debtor's assets and operates between the bank and beneficiary. Relying also upon *Nitin Hashmukhlal Parikh v. Madhya Gujarat Vij Company Ltd.*, I.A. No.340 of 2017, and the principles referred to from *SBI v. V. Ramakrishnan* and *State Sugar Corporation*, the Respondent seeks dismissal of the I.A. with exemplary cost.

4. The Applicant has also filed an affidavit in rejoinder to reply of the Respondent, on 11.06.2026 vide Inward No. D-4629, as well as Rejoinder to Addl. reply of the Respondent on 27.08.2026 vide Inward No. D-7239 denying contentions raised by the Respondent in its reply and Addl. reply. The contents of both the Rejoinders are reproduced as follows:

4.1 The Applicant states that the Corporate Debtor bid for 70 MW/140 MWh STU-connected Battery Energy Storage Projects under the RfS issued by GUVNL. GUVNL issued the LOI dated March 14, 2024 and the BESPA was executed on June 24, 2024. The PBG furnished was for Rs. 12,95,00,000/-.

4.2 The Applicant states that the Corporate Debtor was admitted into CIRP on June 13, 2025, moratorium under Section 14 of the Code was imposed, and

management vested with the Applicant. GUVNL alleges that the BESPA lapsed or terminated on July 15, 2025 after its notice dated June 27, 2025.

4.3 GUVNL invoked the PBG on August 02, 2025, before the Scheduled Commissioning Date of December 26, 2025. The Applicant states that he learnt of the alleged termination on February 20, 2026 and of encashment through ICICI Bank, and thereafter sought reversal and relevant documents. No separate Annexure is annexed with either Rejoinder; Exhibits 1 to 7 referred to are exhibits of the Application.

4.4 The Applicant submits that Article 13.3.1 of the BESPA required issuance of a GUVNL Preliminary Default Notice and Article 13.3.2 required a minimum ninety-day Consultation Period in case of default. The Applicant states that GUVNL did not comply with these contractual requirements.

4.5 The Applicant submits that Article 4.6.1 permits encashment of the PBG to the extent of liquidated damages for delay in commissioning beyond the SCoD. Since the PBG was invoked on August 02, 2025, before the SCoD of December 26, 2025, the Applicant contends that the contractual basis for such encashment had not arisen.

4.6 The Applicant submits that Clause 17.6 of the BESPA prescribed the mode and address for service of

notices. He states that the letters dated June 12, June 21, June 27 and July 17, 2025 were sent to the registered office addresses and marked for the attention of Mr. Anmol Singh Jaggi, instead of being served at the address stipulated in the BESPA.

4.7 The Applicant submits that from June 13, 2025 the erstwhile directors ceased to have authority to manage the Corporate Debtor and management vested with the Applicant. The communications were not served upon the Applicant and, according to him, therefore did not satisfy Article 3.2.1 of the BESPA or Clause 23.4 of the RfS.

4.8 The Applicant submits that the thirty-day notice under Article 3.2.1 could operate only upon valid service in the contractually stipulated manner. Since the notices were not validly served, the Applicant contends that the notice period did not commence, the alleged termination by efflux of time did not occur, and the consequential PBG invocation cannot be sustained.

4.9 The Applicant relies upon *Gujarat Urja Vikas Nigam Limited v. Amit Gupta and Ors.*, (2021) 7 SCC 209 and *Tata Consultancy Services Limited v. Vishal Ghisulal Jain*, (2022) 2 SCC 583. The Applicant also addresses the order in *Keshav Khaneja, Resolution Professional of Gensol Engineering Limited v. HMEL Green Energy Private Limited*, I.A. No. 21 of 2026 in C.P. (IB) No. 195

of 2025.

4.10 The Applicant submits that the HMEL order is distinguishable because about 70% of the contracted capacity in that matter had been commissioned, whereas in the present case the alleged termination and PBG invocation occurred before the SCoD. He further states that no pre-existing breach trail or notice to the Resolution Professional was established in the present case.

