NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.836 of 2024
& I.A. No.3021 of 2024

(Arising out of Order dated 08.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court II in IA No.2777 of 2022 in C.P. (IB) No.1832/IBC/MB/MAH/2017)

IN THE MATTER OF:

Arkay Logistics Limited
Office No.261, Level 2,
Upper Level, Kamala House,
Senapati Bapat Marg, Kamala City,
Lower Parel, Mumbai – 400013. ...Appellant

Versus

Mr. Abhijit Guhathakurta,
Liquidator of EPC Constructions (India) Ltd.,
1st Floor, Tower-II, Equinox Business Park,
(Peninsula Techno Park), Off BKC LBS Marg,
Kurla (W), Mumbai-70. ...Respondent

Present:

For Appellant	**:**	**Mr. Abhijeet Sinha, Sr. Advocate with Mr. Raheel Patel, Mr. Himanshu Satija, Mr. Harsh Saxena, Mr. Shevaaz Khan, Ms. Ridhi Ranjan, Advocates.**
For Respondent	**:**	**Mr. Abhishek Swaroop, Mr. Aditya Vikram Singh, Ms. Shreya Chandhok, Advocates.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed challenging order dated 08.01.2024 passed by National Company Law Tribunal, Mumbai Bench, Court II in IA No.2777 of 2022 filed by the Liquidator. By the impugned order, the Adjudicating Authority allowed IA No.2777 of 2022 and directed the Appellant to return an amount of Rs.18,10,00,000/- to the Corporate Debtor. Aggrieved by which order this Appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

(i) The Corporate Debtor EPC Construction (India) Ltd. [earlier known as Essar Projects (India)] was awarded a contract by GSPL India Gasnet Ltd. ("**GIGL**") on 18.01.2017. A Performance Bank Guarantee ("**PBG**") amounting to Rs.21,17,30,000/- was to be submitted by the Corporate Debtor ("**CD**") for working of the contract. The Corporate Debtor after discussing with the Appellant, wrote a letter dated 08.02.2017 requesting the Appellant to arrange for issuance of the PBG from their existing line of credit with Axis Bank. The CD undertook to replace the PBG. In pursuance of the request made by the CD, Axis Bank provided PBG by marking a lien on the FD against 100% margin on two FDs. Lien amount on two FDs was Rs.21,17,35,762/-. The CD made payment aggregating to Rs.6.60 crores in two tranches i.e. Rs.6.0 crores on 01.03.2017 and Rs.0.60 crores on 02.03.2017 through RTGS in lieu of the margin money to the Appellant. The CD, subsequently also made a payment of further amount of Rs.12.50 crores towards the margin money and an amount of Rs.3 crores also taken as an advance on 18.04.2017 by the CD from the Appellant.

(ii) On 18.01.2018, the CD wrote to the Appellant that net amount of Rs.18.10 crores has been paid in lieu of the lien

marked by Axis Bank on two FDs against PBG issued in favour of the CD. No further amount could be paid by the CD, since Corporate Insolvency Resolution process ("**CIRP**") commenced against the CD vide order dated 20.04.2018.

(iii) The contract awarded in favour of the Appellant was completed and PBG was released by GIGL and surrendered by the CD to the Axis Bank on 24.03.2021. Consequent to surrender of the PBG, the Bank also cancelled the lien marked on the FDs submitted by the Appellant. In view of the surrender of the PBG, the amount of margin money, which was deposited of Rs.18.10 crores to the Appellant, towards the issuance of PBG in favour of the CD, was required to be released to the account of the CD.

(iv) The CD was put into liquidation by order dated 07.05.2021 by the Adjudicating Authority. The Liquidator after surrender of the PBG issued a Legal Notice dated 09.07.2022 to the Appellant calling upon the Appellant to release the amount of Rs.18.10 crores to the CD, as the PBG with lien on Appellant FD stand returned and PBG was also cancelled. No reply to notice was given by the Appellant.

