

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CA No.139/2019, 170/2019, IA No. 477/2021,
RT CA No. 319/Chd/ALB/2022
(as amended by IA No. 283/2023)**

**In
CP (IB) No. 97/Chd/Hry/2018
(Admitted Matter)**

**Under Section 60(5) of IBC, 2016,
Read with Rule 11 of NCLT Rules, 2016**

In the matter of:

Oriental Bank of Commerce

....Financial Creditor

Vs.

M/s. Isolux Corsan India Engineering and Construction Private Limited
Through Liquidator Professional, Mr. Rajeev Bansal.

...Corporate Debtor

And in the matter of:-

CA No. 139/2019

M/s Tata Project Limited
Having its registered office at
Mithona Towers 1, 1-7-80 to 87, Penderghast Road,
Secunderabad, Telangana- 500002

....Appellant/Operational Creditor

Vs.

Mr.Vikram Kumar, Interim Resolution Professional of
M/s. Isolux Corsan India Engineering and Construction Private Limited,
Resident of J-6A, Kailash Colony, New Delhi- 110048

...Respondent No. 1

South East U.P. Power Transmission Company Limited
having its Registered Office at: 409, 4th Floor,
Shalimar Titanium, Vibhuti Khand, Gomti Nagar,
Lucknow, Uttar Pradesh - 226 010.

...Respondent No. 2

CA No. 170/2019

Mr. Vikram Kumar
Resolution Professional
For Isolux Corsan India Engineering & Construction Pvt Ltd.

...Applicant

Vs.

Tata Projects Limited
Mithona Towers 1, 1-7-80 to 87, Penderghast Road,
Secunderabad, Telangana-500002

...Respondent

IA No. 477/2021

CA Rajeev Bansal, Liquidator of
Isolux Coran India Engineering And Construction Private Limited
2163A, Shri Nagar Colony, Jagadhri, Yamunanagar

...Applicant

Vs.

Tata Projects Limited
Mithona Towers 1, 1-7-80 to 87, Penderghast Road,
Secunderabad, Telangana-500002

...Respondent

RT CA No. 319/Chd/ALB/2022 originally filed as CA No. 319/2019 (Amended vide IA No. 283/2023)

South East U.P. Power Transmission Company Limited
having its Registered Office at: 409, 4th Floor,
Shalimar Titanium, Vibhuti Khand, Gomti Nagar,
Lucknow, Uttar Pradesh - 226 010.

.... Applicant

vs

1. Tata Projects Limited
having its Registered Office at Mithona Towers - 1,
1-7-80 to 87, Penderghast Road, Secunderabad,
Telangana - 500 003,

2. Isolux Corsan India Engineering & Constructions Private Limited
through its Liquidator, namely, CA Rajeev Bansal
2163 A, Shri Nagar Colony, Jagadhri, Yamunanagar, Haryana - 135 001

... Respondents

Order delivered on: 08.12.2023

**Coram : HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Liquidator : 1. Mr. Abhinav Mishra, Advocate
2. Ms. Jagriti Dosi, Advocate
3. Ms. Nivedita Chauhan, Advocate
4. Ms. Komal Singh, Advocate

For the SEUP : 1. Mr. Amit Jhanji, Senior Advocate
2. Mr. Manmeet Singh, Advocate
3. Mr. Anurag Robin Frey, Advocate
4. Mr. Vipul Joshi, Advocate
5. Mr. Manav Sharma, Advocate
6. Ms. Ekakshra Mahajan Mandhar, Advocate

For the applicant-Tata
Projects Limited in IA
No. 139/2019 and Respondent
in IA No. 170/2019 : 1. Mr. Amandeep Singh Talwar, Advocate

Per: Harnam Singh Thakur, Member (Judicial)
Subrata Kumar Dash, Member (Technical)

ORDER

IA No. 139/2019, 170/2019, along with IA No. 319/2021 Allahabad (re-registered as RT-CA 319/Chd/Alb/2022) (as amended by IA No. 283/2023), IA No. 477/2021 are inter-related as these IAs deal with the claim for the custody of the same equipments by different parties. In view of the same, these IAs are taken up together for discussion and adjudication.

2. By our order dated 19.01.2023, we had allowed SEUP Power Transmission Company Limited to be impleaded as a respondent in CA No. 139/2019, 170/2019 and IA No. 477/2021 after making a reference to the decision of the Hon'ble Principal Bench dated 23.05.2022. By IA No. 283/2023, the applicant sought to bring certain amendments on the list of equipments on record in CA No. 319/2019. It is stated by the learned senior counsel that Schedule A is part of amended CA No. 319/2019.

3. As recorded in our daily order dated 16.03.2023, a copy of the Resolution Plan of SEUP which was approved by Adjudicating Authority on 26.03.2022 was filed before this Bench in a sealed cover. The learned senior counsel for the SEUP also stated that redacted copy of the Resolution Plan of SEUP will be supplied to the counsel of the liquidator. Subsequently, at the request of the learned counsel for the liquidator, an inspection of the said Resolution Plan was granted to the learned counsel of the liquidator by our order dated 05.09.2023.

4. **CA No. 139/2019**

4.1 The instant Application has been filed u/s 60(5) of the Insolvency and Bankruptcy Code (hereinafter referred to as "the Code") read with Rule 11 of the National

Company Law Tribunal Rules, 2016, seeking the declaration from this Hon'ble National Company Law Tribunal ("NCLT"), that the applicant, i.e., Tata Project Limited (hereinafter referred to as "TPL"), has the right of Seller's lien over the goods in question and thus has the right to sell goods and appropriate the money recovered from the sale of the aforesaid goods.

4.2 Brief facts of the case as outlined are as under;

- a) In the present case, the applicant purchased/ got fabricated certain steel structures that were kept in the applicant's godowns for the purpose of the work as per the contract dated 02.03.2012, entered into by the applicant with the corporate debtor. However, the corporate debtor did not make the payments. The applicant was awarded the said contract with a package value of INR 190.23 Crores for Package 1B and INR 192.40 Crores for Package 2B.
- b) The applicant had commenced the work for both packages, and the work with respect to Package 2B has been duly performed. The applicant vide letter dated 23.11.2016 intimated the in-progress status of the 'taking over process' and the 'final testing and commission of line work', to the corporate debtor. With regards to Package 1B, the works were suspended in July, 2015, and the suspension has continued since then despite various letters from the applicant.
- c) The applicant, on 10.04.2018, conducted a Joint inspection along with South East U.P. Power Transmission Company Limited, (also referred to

as "SEUPPTCL" or "SEUP") and TRACTEBEL (a representative of SEUPPTCL), wherein a Joint Inventory was made of the stores and a statement was duly signed on 10.04.2018.