4.11 The Applicant submits that Section 25 of the Code imposes duties upon the Resolution Professional concerning the records and assets of the Corporate Debtor, but does not validate service by a third party contrary to the contractual mode and address. The Applicant states that the burden of proving valid service rests upon GUVNL.

4.12 The Applicant states that, when CIRP commenced, the offices of the Corporate Debtor were under seizure by the Directorate of Enforcement and were not accessible to him. He further states that neither the Corporate Debtor nor the Applicant received the letters dated June 12, June 21, June 27 and July 17, 2025 or the alleged termination letter dated July 15, 2025 before the filing of GUVNL's Affidavit-in-Reply dated May 02, 2026.

4.13 The Applicant submits that the order dated June 13,

2025 admitting the Corporate Debtor into CIRP was a public judicial order. He further refers to GUVNL's communications dated March 09 and March 24, 2026 and submits that GUVNL had the official e-mail and correspondence details but did not establish that the communications were copied or forwarded to the Applicant or any person connected with the CIRP.

4.14 In the Rejoinder to the Additional Reply, the Applicant submits that Article 3.2.1 itself required written notice of at least thirty days even if Article 3.2, instead of Article 13, was applicable. He further submits that Clause 17.6 governed service of notices under the BESPA and that GUVNL could not avoid this requirement by characterising the event as an automatic lapse.

4.15 The Applicant submits that GUVNL did not raise the distinction between Article 3.2 and Article 13 in its earlier Affidavit-in-Reply or correspondence. He further submits that PBG invocation depended upon valid termination, that the issue under Section 14 of the Code is not determinative in isolation, and that encashment of Rs. 12,95,00,000/- affects the asset pool and value maximisation during CIRP.

4.16 In view of the above, the Applicant submits that the termination of the BESPA was not effected in accordance with the agreed notice provisions and that the consequential invocation and encashment of the

PBG cannot be sustained. The Applicant has sought permission to amend the relief clause to seek setting aside of the BESPA termination, in addition to the reliefs already sought in the Application.

5. The Applicant has e-filed Written Submissions along-with judgments on 04.09.2026. The major contentions of the Applicant are as follows:

5.1 The Applicant sets out the chronology as follows: the LOI was executed on 14.03.2024 and the BESPA on 24.06.2024. The Right of Use Agreement was executed on 21.10.2024 and the Detailed Project Report was prepared and submitted in 10.2024. The PBG of Rs. 12,95,00,000 was furnished in favour of GUVNL.

5.2 The Applicant states that the contractual deadline for Financial Closure under Article 3.1 of the BESPA was 26.06.2025 and the SCOD was 26.12.2025. CIRP commenced on 13.06.2025. Thus, according to the Applicant, both contractual dates fell during CIRP and no default relating to Financial Closure or commissioning had occurred before commencement of CIRP.

5.3 The Applicant refers to the letters dated 12.06.2025, 21.06.2025, 27.06.2025 and 17.07.2025. It states that the first letter was admittedly undelivered and the remaining letters were issued after

commencement of CIRP. The Applicant states that GUVNL treated 17.07.2025 as the date of termination and 02.08.2025 as the date of PBG encashment.

5.4 The Applicant submits that Article 13.3 required a preliminary default notice followed by a 90-day consultation period. It states that GUVNL subsequently relied upon Article 3.2 and claimed automatic lapse for non-fulfilment of conditions subsequent. The Applicant submits that Article 3.2.1 itself required 30 days' written notice and Article 17.6 prescribed the mode and address for service.

5.5 The Applicant states that the alleged notices were sent to the earlier registered office and were not received by the Resolution Professional. It submits that Section 25 of the Code does not dispense with the contractual requirement of service under Article 17.6. It therefore submits that no valid notice period commenced and no valid termination or lapse could take effect on 17.07.2025.

5.6 The Applicant further submits that, even if valid service is assumed, termination during CIRP could not be permitted where the contract is central to the Corporate Debtor's survival and going concern status. It states that the BESPA concerned development, ownership and operation of the 70 MW/140 MWh Battery Energy Storage Project. The Applicant also states that it does not contend that Section 14 is a

blanket bar on PBG invocation.