(v) The Liquidator filed IA before the Adjudicating Authority, being IA No.2777 of 2022. On 29.09.2022, the Adjudicating Authority in IA No.2777 of 2022 directed the Appellant to file reply within three weeks. The Appellant sought additional two weeks' time on 04.11.2022 to file reply. On 28.11.2022,

the Adjudicating Authority noticed that reply not filed by the Appellant. On 11.09.2023, the Adjudicating Authority recorded that reply has still not been filed by the Appellant and directed that this is the last and final opportunity for the Appellant to file the reply. On 17.10.2023, reply came to be filed by the Appellant, challenging the maintainability of IA 2777 of 2022. The transactions as claimed in IA No.2777 of 2022 was not refuted or objected to in the reply.

(vi) The Adjudicating Authority heard the parties and reserved the order, the Adjudicating Authority passed the impugned order allowing the Application. The Adjudicating Authority held that it was obligation of the Liquidator to take steps to return of the said amount to the CD. It was held that in the reply, the Appellant has not disputed its liability to pay back the amount, hence, there are no issues, which need adjudication by the Civil Court. After recording the facts in details, the Adjudicating Authority allowed the Application and issued direction to the Appellant to return the amount of Rs.18.10 crores to the Corporate Debtor. Aggrieved by the said order, this Appeal has been filed.

3. We have heard Shri Abhijeet Sinha, learned Senior Counsel appearing for the Appellant and Shri Abhishek Swaroop, learned Counsel appearing for the Respondent.

4. Shri Abhijeet Sinha, learned Senior Counsel for the Appellant challenging the order passed by the Adjudicating Authority submits that Adjudicating Authority has no jurisdiction to entertain IA No.2777 of 2022. It is submitted that Liquidator was free to initiate proceedings for recovery in a competent Court as per Section 35(1)(k) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**IBC**") and Liquidator could not have filed the Application before the Adjudicating Authority and should have taken recourse to appropriate proceedings in a competent Court. It is submitted that the mere fact that the Appellant in reply to IA No.2777 of 2022 has only raised question of maintainability of the Application, does not debar the Appellant to raise issue on merits of the claim as made in IA No.2777 of 2022. The learned Counsel for the Appellant submits that an IA No.3536 of 2024 has been filed in this Appeal for bringing on record various correspondence and materials to indicate that the Corporate Debtor owed an amount of Rs.16.35 Crores to the Appellant. Hence, the amount which was paid by the CD of Rs.18.10 crores were adjusted towards its dues and payable. The CD has assigned its liabilities to one – Imperial Consultants & Securities ("**ICS**"), who failed to discharge the liabilities, hence, the amount was adjusted. The learned Counsel for the Appellant submits that documents filed with IA No.3536 of 2024 be taken on record and this Court in event it does not accept the submission of the Appellant that Application was not maintainable, may adjudicate the issue on merits. The NCLT has proceeded on an erroneous assumption that alleged debt was not disputed by the Appellant. It is submitted that recovery of debt, even if admitted, cannot be ordered

under Section 60, sub-section (5) of the IBC. There is no debt due and payable by the Appellant to the CD. The NCLT, by its very nature as a summary Court, is not equipped to conduct a detailed examination of evidence or complex factual disputes. The documents, which are being sought to be filed by the Appellant, requires examination and scrutiny by a Court before any order is passed against the Appellant.

5. Learned Counsel for the Respondent refuting the submissions of learned Counsel for the Appellant submits that looking to the nature of transaction and obtaining of PBG from the Axis Bank, towards a contract awarded in favour of the CD against the lien marked on two FDs of Appellant, the CD having paid Rs.18.10 crores towards the margin money for issuance of PBG, the PBG having been surrendered and the lien of Appellant having been cancelled by the Bank, the amount under the PBG ought to have been returned, which was the amount belonged to the CD. The Liquidator, who has duty to protect the assets of the CD was fully entitled to file an Application seeking return of the amount to the CD, which belonged to it. The Application was fully maintainable before the Adjudicating Authority. It is submitted that the Appellant was given four opportunities to file reply to the IA No.2777 of 2022 by four orders passed by the Adjudicating Authority on 29.09.2022, 04.11.2022, 28.11.2022 and lastly on 11.09.2023. The Appellant failed to file any reply for about more than a year and filed only reply, challenging the maintainability of the IA. In the reply, which was filed by the Appellant after taking four opportunities, no transactions, which were claimed by the Liquidator in