- d) CIRP was initiated in the case of the Corporate Debtor (Isolux India) on 11.10.2018 and the applicant TPL filed its claim on 26.10.2018. Subsequently, the applicant was requested by the IRP to access the value of the goods, but after a market survey, it was found that the goods have only a scrap value, being specific to the project. The IRP of Isolux India, in his letter dated 16.10.2018 asked for the custody and control of the goods to be given to the Corporate Debtor. In response, this application was filed.
- e) Therefore, the applicant filed the application by way of abundant caution, seeking a declaration from this Tribunal that the applicant has the right of an unpaid seller over the goods in question and thus has the right to sell the same and appropriate the money recovered from the sale of the same.
- f) The applicant has relied on Section 3(6)a and 5(21) of the IBC, as well as on certain provisions of the Sale of Goods Act (hereinafter also referred to as "SOGA"), such as Section 45, 46, 47 (Unpaid Seller; Unpaid Seller's Rights; Seller's Lien), and Judicial decisions including ***Contship Container Lines Ltd vs. D. K. Lall and Ors, AIR 2010 SC1704.***
- g) Reliance has also been placed upon Section 24 (Transfer of Ownership)

from the General Conditions of Contract (“GCC”), to state that as per the contract between the applicant and the corporate debtor, once the goods have been put into transport, the title of the goods shall be transferred to the purchaser, and even in the case that the title of the goods is assumed to be passed to the corporate debtor, the applicant shall continue to exercise the rights of an unpaid seller.,

- h) It is submitted that Section 238 of the IBC provides for the overriding power of the provisions of the IBC, however, it is argued that the said provisions of the Sale of Goods Act, namely Sections 45 to 47, are not superseded by the provisions of the IBC as there is no inconsistency between the said provisions of the two Acts.
- i) The applicant asserts that the applicant’s rights as an unpaid seller would subsist, and in such a case, the applicant shall rest their reliance on the well-settled principle of law that an unpaid seller shall have lien over the goods, hence giving the applicant undisputed right on the lien of the mentioned goods.
- j) In view of the facts and circumstances mentioned by the applicant, the applicant prays for the declaration of the applicant’s right as an unpaid seller over the goods in question as well as the consequent right to sell the goods and thereby appropriate the money recovered from the sale of the aforesaid goods.

4.3 The Resolution Professional of the corporate debtor, i.e. Isolux, respondent No.1 in his reply (Diary No. 2166, Dated 29.04.2019) has stated the following;

- a) It is submitted that the applicant has misled the Adjudicating Authority by providing incorrect facts with regards to the transaction between the Corporate Debtor and the Respondent.
- b) This Adjudicating Authority vide order dated 11.10.2018 (declared a Moratorium under Section 14(1)(c) of the Code of 2016, which clearly prohibits any action by creditor to recover its dues from the corporate debtor in the period from 11.10.2018 till the completion of the CIRP. It is submitted that when under the statutory position any action to recover by any creditor against the corporate debtor is prohibited during the moratorium, the applicant already being an Operational Creditor of the corporate debtor is thus prohibited to take any action to recover, including the action of sale of the said goods in the custody of the applicant belonging to the corporate debtor.
- c) Respondent corporate debtor also places reliance of Section 3(37) of the code, to state that the term "property" includes 'goods', and that, in view of the same, the applicant has withheld the goods belonging to the corporate debtor, therefore, the corporate debtor is bound to take custody and control of the said assets.
- d) the applicant has submitted that it already has filed for claims as admitted to the tune of INR 28,72,17,097/-, in terms of the joint reconciliation

statement and being the Operational Creditor of the corporate debtor. given that the claim is admitted, and the fact that the Operational Creditor is already holding certain goods of the corporate debtor, the Operational Creditor is bound to hand over the custody of the goods to the respondent corporate debtor.

- e) It is stated that protection is granted to any corporate debtor undergoing a CIRP through the declaration of the Moratorium under Section 14, against the recovery of any kind of debt due by the corporate debtor even on stages such as the execution in any Court, Tribunal, Arbitral Panel, or other authority. The applicant has already filed its claims in terms of the provisions of the Code, and there being a Moratorium under the Code, the applicant can't in any manner take any steps for the sale of the goods as the same is in complete violation of the moratorium as granted by this Adjudicating Authority.
- f) The duty of the IRP is to ensure that the interests of all the stakeholders are maximized through a Resolution Plan. No single creditor must be allowed to benefit over and above the other creditors or affect the interest of the other creditors. The action of the Applicant, if allowed, will cause further stress on the business of the corporate debtor and lead to compromising the interest of the entire body of creditors and other stakeholders.
- g) Reliance has been placed on Section 238 of the code, which provides for

the overriding effect of the provisions of the Code over all other laws in the country.

h) Respondent has also relied upon Judicial decisions of the Hon'ble Supreme Court in cases such as;

- ***Pr Commissioner of Income Tax v Monnet Ispat and Energy Ltd.***
dated 10.08.2018

- ***Innoventive Industries Ltd v ICICI Bank (2018) 1 SCC 407***

4.4 In its reply, the South-East UP Power Transmission Company Limited ("SEUP"), respondent No.2 submitted that:

a. SEUP is initiated into resolution by order dated 15.06.2022 and the new management has taken control of SEUP as on 16.09.2022.

b. The Resolution Plan in Part IV, at para 7, provides that all assets of SEUP shall be free and clear from all encumbrances in favor of any person, including financial creditors, operational creditors, and any other persons.

c. The Liquidator of Isolux Corsan India Engineering & Construction Limited ("Isolux") had filed a claim in the CIRP of SEUP, which was only partially admitted by the Resolution Professional. Against this, the Liquidator of Isolux filed IA No. 318/2021 on 22.09.2021, and in the meanwhile, the Approval Order was pronounced.

d. Hence, Isolux filed an appeal titled ***Isolux Corsan India Engineering & Construction Pvt Ltd through its Liquidator vs Mr***

Shailesh Sharma (Erstwhile RP of SEUP) and Ors., CA (AT) Ins No. 1124/2022 before the Hon'ble NCLAT, which **was dismissed** vide judgment dated 04.11.2022.

4.5 The respondent- SEUP has relied upon its contention filed in RT-CA No. 319/CHD/ALD/ 2022 on the same issue.

4.6 In the rejoinder filed on behalf of Applicant- TPL, it is submitted as follows;

- a) The entire reply of the Interim Resolution Professional is based on the wrong premise that there is a contradiction between the provisions of the IBC and those of the SOGA, that the premise is incorrect and has no basis in law, thus rendering all the objections of the IRP as unsustainable in law.
- b) It is submitted that there is no submission of incorrect facts to the Adjudicating Authority. The factum of the joint reconciliation has already been disclosed in the petition. Applicant claims that the Resolution Professional has now admitted the claim only to the extent of INR 28,72,17,097, and the applicant denies that they had admitted the claim only to this extent, and therefore claim that the applicant reserves the right to take remedies available in law in respect of the remaining amount.
- c) The applicant declines that the Committee of Creditors has any right to order the sale of the Goods lying with the applicant.
- d) Sections 3, 18, or 25 of the IBC do not grant any protection to the corporate debtor in relation to the rights of an unpaid seller. With regards

to the Moratorium defined under section 14 of the IBC, the applicant states that the limit of such moratorium only extends to the security interest created by the borrower, and it doesn't restrict the rights created under statutes, that Sections 18 & 25 only deal with the duties of the IRP and the RP respectively, and the said sections don't grant any protection from exercising of the right of unpaid seller to exercise lien over the goods or to sell the same.