5.7 The Applicant submits that the right to invoke the PBG under Article 3.2.1 depended upon a valid termination. It further refers to Article 4.6.1 concerning encashment towards liquidated damages for failure to commence supply from the SCOD. Since the SCOD was 26.12.2025 and the PBG was invoked on 02.08.2025, the Applicant submits that the invocation was made before the contractual commissioning date.

5.8 The Applicant distinguishes the HMEL Order relied upon by GUVNL. It submits that the BESPA concerned the Corporate Debtor's 70 MW/140 MWh project, that there was no pre-CIRP trail of contractual default, and that termination took place before the SCOD. It therefore submits that the factual circumstances relied upon in HMEL do not apply to the present case.

5.9 The Applicant relies upon *Gujarat Urja Vikas Nigam Limited v. Amit Gupta & Ors.*, (2021) 7 SCC 209. The Supreme Court held that where termination of a contract is connected with the insolvency of the Corporate Debtor and the contract is central to its survival, the NCLT may exercise jurisdiction under Section 60(5)(c) of the Code; such jurisdiction is not confined to matters prohibited by Section 14.

5.10 The Applicant also relies upon *Tata Consultancy Services Limited v. Vishal Ghisulal Jain (SK Wheels (P) Ltd., RP)*, (2022) 2 SCC 583, where the Supreme Court held that Section 60(5) cannot be used where termination is unrelated to insolvency and the conditions stated in *Gujarat Urja* are not satisfied. The Applicant also relies upon the Tribunal's order dated 09.03.2026 in *Keshav Khaneja, RP of Gensol Engineering Limited v. Maharashtra State Power Generation Company Limited*, IA No. 1405 of 2025 in CP(IB) No. 195 of 2025, where termination during CIRP was kept inoperative in the circumstances recorded therein.

5.11 In view of the above facts and submissions, the Applicant seeks allowance of the Amended Application and declaration that the termination of the LOI and BESPA and the invocation and encashment of the PBG are void and without effect in law. The Applicant further seeks release and refund of the PBG and such other orders as the Tribunal may deem fit.

6. The Respondent also e-filed Written Submissions along-with compilation of judgments on 05.09.2026. The contentions of the Respondent are as follows: -

6.1 The Respondent No. 1, Gujarat Urja Vikas Nigam Limited, states that the Applicant seeks setting aside of termination of the Battery Energy Storage Purchase

Agreement (BESPA) and return of the amount realised through Performance Bank Guarantee (PBG). It submits that both prayers are not maintainable under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

6.2 The Respondent No. 1 submits that termination of the BESPA arose from non-compliance with its terms and not from the insolvency of the Corporate Debtor. It states that the Applicant has not shown any nexus between termination and CIRP or that the BESPA was central to the operations or survival of the Corporate Debtor.

6.3 The BESPA commenced on 26.06.2024. Under Clauses 3.1(iv) and 3.1(v), the Corporate Debtor was required to submit the documents relating to the Conditions Subsequent and Financial Closure within the prescribed period, and the required documents were to be submitted on or before 12.06.2025.

6.4 The Respondent No. 1 states that the Corporate Debtor did not submit the required documents by 12.06.2025. Clause 3.2.1 permitted encashment of the PBG and termination of the BESPA by 30 days' written notice, subject to the stated exceptions. Notice was issued on 27.06.2025 and the BESPA ended on 26.07.2025.

6.5 The Respondent No. 1 further states that the PBG was

encashed on 02.08.2025. It relies on the correspondence between the parties to submit that the Corporate Debtor was repeatedly called upon to comply with its obligations and that the termination process did not refer to or depend upon CIRP.

6.6 The Respondent No. 1 submits that Clause 13.3 is not applicable because termination was not based on an event of default under that clause. According to the submission, termination followed non-completion of Financial Closure under Clause 3.2.1 and took effect after expiry of the prescribed notice period.