the Application IA No.2777 of 2022 were denied or disputed. There being no dispute having been raised to the transactions in question, the Adjudicating Authority has rightly directed the amount be returned to the CD, which amount belonged to the CD. It is submitted that IA No.3536 of 2024 filed by the Appellant for bringing on record various letters and documents, cannot be accepted in this Appeal. The Appellant having ample opportunity to file reply and these documents (which are of the year 2016 to 2022) before the Adjudicating Authority, cannot be allowed to bring on record these documents now before this Appellate Tribunal. The Appellant was given opportunity to file reply and bring all relevant documents before the Adjudicating Authority, where the Appellant elected not to bring any material on record or file reply on merits, the IA filed by the Appellant cannot be allowed. It is further submitted that the story now sought to be developed by the Appellant that there were dues on the CD, amounting to Rs.16.35 crores, is a concocted and dishonest story. In the CIRP of the Corporate Debtor, the Appellant neither filed any claim before the RP or before the Liquidator and had any dues of the Appellant were there on the CD, there was no impediment on the Appellant for filing its claim. The story of dues of Rs.16.35 crores, now invented by the Appellant is wholly false and dishonest. The documents sought to be introduced by the Appellant by filing IA No.3536 of 2024, need to be rejected. The Appellant, who deliberately elected not to file any reply on the merits to the Application, or file any documents before the Adjudicating Authority, cannot be allowed to introduce documents, which

were very much in possession and power of the Appellant, when he filed the reply in IA No.2777 of 2022.

6. We have considered the submissions of learned Counsel for the parties and have perused the record.

7. The learned Counsel for the Appellant in support of his submission that the Adjudicating Authority has no jurisdiction to entertain the Application under Section 60, sub-section (5) read with Rule 11 of the NCLT Rules 2016 has relied on the judgments of the Hon'ble Supreme Court in ***(2020) 13 SCC 308 – Embassy Property Development Pvt. Ltd. vs. State of Karnataka***; and in ***Gujarat Urja Vikas Nigam Ltd. vs. Mr. Amit Gupta – Civil Appeal No.9241 of 2019*** and the judgment of this Tribunal in ***Ramachandra D. Choudhary vs. Bansal Trading Company and Ors. – (2022) SCC OnLine NCLAT 360***. The Application, which was filed by the Liquidator was an Application under Section 60, sub-section (5) of the IBC read with Rule 11 of NCLT Rules 2016. The judgment of the Hon'ble Supreme Court in **Embassy Property** relied by the Appellant has dealt with jurisdiction of the NCLT in paragraphs 40 and 41, which are as follows:

> "**40.** If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(1)(*f*)(*vi*) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, *subject to the determination of owner-ship by a court or other authority*. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition

of the term "assets" under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property". Another important aspect is that under Section 25(2)(*b*) of the IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in *judicial, quasi-judicial and arbitration proceedings*. Sections 25(1) and 25(2)(*b*) reads as follows:

> "**25. *Duties of resolution professional*.**—(1) It shall be the duty of the resolution professional *to preserve and protect the assets of the corporate debtor*, including the continued business operations of the corporate debtor.
>
> (2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:
>
> (*a*) ***
>
> (*b*) represent and act on behalf of the corporate debtor with third parties, *exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings*;"
>
> (emphasis supplied)

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

41. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right."