- e) If the interpretation submitted by the RP is upheld, the same would in fact mean rewriting and incorporation into the provisions in Section 14 of such protection, which the legislature in its wisdom did not provide. The provisions of Sections 18 and 25 are to be read keeping in mind the provisions of Section 14. The said sections don't impose any duty upon or take away any right from a third party who is in possession of goods as an unpaid seller.
- f) The right of the corporate debtor in the goods is subject to such restrictions as placed by the law and the RP takes over the company and the company's assets along with such restrictions as are applicable under law.
- g) Nothing in the reply of such nature is highlighted which would show that the provisions of the SOGA and IBC are contradictory. Also, finally the applicant states that even the conditions of Sections 18 and 25 have not been met as no balance sheet has been brought on record.

- h) The applicant has moved the application as a matter of abundant caution, and Section 14 has no applicability as there is no security interest created by the corporate debtor in the present case.
- It is submitted that there is no substantive provision obligating the handing over of the goods to the RP or otherwise.
 - It is submitted that the answering respondent is misinterpreting the provisions of Section 14 and that the applicant has the right to sell the goods to recover the money as an unpaid seller.
 - The RP can only enforce the rights of the corporate debtor subject to the rights of the applicant under the applicable law and therefore has no right to sell the goods under question.
- i) It is submitted that the corporate debtor never gained absolute ownership of the goods and that any ownership is subject to the provisions of the SOGA which governs the transaction in question. The RP has ignored the fact that possession of goods that have not been paid for, cannot be forcibly obtained, and if the same is still done, such an action would be against public policy and would render the provisions enabling such an action arbitrary and unsustainable.
- j) There is no contradiction between SOGA and IBC regarding the rights of an unpaid seller.
- k) The fact of running of the corporate debtor has no concern with the present dispute. That security interest is not created by the corporate

debtor; further Section 14 grants protection only in terms of Moratorium while the company is operating during the subsistence of the Resolution Proceedings. The funds realized from the sale can't be utilised in the Resolution Process if the applicant has statutory rights to recover its money, which has not been expressly barred by the IBC. Where the law enables the applicant to recover money for the goods it has produced, the same right can't be denied merely to benefit other creditors.

- l) The fact that the applicant has filed a claim as a creditor doesn't in any manner restrict its right as an unpaid seller. Rather, on the admission of part-claim, the applicant is entitled to recover that much amount at least.
- m) With regards to Section 238 IBC, the applicant states that it is mandatory to show inconsistency between a statute and the IBC for invoking the mentioned section.
- n) The transfer of ownership is based on the logical premise that till the goods are not paid for, the owner cannot enforce the right to possess or utilize the goods, and in the face of such non-payment, the seller in possession of the goods can recover the money by selling the same, therefore, the transfer of ownership of such goods is subject to the rights of the unpaid seller, and such ownership is not unconditional or unfettered. The reply doesn't disclose any provision whereby the goods would become assets of the corporate debtor without the conditions envisaged in the SOGA. Hence, the above contention in no way contradicts the IBC,

which itself has no provisions that restrict the right of the unpaid seller. No inconsistency has been highlighted between various statutes.

- o) With regards to the judicial decisions relied upon by the respondent with regards to the applicability of Section 238, the applicant states that as Section 238 doesn't apply in the facts of the case, even such reliance is misconceived. The judgments mentioned have no applicability to the facts of the present case.

5 **CA No. 170/2019**

- 5.1 The present application has been filed under Section 14 r/w Section 18(1)(f), 25(1), 25(2)(a), 60(5) of the Insolvency and Bankruptcy Code, 2016, by the applicant, i.e., Mr. Vikram Kumar, IRP of Isolux Corsan India Engineering and Construction Pvt. Ltd., seeking directions from this -Adjudicating Authority for the handover of the custody and control of the goods belonging to the corporate debtor (Isolux) lying with the respondent (TPL) and prohibiting the respondent from selling the goods and appropriation of any amount towards its dues against the corporate debtor.

5.1.1 In addition to reiterating the facts mentioned in CA No. 139/2019, the applicants have stated that during the execution of the project, ICI-C&C Mainpuri JV transferred its business to the corporate debtor under the Business Transfer Agreement dated 01.12.2014 and Novation Agreements were signed among the corporate debtor, ICI-C&C Mainpuri JV and the respondent. The works of Package 1B were suspended in July 2015 and a

Joint Reconciliation Statement with regards to outstanding payment was duly signed on 06.04.2017, between the corporate debtor and the respondent wherein the latter agreed that Rs. 28,72,17,097/- was due and payable by the corporate debtor to the respondent. The material was procured by TPL for the execution of the packages, and a joint inspection was conducted by SEUPPTCL, TPL and a representative of TRACTEBEL, and a statement was duly signed on 10.04.2018.

5.1.2 It is also stated that after the corporate debtor was admitted to CIRP by order dated 11.10.2018, and in pursuance of public announcement dated 15.10.2018, the respondent filed its claim in Form B dated 26.10.2018, for an amount of Rs. 57,17,43,049/-, wherein after verification of the claim, the applicant had admitted an amount of Rs. 28,72,17,097/- as per the joint reconciliation statement.

5.1.3 The applicant states that since the moratorium was imposed under Section 14 of the Code vide order dated 11.10.2018 and the respondent already being an operational creditor of the corporate debtor is prohibited from taking any action to recover i.e., sale of the said goods in the custody of the respondent belonging to the corporate debtor and is bound to handover the custody of the said goods to the applicant.

5.1.4 It is further stated by the applicant that the CoC in its 5th meeting held on 15.02.2019, discussed the matter and resolved that the sale of stock

lying with TPL shall be approved for sale by the Resolution Professional, subject to approval by NCLT.

5.1.5 The applicant relies upon the judgment of the Hon'ble Supreme Court in the case of ***Innoventive Industries Ltd v ICICI Bank (2018) 1 SCC 407*** and ***Pr. Commissioner of Income Tax v Monnet Ispat and Energy Ltd.*** wherein the overriding effect of the provisions of IBC, 2016 were discussed.

5.1.6 It is submitted by respondent No.1, TPL, vide its reply dated 24.05.2019, that the claims were submitted by it on 26.10.2018, in the prescribed Form-B under Regulation 7 of the Code, and IRP was also informed via notice dated 26.10.2018 about its right to lien in case it fails to receive any response from IRP within 30 days.

5.1.7 The IRP, via email dated 28.10.2018 and a personal meeting with respondent no.1 on 29.10.2018, advised him to assess the value of the goods, to which respondent no.1 replied via letter dated 08.01.2019 that three buyers have submitted quotes at scrap value and requested the IRP to pass necessary orders for the sale of goods and appropriate the proceeds against its dues against the corporate debtor, to which the IRP replied via an email dated 16.01.19 and requested the respondent no.1 to refrain from selling the goods and also directed to provide custody and control of the goods alleging that the same are assets of the corporate debtor.

5.1.8 It is submitted by respondent no. 1 that according to the contract between respondent no.1 and the corporate debtor, once the goods have been

put into transport, the title of the goods shall be transferred to the purchaser. Accordingly, even if the title has been passed, respondent no.1 has all the rights of an unpaid seller, which includes a lien over the goods as well as the right to re-sell them for unpaid amounts.