6.7 The Respondent No. 1 submits that the termination notice was served on the Corporate Debtor at its registered office and official email address. It states that the Resolution Professional, after taking control of the Corporate Debtor's records under Section 25 of the Code, was required to examine the records and correspondence relating to the BESPA.

6.8 The Respondent No. 1 states that the Applicant himself relied upon the Letter of Intent forming part of the same transaction. It submits that if the Letter of Intent could be traced from the Corporate Debtor's records, the subsequent correspondence and termination notice could also have been traced, and separate service on the Resolution Professional was not required.

6.9 In *Tata Consultancy Services Limited v. Vishal Ghisulal Jain, Resolution Professional, SK Wheels Private Limited,* (2022) 2 SCC 583, the Supreme Court held that Section 60(5) cannot be used for a contractual dispute having no nexus with insolvency. It further held that interference with termination is justified only where the contract is central to CIRP and its termination may cause corporate death.

6.10 In *Gujarat Urja Vikas Nigam Limited v. Amit Gupta & Ors.,* (2021) 7 SCC 209, the Supreme Court held that NCLT has jurisdiction over disputes arising solely from or relating to insolvency, but the required nexus must exist. Intervention was upheld because the PPA was terminated only due to insolvency and was the sole contract necessary for the Corporate Debtor's survival.

6.11 In *Mr. Keshav Khaneja v. HEML Green Energy Private Limited,* I.A. No. 21(AHM) 2026 in C.P. (IB) No. 195 of 2025, order dated 30.04.2026, this Tribunal held that the EPC contract was not central to the Corporate Debtor's operations or survival. The Corporate Debtor had other projects, the balance work was limited, and alternate contractors were engaged.

6.12 The Respondent No. 1 relies on the above decisions to submit that the BESPA does not satisfy the test of centrality. It states that the Applicant has not shown that the BESPA was the only or primary source of

revenue or that its termination would make the Corporate Debtor unable to continue as a going concern.

6.13 On the PBG, Respondent No. 1 submits that Section 14(1) of the Code does not prohibit invocation of a Performance Bank Guarantee. It relies on Section 3(31), which excludes a performance guarantee from the definition of security interest, and submits that the moratorium therefore does not prevent invocation of the PBG.

6.14 *In Indian Overseas Bank v. Arvind Kumar,* 2020 SCC OnLine NCLAT 666, Company Appeal (AT) (Insolvency) No. 558 of 2020, decided on 28.09.2020, the NCLAT held that a Performance Bank Guarantee is not covered by Section 14 and that its invocation cannot be stopped on that ground. The appeal was partly allowed concerning the margin money after invocation.

6.15 In *Vijay Kumar Garg (Liquidator of Lanco Vidarbha Thermal Power Ltd.) v. Power Grid Corporation of India Ltd. & Ors.,* (2024) 243 Comp Cas 619: 2023 SCC OnLine NCLAT 566, Company Appeal (AT) (CH) (Insolvency) No. 260 of 2023, decided on 01.09.2023, the NCLAT upheld invocation of performance bank guarantees where adverse progress of work was established.

6.16 Accordingly, Respondent No. 1 seeks rejection of the prayers for setting aside BESPA termination and for return of the PBG amount.

7. We have heard the Ld. Counsel for the Applicant, Ld. Counsel for the Respondent No.1 & 2 and perused the pleadings, documents, Replies, Additional Reply, Rejoinders, Written Submissions and compilations of judgments placed on record. We have also considered the contractual provisions relied upon by the parties.

8. The present proceedings under Section 60(5) of the Code concern the validity of termination of the BESPA during CIRP and the consequential invocation and encashment of the PBG for Rs.12,95,00,000/-. Both actions of the Respondent have been challenged by the Applicant.

9. The Respondent No.1 submits that termination was on account of non-fulfilment of Financial Closure under Article 3.2 and was independent of CIRP. It further submits that Article 13.3, relating to an Event of Default, was not applicable. The Applicant, however, disputes the

manner of termination and relies upon the notice and service requirements contained in the BESPA.