8. In the **Embassy Property** (supra), the RP has filed an IA before the NCLT challenging the decision of the State of Karnataka by which the State rejected the proposal for deemed extension of the mining lease, on the ground that Corporate Debtor has contravened not only the terms and conditions of the Lease Deed, but also the provisions of Rule 37 of the Mineral Concession Rules, 1960. Initially, the RP filed a Writ Petition challenging the order of the Government, but he withdrew the Writ Petition, with liberty to file a fresh Writ Petition. However, instead of filing Writ Petition, the RP filed an Application before the NCLT Chennai Bench, praying for setting aside the order of Government of Karnataka. The NCLT has allowed the Application filed by the RP, against which State of Karnataka filed the Writ Petition. The High Court set aside the order of NCLT and remitted the matter back to NCLT for fresh consideration. The NCLT again passed an order on 03.05.2019 allowing the Miscellaneous Application, setting aside the order of rejection and directing the Government of Karnataka to execute supplemental lease deed. Challenging the aforesaid order of the NCLT, the Government of Karnataka filed a Writ Petition before the High Court, where the Court stayed the operation of the order passed by NCLT. Challenging the said order, Embassy Property has filed an Appeal before the Hon'ble Supreme Court. The observations made by the Hon'ble Supreme Court in paragraphs 40 and 41 were made in the above context. In paragraph 46 of the judgment, the Hon'ble Supreme Court held as follows:

> "**46.** Therefore, in fine, our answer to the first question would be that NCLT did not have jurisdiction to entertain an application

against the Government of Karnataka for a direction to execute supplemental lease deeds for the extension of the mining lease. Since NCLT chose to exercise a jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was *coram non judice*."

9. In **Gujarat Urja Vikas Nigam** (supra), the Hon'ble Supreme Court in paragraph 67 has again made following observations:

"67. The institutional framework under the IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. In the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful, reorganization or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner. Pursuing this theme in Innoventive (supra) this court observed that "one of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of "speeding up of the insolvency process". The principle was reiterated in Arcelor Mittal (supra) where this court held that "the non-obstante Clause in Section 60(5) is designed for a different purpose: to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings". Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing

> do, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist."

10. This Tribunal in **Ramchandra D. Choudhary** (supra) has also made similar observation in paragraph 15, which is as follows:

> "15. Keeping in view the aforenoted ratio in 'Gujarat Urja Vikas Nigam Limited' (Supra), we hold that the remedy for recovery of debts, disputed or not, cannot be determined in summary proceedings and the Code does not contemplate adjudication of any such nature. Any such steps taken under Section 60(5) of the Code before the Adjudicating Authority, would tantamount to bypassing/short-circuiting the Judicial Proceedings. Keeping in view the submissions of the Respondents, to adjudicate whether the amount is due and payable by the 'sundry debtors' who have raised disputes, would require calling for evidence and cannot be proceeded under the Code. The Appellant is well within its powers to take appropriate steps to file legal proceedings, if the circumstances so warrant. The Code expressly provides for the Liquidator to institute or defend any Suit, Prosecution or other Legal Proceedings, Civil or Criminal, in the name or on behalf of the 'Corporate Debtor'."

11. There can be no dispute to the proposition laid down by the Hon'ble Supreme Court and this Tribunal in the above cases. For recovery of debt, the RP cannot initiate proceedings under Section 60, sub-section (5). Rather, the RP/ Liquidator has to take recourse for recovery of the amount in accordance with law. The judgment of this tribunal in Ramchandra D. Choudhary was also relied before the Adjudicating

Authority. The Adjudicating Authority has noticed the judgment and made following observations in paragraph 21, which are as follows:

> "**21.** The Ld. Counsel for the Respondent relied on the order of Hon'ble NCLAT in the case of Ramachandra D. Choudhary v. Bansal Trading Company and Others; 2022 SCC Online NCLAT 360 wherein it was held that the remedy for recovery of debts, disputed or not, cannot be determined in summary proceedings and the Code does not contemplate adjudication of any such nature. Any such steps taken under Section 60(5) of the Code before the Adjudicating Authority, would tantamount to bypassing/short- circuiting the judicial proceedings. However, it is observed from the facts of the above case that it is an application for recovery of outstanding amounts from Sundry Debtors who contended that the corporate debtor failed to supply the requisite goods despite entering into a transaction for supply of Crude Edible Oil and Palm Oil, thereby causing huge losses to the Sundry Debtor and eventually these amounts were squared off and adjusted against the dues of the Corporate Debtor. It was also observed that the issue whether any amounts are due or not by the Sundry Debtor would require adjudication after calling for evidence and therefore can be proceeded only in a civil court. Thus, the facts of the said case warranted adjudication of dispute by adducing of evidence by the parties which could not be done in a summary proceeding. We are, therefore, of the view that the above decision is not applicable in the present case."

12. IA No.2777 of 2022 was filed by the Liquidator before the Adjudicating Authority praying for following reliefs:

> "24. In view of the facts and circumstances and the foregoing submissions, the Applicant most humbly prays that this Hon'ble Tribunal be pleased to:

a. Direct the Respondent to return an amount of INR 18,10,00,000 (Rupees Eighteen Crores Ten Lakhs Only) to the Corporate Debtor; and

b. Pass such other order and / or directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case which are necessary."

13. In IA No.2777 of 2022, the Liquidator has given sequence of the facts. From paragraphs 9 to 16, the transactions between the parties have been captured, which are as follows:

"9. Vide letter dated 08.02.2017, the Corporate Debtor requested the Respondent to arrange for issuance of the said PBG from their existing line of credit with Axis Bank. Such an arrangement was agreed to, and Axis Bank issued PBG No. 13940100006735, on 02.03.2017 to the tune of INR 21,17,00,000 (Rupees Twenty-One Crores Seventeen Lakhs Only), to GIGL. The same was done by marking a lien on the Respondent's fixed deposits, whose details are as follows:

FD No.	FD Value (INR)	Lien Amount (INR)
917040024014860	15,27,37,326	14,58,00,000
917040024016002	6,91,35,851	6,59,35,762
Total	**22,18,73,177**	**21,17,35,762**

Annexed hereto and marked as "Annexure B" is a copy of the letter dated 08.02.2017.

10. Against the said margin money provided by the Respondent, the Corporate Debtor was required to deposit an amount of INR 22,18,73,177 (Rupees Twenty-Two Crores Eighteen Lakhs Seventy Three Thousand One Hundred and Seventy-Seven Only) with the Respondent, over a period of time Annexed hereto and marked as "Annexure C (Colly.)" are

copies of the letter dated 02.03.2017 and the Corporate Debtor's bank statement, evidencing the transfer of money as described above.

12. Since the Corporate Debtor was facing liquidity problems, vide letter dated 18.04.2017, it requested the Respondent for a short-term advance of INR 3,00,00,000 (Rupees Three Crores Only). The same was agreed to and transferred by the Respondent on 18.04.2017. Annexed hereto and marked as "Annexure D" is a copy of the letter dated 18.04.2017.

13. Subsequently, the Corporate Debtor deposited amounts of INR 12,00,00,000 (Rupees Twelve Crores Only), INR 50,00,000 (Rupees Fifty Lakhs Only) and INR 2,00,00,000 (Rupees Two Crores Only) on 05.01.2018, 09.01.2018 and 18.01.2018, respectively, with the Respondent.

    Annexed hereto and marked as "Annexure E (Colly.)" are copies of the relevant bank statement evidencing the transfer of money as described above.

14. Hence, the short-term advance was repaid by the Corporate Debtor and a net amount of INR 18,10,00,000 (Rupees Eighteen Crores Ten Lakhs Only) was deposited with the Respondent, in lieu of the margin money. The same was informed, vide letter dated 18.01.2018. The Corporate Debtor, through such letter, further assured the deposit of the balance amount of INR 3,00,00,000 (Rupees Three Crores Only) in due course of time. The Corporate Debtor also requested that the Respondent ensure that once the PBG is surrendered by GIGL, the deposited amounts are released to it by the Respondent immediately.