5.1.9 It is also put forward by respondent no.1 that Section 238 of the IBC provides for overriding power of the provisions of the IBC and Sections 45 to 47 of the Sale of Goods Act are not superseded by the provisions of the IBC as there is no inconsistency between the said provisions of the two Acts. The moratorium under Section 14 does not prohibit the exercise of the rights of an unpaid seller, as this is not a security interest created by the corporate debtor and hence, Section 14(1)(c) has no applicability.

5.2 Respondent no. 2, South-East UP Power Transmission Company Limited (“SEUP”) in its reply dated 17.01.2023 submitted that it has successfully undergone the CIR process, and the Hon’ble NCLT, Allahabad Bench vide order dated 15.06.2022 approved the Resolution Plan, which has been successfully implemented and the new management took charge and control of SEUP as on 16.09.2022. The Resolution plan provides that all the assets of SEUP shall be free and clear from all encumbrances in favor of any person, including all financial creditors and operational creditors or any other persons.

5.2.1 It is also submitted by respondent no. 2 that the Liquidator of Isolux Corsan India Engineering & Construction Private Limited (“Isolux”) had filed a claim in the CIRP of SEUP, which was partially admitted by the Resolution

Professional. Isolux filed an appeal against the approval order before the National Company Law Appellate Tribunal wherein the said appeal was dismissed vide judgment dated 04.11.2022 and the matter regarding the purported claims of Isolux against SEUP (whether admitted by the RP or otherwise) was finalized.

5.2.2 On 04.10.2021, the Resolution Professional of SEUP had filed I.A. No. 319/2021 against Tata Projects Ltd. before the Hon'ble NCLT, Allahabad, wherein the Resolution Professional had sought the handover from TPL of goods and equipment owned by SEUP which were lying in the godowns of TPL. The said application was transferred by the Hon'ble NCLT, Principal Bench, New Delhi vide order dated 23.05.2022, to this Bench.

5.2.3 Respondent No. 2 also submitted that the project being of national importance, is getting delayed due to the unavailability of the equipment procured solely for the project. Thus, the Resolution Plan needs to be implemented in order for the commission of the project of SEUP.

5.2.4 Respondent no. 2 also seeks to adopt and rely on the contents of SEUP's application and rejoinder dated 28.02.2022.

5.3 By its rejoinder dated 04.11.2019 to the reply filed by respondent No.1, the applicant reiterated the facts of the application submitted that the goods being the property of the corporate debtor within the meaning of Section 3(27) of the IBC, 2016 is required to be taken in custody and control by the applicant in terms of Section 18(1)(f) read with Section 25(2)(a) of the Code. The respondent is an

operational creditor of the corporate debtor and is thus prohibited from taking action to recover, i.e., the sale of goods in the custody of respondent No.1 belonging to the corporate debtor.

5.3.1 The applicant in its rejoinder dated 30.05.2023 to the Reply submitted by respondent No. 2, pointed towards the two different sets of contractual agreements; the first being the Mainpuri agreement entered into and between SEUP and Isolux, the second, being the TATA agreements entered into and between the respondent No. 1(TATA) and the corporate debtor (Isolux) for the UP-BOOT power project in the State of U.P. and mentioned that both sets of the agreements are independent of each other and thus, respondent No. 2 has no privity to the TATA agreements and vice versa and therefore, respondent no.2 entails no right to seek possession of goods/assets from respondent No. 1

5.3.2 It also submitted that the new management of respondent No. 2 had terminated the contracts entered into and between the corporate debtor and the erstwhile management of respondent No. 2 and thus, Respondent no.2 being a resolved/fresh entity, cannot claim possession from Respondent No.1, with whom it has never been within any contractual relationship, and that the said contracts have also not been carried forward/novated in favor of the new management of Respondent no.2 as per its resolution plan. It was also submitted that neither the resolution professionals nor the committee of creditors of Respondent No. 2 constituted any warranty in relation to the title

over the assets of Respondent No. 2. Thus, Respondent No. 2 has failed to showcase the ownership of the goods in dispute. The claim filed on behalf of the corporate debtor on 19.06.2021 in the CIRP of respondent no.2 was never for the goods in dispute as the same was never being installed at the site or passed to Respondent no.2 and the same has been a subject matter of dispute between the corporate debtor and the Respondent no.1 and is pending for adjudication before this Tribunal since 2019.

5.3.3 Further, the applicant also contended that Respondent no.1 is in a contractual relationship with the corporate debtor and thus, Respondent no. 2 has no privity of contract and cannot assert its alleged rights whatsoever prior to the adjudication of the dispute between the corporate debtor and Respondent no.1.

5.3.4 The applicant seeks this Adjudicating Authority to disallow the alleged contentions raised by Respondent no.2 and allow the present application directing Respondent no.1 to immediately release/handover goods/assets/equipment of the corporate debtor wrongfully held in its possession to the applicant/liquidator.

6. **C.A. No. 477/2021**

6.1 IA no. 477/2021 has been filed by the Liquidator of Isolux Corsan India Engineering & Constructions Private Limited for early listing and hearing on CA No. 139/2019 and CA No. 170/2019 and also to bring on record certain additional facts/issues.

6.2 The applicant-liquidator has given a chronology of affidavits leading to the rest of the settlement proposal from TATA Projects by the liquidator, wherein, TATA Projects proposes to take full ownership towards goods manufactured by it. The details of the settlement proposals have been submitted. Isolux India submitted a counter proposal dated 08.06.2021, which was agreed to by the respondent, however, with regard to the condition of sale of goods manufactured by the respondents as proposed by the liquidator.

6.2.1 The questions to be adjudicated as stated by the applicant are as under:

1. Whether the Respondent (TATA Projects Limited) is the Unpaid Seller under the Sale of Goods Act?

The State of Madras vs. Gannon Dunkerley & Co. (Madras) Ltd. [AIR 1958 SC 560] (para 16).

Devi Das Gopal Krishnan and Ors. Vs. State of Punjab and Ors [AIR 1967 SC 1895] (para 23)

M/s Hindustan Aeronautics Ltd. vs. State of Karnataka [AIR 1984 SC 744] (para 13).

State of Andhra Pradesh vs. M/s Kone Elevators Ltd. [(2005) 3 SCC 389] (para 5).

State of Punjab vs. Associated Hotels of India [AIR 1972 SC 1131] (para 12).

2. Whether the interpretation of Cl.24.1.- Transfer of Ownership under the General Conditions of Contract (GCC) of Service Agreement executed between the corporate debtor and the Respondent (TATA Projects).
Constitute sale under the Sale of Goods Act,1930?

Whether the respondent can claim Security Interest on the assets of the corporate debtor lying in its custody?

3. Whether the amount of INR 17.22 cr of the goods/assets of the corporate debtor lying in the custody of the Respondent (TATA Projects), included in the claim accepted by the Liquidator/applicant of the Respondent?