10. We find that Article 3.2.1 itself contemplated written notice before termination and encashment of the PBG for non-fulfilment of the Conditions Subsequent. Therefore, even if Article 13.3 is held inapplicable, the contractual requirements applicable under Article 3.2.1 and the prescribed mode of service under Clause 17.6 were required to be complied with.

11. The Respondent No.1 relies upon the communications dated 12.06.2025, 21.06.2025, 27.06.2025 and 17.07.2025 and their delivery records. The Applicant disputes receipt of these communications and states that the same were not served upon the Resolution Professional after commencement of CIRP on 13.06.2025.

12. The Respondent along with its Affidavit in Reply filed on 05.05.2026 has attached copy of letter dated 12.06.2025 along with e-mail sent by it to the contractor, a copy of letter dated 21.06.2025, a copy of tracking report showing delivery of letter dated 21.06.2025 along with email sent to

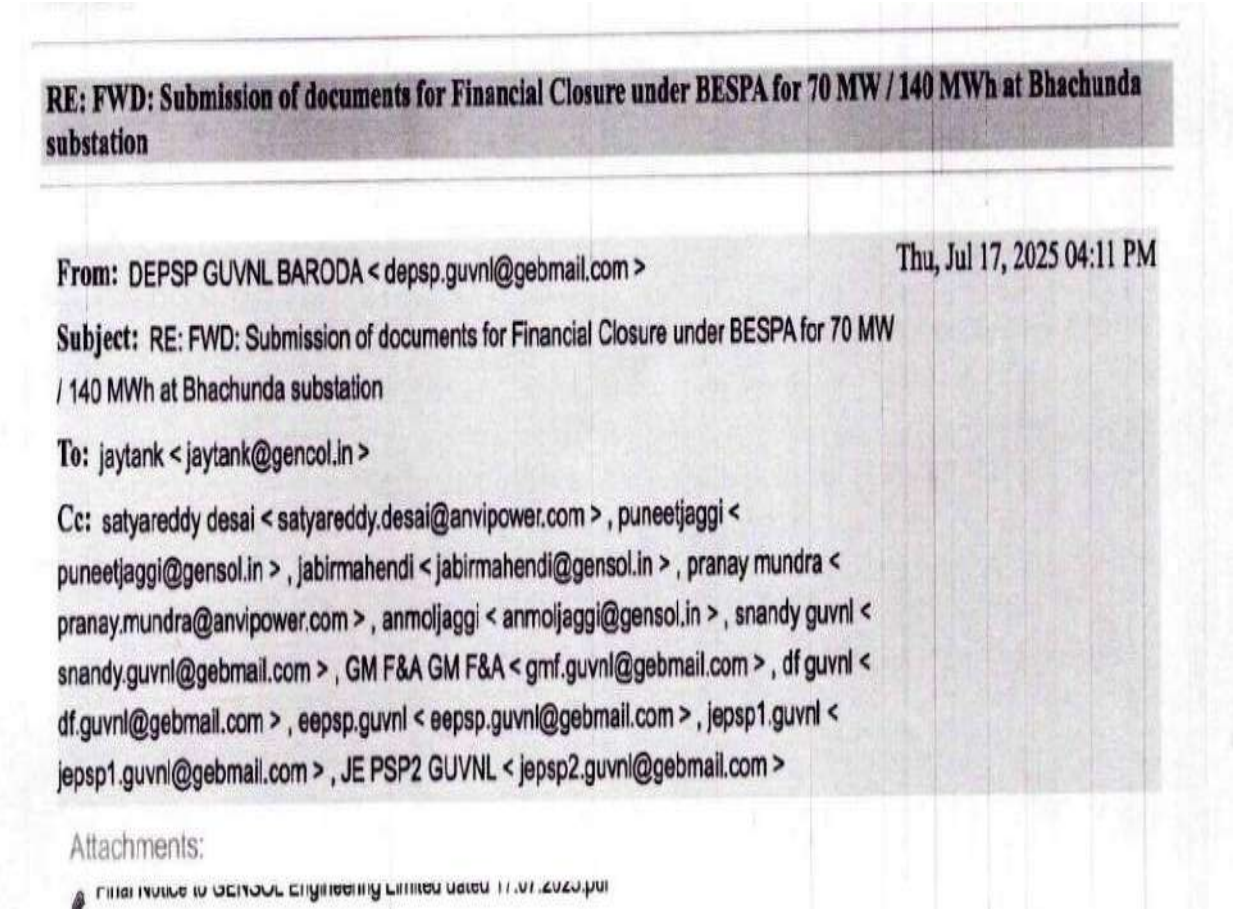
the contractor, a copy of letter dated 27.06.2025 sent by the Respondent, a copy of tracking report showing delivery of letter dated 27.06.2025 along with email sent to the contractor, a copy of letter dated 17.07.2025 sent and a copy of tracking report showing delivery of letter dated 17.07.2025 and a copy of letter dated 02.08.2025.