    Annexed hereto and marked as "Annexure F" is a copy of the letter dated 18.01.2018.

15. Subsequently since the Corporate Debtor was admitted into insolvency on 20.04.2018, the balance amount was not deposited. However, the PBG has now been released by GIGL and has been surrendered by the Corporate Debtor to

Axis Bank, vide letter 24.03.2021. Through the said letter, the Corporate Debtor has also requested Axis Bank to cancel the PBG, a copy of which has been acknowledged by Axis Bank.

Annexed hereto and marked as "Annexure G" is a copy of the letter dated 24.03.2021.

16. Since the Respondent was obligated to return the deposited amounts after 24.03.2021, once the PBG had been cancelled and the lien over its fixed deposits removed, the Applicant, vide legal notice dated 09.07.2022, directed the Respondent to return the same. However, the Respondent did not return the amounts as required and also did not issue a response to the Applicant's legal.

Annexed hereto and marked as "Annexure H" is a copy of the legal notice dated 09.07.2022"

14. The pleadings in the Application clearly reflect the transactions between the parties. The CD was awarded a contract by GIGL and for working of the contract PBG for an amount of Rs.21,17,35,762/- was required, which was provided by the Appellant on the request of the CD by marking line on two FDs, as noted in paragraph 9 of the Application as above. The Corporate Debtor was required to deposit the said amount over a period of time and the Corporate Debtor deposited the amount of Rs.18.10 crores with the Appellant, which was captured in the letter written by the Corporate Debtor on 18.01.2018, which letter was annexed as Annexure-F to the IA 2777 of 2022. Letter dated 18.01.2018 written by CD to the Appellant is as follows:

"18th January, 2018

To,

Ms Arkay Logistics Limited
Hazira

Dear Sir/ Madam,

Subject: Payment of Rs 14.50 Cr towards the FD Margin, against establishment of PBG Number 13940100006735 dated 02-03-2017 from Axis Bank Limited in favour of our client.

Further to our letter dated 18th April 2017, wherein we requested for a short-term advance of Rs 3.0 Cr for meeting our operational requirements. We have received the said amount on 28th April 2017 through RTGS mode. Further to this we are glad to inform you that we have additionally released payments amounting to Rs.14.50 Cr in three tranches as follows:

On 05th January 2018	Rs. 12.0 Cr
On 09th January 2018	Rs.0.50 Cr
On 18th January 2018	Rs.2.00 Cr

With this payment, a net amount of Rs 18.10 Crs have been paid to you, in lieu of the lien marked - by Axis Bank on your FDs against PBG issued on our behalf in favor of our client.

We ensure to pay the balance amount of Rs 3.0 Cr in due course.

The lien ·on your FDs are expected to be released by 18/08/2020. Accordingly, kindly ensure that your company releases the FD monies to us upon release and surrender of the said PBG by our client and the resultant release of lien on the subject FDs.

Thank you,
Yours faithfully,
For, EPC Constructions India Limited
Sd/-
Authorised Signatory"

15. From the facts as noted above, in the Application filed by the Liquidator, the CD was put into CIRP in the year 2018. During the pendency of the CIRP, the PBG has been released by the GIGL and was surrendered by the Corporate Debtor to Axis Bank vide letter dated

24.03.2021. When the PBG was surrendered and lien marked on the FDs submitted by the Appellant was cancelled, the amount, which was paid by the CD to the Appellant towards the margin money of Rs.18.10 crores, became the asset of the CD and was required to be returned. The transactions in question was with respect to PBG given by the CD to carry out the contract granted by GIGL. For obtaining the PBG through the existing line of credit, the amounts were paid to the Appellant of Rs.18.10 crores. The Liquidator along with the Application has also filed the Bank statements reflecting the payment of Rs.18.10 crores to the Appellant, which amounts were towards margin money arranged by Appellant for issuing the PBG.