State of Andhra Pradesh vs. M/s Kone Elevators Ltd. [(2005) 3 SCC 389] (para 5) cited in the application by Liquidator in para 7.1(iv)

6.3 The Respondent, TPL in its reply dated 06.01.2023 filed by Diary No. 00882/2 submitted that it is not possible for the corporate debtor through the IRP or the Liquidator to take contrary stands during the CIRP process and a completely different stand during the liquidation.

6.3.1 The entire premise on which the exercise of rights by TPL was delayed was that it was enforcing a 'Security Interest', created by the corporate debtor and was covered by the moratorium. The sale was prevented by virtue of the interim orders passed by this Tribunal and it is settled law that the interim directions cannot be used to defeat substantive rights and the relief in the application always relates back to the date of its filing.

6.3.2 It was submitted by the Respondent that in the same proceedings, two contrary arguments cannot be put by a party. On one hand, TPL's exercise of right of unpaid seller was delayed on the premise that it was an action to foreclose and recover a security interest under Section 14(c) of the Code. After having successfully delayed the exercise of such rights, a stand is sought to be taken that the rights do not fall within the definition of 'Security Interest'. Considering the fact that the stand is being taken on behalf of the same person, i.e., the corporate debtor, the same is untenable in law.

6.3.3 The rights of TPL are to be seen on the date of filing of the present application and not during liquidation. The exercise of rights has been delayed by the IRP by taking a specific stand. In the event, if this Tribunal is pleased to find that the stand of IRP was legally tenable, TPL has to be permitted to exercise its rights as an unpaid seller.

6.3.4 IBC provides the definition of security interest wherein the term "provided" is used prior to the word secured creditor, meaning that any security interest which may be created or provided by law is duly recognised by the IBC.

6.3.5 Section 14 of the IBC uses the word, "created" and hence this relates only to those interests which can be later on exercised under Section 52 IBC. Thus, the legal position being that in the event, the statutorily provided security interest can be exercised during the CIRP Process. The provision has to be interpreted in one way, both under CIRP and Liquidation. If the exercise

of rights is prevented by Section 14, the same can be enforced under Section 52. If the same is not covered under section 14, there is nothing preventing TPL from exercising its right at that stage and the action of the IRP is to be declared illegal.

6.3.6 Replying to the issue of whether TPL is an unpaid seller under the Sale of Goods Act, it was submitted by TPL that it has established that it is an unpaid seller within the definition of the Sales of Goods Act and has the right of lien and sale which vests in such unpaid seller under the Sales of Goods Act (in C.A. No. 139 Of 2019). The primary rationale given by the liquidator for making an averment to this effect is that the essence of the three contracts between TPL and the corporate debtor is not in the nature of sale as for sale, there has to be a transfer of property. However, the present contract is in the nature of service and supply and clause 1 clearly defines the scope of supply which is the supply of equipment to the purchaser as per technical specifications detailed.

6.3.7 Further, Clause 25.2 envisages that ownership of equipment including spare parts, if any, procured in a country where the equipments are loaded on the mode of transport to be used to convey the equipment and upon consigning the endorsing of the dispatch documents in favor of the purchaser as applicable. Thus, the contract envisages that prior to the fulfilment of requirements of Clause 25.2, the ownership of the material would be with the

supplier and post the fulfilment of the requirements of Clause 25.2, the same shall be transferred upon the corporate debtor.

6.3.8 In the present case, the event envisaged under clause 25.2 took place and hence pursuant to the transfer of ownership, the sale under the terms of the Sales of Goods Act was complete. The property has not been passed physically, but the title has passed pursuant to a contract, which is the very condition in which the rights of an unpaid seller, in possession of the goods, is exercised.

6.3.9 Further, there is a supply agreement as well between TPL and the corporate debtor, wherein TPL has supplied the goods and equipments to the corporate debtor, wherein the transfer of ownership is duly envisaged under the contract. Service obligations, the supply of goods and the works were three separate parts of the works. The supply of equipment is duly covered within the definition of the Sales of Goods Act, 1930.

6.3.10 It is also submitted that the adjudication of the claim is the determination of the liability of the corporate debtor towards the Operational Creditor, it has no relation to the exercise of rights of an unpaid seller, a 'Security Interest' provided for by a Statute. In the face of this right of an unpaid seller to lien and sell, provided for in a statute, to secure the payment for sale, is not extinguished in any manner, and the liquidator cannot take possession of the property, completely defeating such provisions. The admission of the claim only establishes the liability of the corporate debtor

towards TPL, establishes the sale and transfer of title under contract and supports the case of TPL to exercise its rights of unpaid seller.

6.4 In its rejoinder, the liquidator of Isolux has stated that Respondent no. 1 has misinterpreted the provisions of IBC, specially, the meaning of “Secured Creditor” and has tried to interpret it to suit its convenience. The line of arguments of the applicant, being common to its stand taken in other applications are not repeated here.

6.5 This application is allowed and additional facts are taken on record and the issues raised, therein, have been discussed in the subsequent paragraphs.

7. **IA No. 319/2019 Allahabad (re-registered as RT-CA No. 319/CHD/ALB/2022)**

7.1 This application has been filed by the Resolution Professional of South East U.P. Power Transmission Company Limited, (herein referred to as SEUP) against Tata Project Limited (TPL) -Respondent No. 1 and the Liquidator of Isolux Corsan India Engineering & Constructions Private Limited (Isolux) under Section 18 (f) read with Section 19(2), Section 19(3) and Section 60(5) of the IBC, 2016 originally before the NCLT, Allahabad Bench and was received by this Bench on 29.08.2022 on transfer.

7.2 The said RT CA 319/CHD/ALB/2022 has been amended subsequently vide I.A. No. 283 of 2023 and the amendment sought to be made in C.A. No. 319 of 2021 (ALLAHABAD); by this application are as under:

“That, in view of the above facts and circumstances, the 'List of Equipment' as annexed as Annexure A-1 in C.A. No. 319 of 2021 (Allahabad); re-registered as: RT-CA No. 319 / Chd / Alb / 2022 is being

hereby replaced by the corrected ANNEXURE - 1 as annexed to this instant Application.”

7.3. That, further, the following new paragraph is being added as the new Para. No. 7 (m) in C.A. No. 319 of 2021 (Allahabad); re-registered as: RT-CA No. 319 / Chd /Alb/ 2022:

"7. (m) It is submitted that while SEUP sourced the Equipment from Isolux in terms of the Mainpuri Supply Agreement, Isolux in turn also supplied a smaller part of the Equipment directly to SEUP (from sources other than TPL). It is pertinent to add that regardless of which of the two categories the Equipment is in, it is the fundamental averment of SEUP that the equipment belongs to SEUP alone and that the same is admittedly for SEUP's Project. Furthermore, the title of the entire equipment has passed on in favour of SEUP alone."

7.4 It is further submitted by SEUP that the following Contractual provisions provide a clear flow of title in the Equipment in favour of SEUP alone:

7.4.1 Clause 8.4.1 of the Mainpuri Supply Agreement: “In case of inter-state supply in form of in-transit sale, the property in goods would pass from Supplier to Purchaser at the time of endorsement of the lorry receipt any such document of title to the goods, by Supplier in favour of Purchaser, during the course of movement of such goods... Otherwise, then as mentioned above, the ownership in Equipment shall be handed over to the Purchaser on physical handing over of such Equipment to the Purchaser at Site.” (Emphasis added)

7.4.2 The endorsed lorry receipts in favour of SEUP for the total quantity of Equipment for Package IB for 13,777.328 metric tonnes which includes the

Equipment presently in the three TPL stores (at Bara, Jayantipur and Fatehpur in Uttar Pradesh) and the Equipment that has already been utilized for the Project, along with the entire set of invoices and other supporting documents were filed by SEUP on 05.09.2023.