13. The Applicant/Resolution Professional submits that it got knowledge of alleged termination only during the meeting held on 20.02.2026 and it did not receive any notice or letters from the Respondent though the CIRP commenced on 13.06.2025.

14. Copy of BESPA dated 24.06.2024 appears on pages 149 to 238 of the Application. Article 17.6 of the Agreement concerns notices. Article 17.6.2 states that, " If to the BESSD, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the address below: Address: Shanti One, 88/4, Nagar Rd, Yerawada, Pune, Maharashtra 411006; Attention: Mr Pranay Mundra, Email: pranaymundra@gensol.in;

Telephone no. +91 79725 16648. Article 17.6.5 states that, "Any Party may by notice of at least 15 days to the other party change address and/or addresses to which such notices and communications to it are to be delivered". Page 4 of the Agreement notes that BESSD is referred for M/s Gensol Engineering Limited.

15. The letters referred to by the Respondent are addressed to M/s Gensol Engineering Limited and delivered through India Post but not clear on which address these were delivered. The letters are also sent through email sent through emails to various persons and, for example, one of such letters dated 17.07.2025 (after commencement of CIRP) is sent to various persons through email and such email addresses are extracted below:



RE: FWD: Submission of documents for Financial Closure under BESPA for 70 MW / 140 MWh at Bhachunda substation

From: DEPSP GUVNL BARODA < depsp.guvnl@gebmail.com > Thu, Jul 17, 2025 04:11 PM

Subject: RE: FWD: Submission of documents for Financial Closure under BESPA for 70 MW / 140 MWh at Bhachunda substation

To: jaytank < jaytank@gencol.in >

Cc: satyareddy desai < satyareddy.desai@anvipower.com > , puneetjaggi < puneetjaggi@gensol.in > , jabirmahendi < jabirmahendi@gensol.in > , pranay mundra < pranay.mundra@anvipower.com > , anmoljaggi < anmoljaggi@gensol.in > , snandy guvnl < snandy.guvnl@gebmail.com > , GM F&A GM F&A < gmf.guvnl@gebmail.com > , df guvnl < df.guvnl@gebmail.com > , eepsp.guvnl < eepsp.guvnl@gebmail.com > , jepsp1.guvnl < jepsp1.guvnl@gebmail.com > , JE PSP2 GUVNL < jepsp2.guvnl@gebmail.com >

Attachments:

Final Notice to GENSOL Engineering Limited dated 17.07.2025.pdf

16. The BESPA provided for sending e-mail to pranay.mundra@gensol.in but the letter has been sent to various persons including Pranay Mundra but on email address: pranay.mundra@avnipower.com. After initiation of the CIRP, the letter should have been addressed/copied to the Resolution Professional, but it has not been done. But the Agreement also required informing the change of address, if it had changed. It appears the RP also did not inform the Respondent about the change of address. The

RP is also supposed to take control of the offices of the corporate debtor, but it has been submitted that the corporate office was closed. We note there are issues concerning proper service of notices and communication between parties.