16. At this juncture, we may also notice one of the submission advanced by learned Counsel for the Appellant that amount of Rs16.35 crores was due on the CD, hence the amount of Rs.18.10 crores was adjusted. Hence, there is no liability of Appellant to return the amount of Rs.18.10 crores. The above theory, which is sought to be advanced in the present Appeal was not even taken by the Appellant before the Adjudicating Authority, where it was given ample opportunity to reply to IA No.2777 of 2022. Despite given repeated opportunity for filing a reply, the Appellant itself choose not to deny or comment on the transactions, which was entered between the parties as captured in IA No.2777 of 2022. Furthermore, it is not the case of the Appellant that it has filed any claim either before RP or before Liquidator of its alleged claim against the CD. Thus, the theory, which is sought to be developed in the Appeal

by the learned Counsel for the Appellant is unacceptable and is only an attempt to raise the dispute regarding transactions, where no such dispute ever existed.

17. The learned Counsel for the Appellant has submitted that the recovery of debt by means of Application under Section 60, sub-section (5) is not permissible, even if the debt is not disputed. The present is not a case where Liquidator was trying to recover any debt, which was owed by the Appellant to the CD. Rather, the Liquidator was only asking for the refund of the amount, which was given by the CD towards margin money for securing a PBG through the Appellant from its credit line of the Axis Bank. The payment of Rs.18.10 crores was towards the margin money, which is captured in the letter written at the relevant time by the CD to the Appellant, the letter dated 18.01.2018, which we have already extracted above. When the PBG was surrendered and lien was cancelled, which was marked on the FDs given by the Appellant for securing PBG was cancelled, the CD was entitled for the margin money, which was paid by the CD towards the PBG. The present was not a case of recovery of any debt by the Liquidator from the Appellant. The sequence of the events and the conduct of the Appellant before the Adjudicating Authority and not raising any objection to the nature of transactions between the parties speaks for itself. The Appellant by IA No.3536 of 2024 sought to bring on record various documents as Annexures A-1 to A-12. In the facts of the present case, specifically when the Appellant elected not to file any reply on merits to IA No.2777 of 2022 before the Adjudicating

Authority, after taking four opportunities, IA No.3536 of 2024 cannot be allowed and is rejected accordingly.

18. The Adjudicating Authority has considered the nature of transactions and has given its reason in paragraph 22 of the order, which is to the following effect:

> "**22.** In the present case, the Respondent has not disputed its liability to pay back the cash deposit of Rs.18.10 crore made by the Corporate Debtor nor has denied its obligation under the arrangement between the companies to return the said amount to the Corporate Debtor. Hence, we do not see any issue which needs adjudication by a civil court after recording the evidence in detail. The framework of liquidation process envisaged under the Code empowered the Tribunal to deal with all issues relating to insolvency, specifically with the aim of avoiding a multiplicity of fora. If the liquidator is required to approach civil court or other jurisdictions in all scenarios when the asset of the Corporate Debtor is in the possession of third party, the object of avoiding multiplicity of fora will be defeated. It is also relevant to mention that once an application is admitted by Tribunal, it is conferred with the jurisdiction to deal with all assets of the Corporate Debtor unless an exclusive jurisdiction is created under another statute or involves issues which cannot be decided in summary proceedings. The application for seeking direction to return the undisputed amount, more so by the related party, to the Corporate Debtor cannot be refused merely on the pretext that the Liquidator is required to file a recovery suit despite the fact that the respondent has not even disputed or denied its liability."

19. We concur with the view taken by the Adjudicating Authority in allowing IA No.2777 of 2022. The present is not a case where this Tribunal may exercise its appellate jurisdiction in interfering with the

order impugned dated 08.01.2024. There is no merit in the Appeal. The Appeal is dismissed. Pending IAs, if any, are also disposed of. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

29th November, 2024

Ashwani