7.4.3 It is submitted in view of title and ownership in the Equipment having passed on to SEUP and given that TPL has parted with possession in the Equipment under the supply leg, TPL clearly cannot exercise rights available to an unpaid seller under the Sale of Goods Act, 1930 (“SOGA”).

7.4.4 It is further submitted that under Clause 6.5.1 (a) of the Mainpuri Supply Agreement, Isolux was to raise invoices on SEUP towards interim payments for the Equipment – the same form a part of the Additional Documents filed by SEUP. It is the contention of SEUP that it has paid Isolux for the Equipment supplied to it under the Mainpuri Supply Agreement. Without prejudice to the foregoing, any pending payment stands extinguished in view of the terms of the Resolution Plan.

7.4.5 It is stated that Isolux’s any further claims against SEUP stand fully rejected given that the Hon’ble National Company Law Appellate Tribunal (“NCLAT”) dismissed Isolux’s appeal, inter alia, against the partial admission of its claims against SEUP, vide order dated 04.11.2022. The Liquidator of Isolux thereafter moved a civil appeal before the Hon’ble Supreme Court which was also dismissed vide order dated 27.01.2023. The matter regarding the purported claims of Isolux against SEUP (whether admitted or otherwise) has,

thus, attained finality. The counsel for SEUP stated that, without prejudice to the foregoing, while submitting that SEUP has paid Isolux for the Equipment, under Clause 8.4.1 of the Mainpuri Supply Agreement, payment by SEUP for the Equipment supplied by Isolux is irrelevant insofar as transfer of title in the Equipment is concerned.

7.4.6 It is stated that when it was pointed out that Isolux had not raised any claim against SEUP for the Equipment in its claim form submitted to the Resolution Professional of SEUP during SEUP's corporate insolvency resolution process ("CIR Process") because SEUP had paid Isolux for the Equipment. It is further submitted that the Liquidator of Isolux attempted to raise the false argument that no such claim was raised by Isolux since Equipment was not supplied by Isolux to SEUP. The learned counsel stated that it is in this context that the entire set of 698 endorsed lorry receipts, invoices and supporting documents for Phase 1B of the Project were placed on record by SEUP before this Hon'ble Adjudicating Authority, to counter the ex facie false submissions of the Liquidator.

7.4.7 It is submitted that a perusal of the Mainpuri Agreements dated 10.02.2012 (together, "Mainpuri Agreements"), read with the Tata Agreements demonstrates that under the Tata Supply Agreement, TPL delivered the Equipment to Isolux which was then supplied by Isolux under Clause 8.4.1 of the Mainpuri Supply Agreement to SEUP, as the Purchaser of the Equipment.

Thereafter, with title having passed on to SEUP, SEUP delivered the

Equipment back to Isolux (in Isolux's limited capacity as a contractor only) as Isolux was then to carry out services and civil works in terms of the Mainpuri Services and Mainpuri Civil Works Agreements. In the final leg of the back-to-back arrangement, Isolux then handed the Equipment to TPL to carry out services and civil works on the Equipment as a sub-contractor in terms of the Tata Services and Tata Civil Works Agreements. The contractual scheme of the Mainpuri Agreements and Tata Agreements is unequivocal and for the exclusive benefit of the Owner of the Equipment i.e., SEUP.

7.4.8 In the course of present proceedings The SEUP has also furnished the following documents/submissions:

7.4.8.1 SEUP's Additional Documents dated 05.09.2023 filed vide Diary No. 00243 / 7 ("Additional Documents") wherein, inter alia, the complete set of 698 endorsed lorry receipts in favour of SEUP, in terms of Clause 8.4.1 of the Mainpuri Supply Agreement dated 10.02.2012 ("Mainpuri Supply Agreement"), evidencing flow of title and ownership in the Equipment in favour of SEUP, is set forth.

7.4.8.2 Further, additional documents including invoices raised by Tata Projects Limited ("TPL") on Isolux Corsan India Engineering & Construction Private Limited ("Isolux"), and then by Isolux on SEUP, and material issue notes ("MIN") and material receipt notes ("MRN") are also submitted.

7.4.8.3 The approved Resolution Plan dated 19.07.2021 for SEUP (“Resolution Plan”) filed before this Bench on 10.04.2023 vide Special Diary No. 584.

7.4.9 In the course of the present proceedings, the flow of title in the Equipment in favour of SEUP, by way of example for one set of documents (endorsed lorry receipt in terms of Clause 8.4.1 of the Mainpuri Supply Agreement, invoice of TPL on Isolux and invoice of Isolux on SEUP and MIN and MRN for the services and civil works leg), was explained hereinbelow:

a. TPL’s invoice on Isolux: TPL raised Invoice No.TPL/ISOLUX/MAINPURI-BARA(IB)2014- 2015 / INV. 209 dated 31.01.2015, on Isolux for Tower Package 1B.

b. Isolux’s invoice on SEUP: Isolux then raised Invoice No. ICI / 2014-15 /f0074 dated 21.02.2015 on SEUP, enclosing an endorsed annexure containing details of invoices raised by TPL.

c. Endorsed lorry receipt: Along with Invoice No. 209, the corresponding lorry receipt bearing no. 71984 dated 31.01.2015 is also annexed. The consignee is TPL and there are handwritten endorsements which clearly prove that there was movement of the Equipment from TPL to Isolux to SEUP who received such Equipment. The endorsements are clear and are stamped by the respective parties in accordance with the transfer of Equipment viz. from TPL to Isolux to SEUP.

d. Material Receipt Note (MRN) and Material Issue Note (MIN): Once title in the Equipment had passed in favour of SEUP in terms of Clause 8.4.1 read with the endorsed lorry receipts, MRN no. 225 dated 11.02.2015, was issued by SEUP in favour of Isolux under the Mainpuri Supply Agreement, confirming receipt of Equipment.

e. Thereafter, MIN no. 226 dated 11.02.2015, was issued by SEUP in favour of Isolux under the Mainpuri Service Agreement for Isolux to carry out services on such Equipment. The following day, MRN no. 246 dated 12.02.2015, was issued by Isolux in favour of SEUP, confirming the movement of Equipment from SEUP to Isolux under the Mainpuri Service Agreement.

f. Lastly, MIN no. 226 dated 12.02.2015 was issued by Isolux in favour of TPL confirming the movement of Equipment from Isolux to TPL for TPL to provide services on such Equipment under the Tata Service Agreement. A copy of the illustrative invoice no. 209 and documents is annexed as Schedule-D. This flow of ownership and title of the Equipment in favour of SEUP is true for all sets of documents in the Additional Documents.