17. The Corporate Debtor - Gensol Engineering Limited was to complete financial closure on 26.06.2025 and the Scheduled Completion Date of the work was 26.12.2025. Section 25 of the Code requires the Resolution Professional to be in-charge of the continued business operations of the Corporate Debtor.

18. On one side there are allegations of non-service of proper notices or communications to the Applicant by the Respondent and on the other side there appears to be no communication from the Gensol Engineering Limited or the Resolution Professional to the Respondent about the work or work progress as required under the BESPA.

19. The Respondent submits that financial closure was not achieved, and the Respondent vide letters of 27.06.2025 gave a 30-day notice and again on 17.07.2025 informed

the balance notice time of 10 days for responding to the notice and providing information on the achievement of financial closure. However, it appears, i.e. after expiry of 30-day notice period. The Respondent did not receive any response. As per the Respondent, the termination is effective from 28.07.2025. The Performance Bank Guarantee was encashed on 02.08.2025. The Applicant refers to purported termination on 15.07.2025 in the prayer and pleadings but no document or letter has been submitted to this Tribunal to justify the claim of termination on 15.07.2025 which could have been prior to the notice period. Due to non-submission of any document to support its claim, we do not take any cognisance of purported termination on 15.07.2025.

20. The Agreement has been terminated and the Performance Bank Guarantee has been encashed. There are issues of non-compliance of procedure contemplated under the Agreement for its termination including proper service of notice and the non-performance of GENSOL consistent with the provisions of the BESPA Agreement. The

Agreement provided in the event of continued non-compliance, or the absence of any extension sought for compliance of the conditions, the contract was to stand terminated on expiration of notice period.

21. The principal issue requiring determination is whether the contractual dispute raised by the Applicant concerning termination of the Battery Energy Storage Purchase Agreement ("BESPA") and the consequential invocation and encashment of the Performance Bank Guarantee ("PBG") bears the requisite nexus with the insolvency resolution process of the Corporate Debtor so as to attract the jurisdiction of this Adjudicating Authority under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 ("Code")..

22. In ***Gujarat Urja Vikas Nigam Limited v. Amit Gupta & Ors.,*** *(2021) 7 SCC 209,* the Hon'ble Supreme Court recognised the jurisdiction of the Adjudicating Authority under Section 60(5)(c) of the Code in respect of contractual disputes having the requisite nexus with insolvency. The Hon'ble Supreme Court, however, also made it clear that

such jurisdiction is not a general jurisdiction over all contractual disputes and that intervention may be warranted where the termination of a contract is founded upon the insolvency of the Corporate Debtor and the contract is central to its survival or the successful conduct of the CIRP.

23. The aforesaid principle was further explained by the Hon'ble Supreme Court in ***Tata Consultancy Services Limited v. Vishal Ghisulal Jain, Resolution Professional, SK Wheels Private Limited,*** (2022) 2 SCC 583, wherein it was held that Section 60(5) of the Code does not confer upon the NCLT a general jurisdiction to adjudicate contractual disputes and that interference with contractual termination is not warranted where the termination is founded upon breaches which are independent of the insolvency of the Corporate Debtor. The jurisdiction under Section 60(5)(c) is attracted only where the dispute has the requisite nexus with the insolvency proceedings.

24. In the present case, Respondent No.1 has consistently stated that the BESPA was terminated on account of non-fulfilment of the contractual requirement relating to Financial Closure and not on account of the insolvency or commencement of CIRP of the Corporate Debtor. The notices and communications relied upon by Respondent No.1 relate to the alleged non-compliance with the contractual requirements under the BESPA. The Applicant, on the other hand, has disputed the validity and service of such notices and has contended that the termination and invocation of the PBG took place during the CIRP.