7.4.10 Further, while SEUP procured the Equipment from Isolux in terms of the Mainpuri Supply Agreement and indirectly from TPL through Isolux, Isolux also supplied a smaller part of the Equipment directly to SEUP (procured from sources other than TPL). Regardless of which of the two categories the Equipment was in, it is the fundamental averment of SEUP that

it is entitled to the possession of Equipment since the same solely belongs to SEUP on account of the title having ex facie passed to SEUP and was stored in the godowns for the interim pending installation in SEUP's Project. Thus, Isolux can possibly claim no rights of title in respect of the Equipment.

7.4.11 At the outset in this regard, there is no one single EPC Contract. 'EPC Contracts' is defined on pg. 125 / 168, read with Appendix - X of the Resolution Plan, and includes the three separate Mainpuri Agreements. The subsequent termination of the EPC Contracts in terms of the Resolution Plan dated 19.07.2021, in fact, has nothing whatsoever to do with the issue of SEUP's title and ownership over the Equipment, since the same had already transferred to SEUP at the time of endorsement of lorry receipts in its favour in terms of Clause 8.4.1 of the Mainpuri Supply Agreement. Therefore, any subsequent termination of the Mainpuri Supply Agreement has no impact at all on SEUP's title to the Equipment. The Mainpuri Supply Agreement was given effect to by both SEUP and Isolux, and the same is not denied by the Liquidator of Isolux.

7.4.12 It is claimed by SEUP that Clause 7.1 of the Resolution Plan read with Clause 12.22.1 (b) of the Resolution Plan, regarding the assets of SEUP, specifically covers the Equipment in question. Such provision requires that the possession and ownership of all assets of SEUP (whether recorded in its books or not), shall remain vested with it, free of all encumbrances, including but not limited to all stores and materials provided by Isolux (which would also

include the Equipment in TPL's stores, pursuant to the EPC Contracts (including the Mainpuri Supply Agreement), whether lying and / or in physical custody in stores, substations and premises of Isolux or other vendors (which would include TPL).

7.4.13 As regards the other contention of the Liquidator of Isolux qua not novating the Mainpuri Supply Agreement in favour of the new management of SEUP reflects an incorrect understanding of the Insolvency and Bankruptcy Code, 2016, ("Code"). Under the scheme of the Code, the Successful Resolution Applicant ("SRA") takes over the corporate debtor as a going concern. There is no requirement whatsoever under the Code or even otherwise, of novating agreements in favour of the new management of SEUP.

7.4.14 Similarly, reliance by Isolux on the principle of 'clean slate theory' to contend that the Equipment in question is somehow not owned by SEUP post the approval of the Resolution Plan, is misconceived. Such theory recognizes that under the Code, the resolved entity is not liable for the previous liabilities of the corporate debtor. It does not, in any manner whatsoever, relate to the assets of the corporate debtor or require the SRA / resolved entity to novate agreements upon being taken over pursuant to a resolution plan.

7.4.15 Reliance of Isolux on TPL's letters dated 05.02.2016, 27.04.2016 and 23.11.2016 regarding lack of owner-supplied material ("OSM"), is misleading as the list of Equipment/stock statement dated 31.03.2018, stipulates that OSM, in fact, was duly provided.

7.4.16 In any event, OSM is a small fraction of the Equipment lying in the three stores of TPL in Uttar Pradesh and the majority of Equipment is what was provided by TPL under the Tata Supply Agreement to Isolux which was subsequently transferred to SEUP under Clause 8.4.1 of the Mainpuri Supply Agreement. The contention of Isolux qua most of the invoices and documents as provided by SEUP to prove title over the Equipment relate to a period prior to suspension of Package 1B in July 2015, is wholly misleading:

7.4.17 The Equipment lying in the three stores of TPL in Uttar Pradesh, was supplied under various shipments made from time to time prior to suspension of Package 1B of the Project sometime in July 2015. For each shipment of the Equipment, there is an endorsed lorry receipt for SEUP.

7.4.18 Logically, TPL (as the sub-contractor and as a commercial entity), would only supply the Equipment to Isolux prior to its suspension of Package 1B of the Project in July 2015, on account of delayed and nonpayment of dues by Isolux to TPL.

7.4.19 TPL would not and did not continue to supply Equipment to Isolux post suspension of Package 1B by it. Therefore, such contention of the Liquidator of Isolux is devoid of reason and merit.

Isolux's reliance on the RP of SEUP and the Committee of Creditors ("CoC") not giving any warranty of title over the Equipment under Clause 7.1 of the Resolution Plan is incorrect and misleading:

7.4.20 In any CIR Process, it is standard for the RP and the CoC to provide a disclaimer on the basis of an 'as is where is' clause and not provide a warranty to the SRA regarding title and ownership over the assets of the corporate debtor.

7.4.21 The Resolution Plan is not even relevant insofar as the issue of SEUP's title over the Equipment is concerned. Ownership in favour of SEUP is demonstrated in view of a plain reading of Clause 8.4.1 of the Mainpuri Supply Agreement and the endorsed lorry receipts for SEUP made per shipment of the Equipment.

7.4.22. As is set forth above, SEUP has title and ownership over the Equipment in view of the Mainpuri Supply Agreement. Lack of privity of contract between SEUP and TPL is wholly irrelevant in this regard. SEUP is not relying on the Tata sub-agreements with Isolux to demonstrate its title in the Equipment. In any event, Isolux is itself the counterparty of SEUP in the Mainpuri Supply Agreement. The entire contractual arrangement was a back-to-back one meant for the benefit of SEUP as Owner of the Project. Title has already passed to SEUP.

7.4.23 The contention of Isolux regarding no Supply Completion Certificate issued by SEUP in favour of Isolux under the Mainpuri Supply Agreement, is patently untenable because as is evident from a plain reading of Clause 8.4.1 read with Clause 8.4.3 of the Mainpuri Supply Agreement, a Supply Completion Certificate is wholly unrelated to the issue of title and ownership in

the Equipment. The transfer of title in the Equipment is upon endorsement of the lorry receipt pertaining to the shipment of the Equipment in question. The issuance or lack of a Supply Certificate is of no relevance at all in the present case. The Supply Completion Certificate is merely regarding the performance of all obligations by Isolux. Such a certificate is to be issued when all supplies are complete.

7.4.24 It is stated that the Liquidator of Isolux has deliberately suppressed Clause 8.4.3 of the Mainpuri Supply Agreement, which is expressly a deeming provision and, inter alia, provides that if the Purchaser (SEUP) fails to issue the Supply Completion Certificate within 28 days, the Supply Completion Certificate shall be deemed to have been issued on the last day of the said 28-day period. [Clause 8.4.3]

7.4.25 As submitted above, under Clause 6.5.1(a) of the Mainpuri Supply Agreement, Isolux was to raise invoices on SEUP towards interim payments at the end of each month for the Equipment sent in shipments from time to time. Transfer of title with respect to each such shipment, however, took place when the lorry receipt for such shipment was endorsed in favour of SEUP. Therefore, it is false even to the knowledge of the Liquidator of Isolux that a Supply Completion Certificate is required in order for SEUP to demonstrate title over the Equipment. It is a false contention of Isolux that the EPC Contracts is a single "Agreement" which was suspended before the Project was complete and, therefore, no title passed onto SEUP is false and misleading:

7.4.26 The flow of title in favour of SEUP is under Clause 8.4.1 of the Mainpuri Supply Agreement, which was acted upon by way of the lorry receipts and invoices. Isolux, having transferred title and possession of the Equipment in favour of SEUP (by endorsing lorry receipts), raising invoices from time to time on SEUP in this regard and also having received payment by SEUP, Isolux is wrongly claiming that there is one agreement between Isolux and SEUP.