25. We find that the mere fact that the contractual notices, alleged termination and subsequent invocation of the PBG took place after commencement of the CIRP does not, by itself, establish that the impugned action was occasioned by the insolvency of the Corporate Debtor or that it has the requisite nexus with the CIRP. On the material placed before us, the alleged contractual breach relied upon by Respondent No.1 arose from the terms of the BESPA and

is not shown to have been caused by or made dependent upon the commencement of CIRP.

26. The Applicant has also not placed sufficient material before us to establish that the BESPA was the sole, principal or otherwise indispensable contract of the Corporate Debtor, or that termination thereof would result in the corporate death of the Corporate Debtor or materially frustrate the CIRP. Though the Applicant has stated that the BESPA was commercially relevant and concerned a 70 MW/140 MWh Battery Energy Storage Project, no material has been placed to demonstrate that the Corporate Debtor's survival as a going concern or the successful resolution of the Corporate Debtor was dependent upon continuation of this particular contract. The mere fact that termination of a contractual arrangement may have an adverse effect upon the value of the Corporate Debtor cannot, by itself, be treated as sufficient to attract the jurisdiction under Section 60(5)(c) of the Code.

27. The rival submissions concerning the validity of the notices, the mode and manner of service, compliance with the contractual notice period, the alleged termination of the BESPA and the contractual entitlement of Respondent No.1 to invoke the PBG involve disputed questions arising under the BESPA and the governing contractual documents. In the absence of the requisite nexus between such contractual dispute and the insolvency resolution process, we do not consider it appropriate to adjudicate upon these contractual questions in exercise of the jurisdiction conferred under Section 60(5)(c) of the Code. We, therefore, express no opinion on the merits or otherwise of the rival contractual claims.

28. As regards the Performance Bank Guarantee, the submission of Respondent No.1 that a performance guarantee does not fall within the definition of "security interest" under Section 3(31) of the Code and is not ordinarily protected by the moratorium under Section 14 of the Code is noted. However, the question whether the invocation of a particular PBG was contractually

permissible is distinct from the question whether such invocation is prohibited by the moratorium.

29. It is settled that a bank guarantee constitutes an independent contract between the issuing bank and the beneficiary and, particularly in the case of an unconditional bank guarantee, interference with its invocation or encashment is ordinarily permissible only within the limited exceptions recognised in law. In the present case, no exceptional circumstance warranting interference with the PBG on such ground has been established before us.

30. It is also material that the PBG for an amount of Rs.12,95,00,000/- was invoked by Respondent No.1 on 02.08.2025, whereas the present Interlocutory Application was filed only on 25.03.2026. Consequently, the prayer seeking an interim restraint against invocation or encashment of the PBG during pendency of the present proceedings had already become infructuous prior to institution of the present Application. The surviving claim concerning reversal or refund of the amount realised

pursuant to invocation of the PBG is dependent upon the underlying contractual rights and obligations of the parties and, in the facts of the present case, cannot be adjudicated upon in exercise of Section 60(5)(c) of the Code.

31. In view of the foregoing discussion, we hold that the Applicant has failed to establish the requisite nexus between the impugned contractual termination and the insolvency resolution process of the Corporate Debtor so as to invoke the residuary jurisdiction of this Adjudicating Authority under Section 60(5)(c) of the Code. Consequently, the prayers seeking setting aside of the contractual termination of the BESPA and reversal/refund of the amount realised pursuant to invocation of the PBG cannot be granted in the present proceedings.

32. We make it clear that we have not expressed any opinion on the merits of the rival contractual claims, including the validity or otherwise of the notices, the manner of service thereof, termination of the BESPA, or the contractual entitlement of Respondent No.1 to invoke the PBG. The

parties shall be at liberty to avail such remedy as may be available to them under Article 16 of the BESPA and applicable law. Any observations made herein are confined to the question of jurisdiction under Section 60(5)(c) of the Code and the reliefs sought in the present proceedings.

33. Accordingly, **I.A. No. 487 of 2026 is rejected** and **disposed of** in the above terms. There shall be **no order as to costs**

Sd/-	**Sd/-**
SANJEEV SHARMA	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Rutvik St.