Thus, SEUP has valid locus, and the jurisdiction of this Hon'ble Adjudicating Authority does not extinguish on account of approval of the Resolution Plan of SEUP

7.4.27 The case of Liquidator of Isolux is not the per se lack of jurisdiction of this Adjudicating Authority. Instead, the case as set up by Isolux is that somehow there is an extinguishment of the jurisdiction of this Adjudicating Authority on account of approval of the Resolution Plan of SEUP. There was no dispute raised by the Liquidator of Isolux regarding the maintainability of SEUP's application when it was initially made by the Resolution Professional of SEUP. In other words, the Liquidator of Isolux fairly concedes that when the Application was made, this Adjudicating Authority had the necessary jurisdiction to adjudicate the same.

7.4.28 The Resolution Plan for SEUP was approved vide order dated 15.06.2022. Isolux was always aware of such approval being an operational

creditor of SEUP and an unsuccessful objector to the Resolution Plan. [Order dated 15.06.2022]

7.4.29 It is further stated that the above, RT CA No. 319 / CHD / ALB / 2022 (i.e. SEUP's Application), was also under Section 60(5) of the Code. A plain reading of Section 60(5)(c) of the Code would demonstrate its wide and expansive ambit covering any dispute arising out of or in relation to the insolvency resolution or liquidation of a corporate debtor which will be entertained by this Hon'ble Adjudicating Authority. No other judicial fora are vested with such jurisdiction.

7.4.30 Further, the status quo order dated 27.02.2022 pertaining to the Equipment was passed by this Adjudicating Authority and, in any event, both TPL (which was never in CIR Process to begin with), as well as the Liquidator of Isolux, have invoked the jurisdiction of this Adjudicating Authority for the purposes of adjudication of their own applications regarding the Equipment. SEUP cannot be denied requisite jurisdiction merely because it now happens to be a resolved entity in terms of the Code. [Order dated 27.02.2023]

7.4.31 The Resolution Plan was submitted by the SRA of SEUP on the specific basis that the Equipment forms part as an asset of SEUP and that all assets of SEUP (including the Equipment), shall continue to be vested in SEUP. Therefore, the SRA undertook value maximisation during the pendency of such dispute and on such basis, paid a significant sum of Rs. 3,830.99 Crores towards a successful CIR Process of SEUP. However, because the

Equipment is not made available to SEUP, the implementation of the Project and the functioning of SEUP as envisaged in the Resolution Plan, is adversely affected.

7.4.32 Therefore, given that the Application was admittedly properly initiated and SEUP (post takeover by new management), has been permitted to amend the memo of parties (such that SEUP is now pursuing the Application through its Authorized Signatory pursuant to the Application which amendment was allowed vide order dated 14.02.2023), SEUP is entitled to continue with the Application. The change in shareholders / management of SEUP has no impact on the application or on SEUP's standing to pursue the Application. [Order dated 14.02.2023]

7.4.33 SEUP stands impleaded in CA No. 139 / 2019 and CA No. 170 / 2019 filed by Isolux and TPL, respectively. SEUP's Application must be considered as being in Isolux's ongoing liquidation process as well. At the time of filing SEUP's Application on 04.10.2021, SEUP was undergoing CIR Process and Isolux was already in liquidation. Subsequently, on 14.02.2022, SEUP filed a Transfer Petition before the Hon'ble National Company Law Tribunal, Principal Bench, New Delhi ("Principal Bench") pursuant to which SEUP's Application stood transferred to this Hon'ble Adjudicating Authority. Therefore, SEUP's Application (in which Isolux through its Liquidator) is arrayed as a party, is also an application in Isolux's liquidation process and is on no different footing than the application filed by TPL.

7.4.34 Apart from the Application filed by SEUP, SEUP also stands formally impleaded in the applications filed by TPL in IA No. 139 / 2019 and in the application filed by the Liquidator of Isolux in IA No. 170 / 2019, vide order dated 19.01.2023 (“Impleadment Order”) . The Impleadment Order was made pursuant to the transfer order dated 23.05.2022 passed by the Hon’ble Principal Bench. Accordingly, pursuant to the order dated 23.05.2022, the Hon’ble Principal Bench conferred jurisdiction upon this Adjudicating Authority to also hear SEUP’s Application pertaining to the Equipment. [Order dated 23.05.2022].

7.4.35 SEUP has also filed its replies to the said two other applications pertaining to the Equipment wherein, to avoid repetition of facts and submissions, the contents of its own Application are adopted and relied upon. Thus, there can also be no technical objections raised by the Liquidator of Isolux in the given circumstances because SEUP is also party to the applications filed by the Liquidator of Isolux and TPL, and it has asserted its right to possession in such two applications on the footing of its ownership of such Equipment.

7.4.36 Pertinently, in case this Adjudicating Authority were to hold that its jurisdiction to hear the Application stands extinguished in view of the Approval Order, then it would lead to a situation where SEUP would be left remediless. In view of the ongoing liquidation of Isolux, there is a legal bar operating in its favour in terms of Section 33(5) of the Code which prohibits any entity

(including SEUP), from initiating any civil action against Isolux. In effect, SEUP shall then be let remediless on account of the Code, which would be against the principles of ubi jus ibi remedium – where there is a right, there is a remedy. This would also be to the immense unfair prejudice of SEUP merely because it is now a resolved entity under the Code (while its Project is not being implemented despite the approval of the Resolution Plan). Moreover, it would lead to a legal absurdity that the two other applications filed by the Liquidator of Isolux and TPL on the exact same issue i.e., possession of the Equipment, shall continue to proceed before this Adjudicating Authority.

7.4.37 It is also stated that the Liquidator of Isolux never sought the possession of the Equipment from TPL until TPL wrote to Isolux exercising its purported lien on such Equipment being an unpaid seller, in terms of the Sale of Goods Act, 1930 (“SOGA”). There was also no dispute in relation to the Equipment prior to the CIRP of SEUP and such dispute first arose during the CIRP of SEUP when its RP sought access to the Equipment from TPL for inspection. It was then that TPL asserted its lien vide letter dated 02.04.2021 and thereafter, the RP was made aware of the order passed by this Adjudicating Authority dated 27.02.2019, constraining him to seek urgent intervention since, TPL and Isolux had sought orders in respect of the Equipment which belonged to SEUP in the first place. [Email dated 02.04.2021]. It is stated that TPL’s reliance on the Sale of Goods Act, 1930 (“SOGA”), is erroneous in both fact and law:

7.4.38 The title and ownership of the Equipment has transferred to SEUP in accordance with Clause 8.4.1 of the Mainpuri Supply Agreement, pursuant to the lorry receipts which were endorsed from time to time in favour of SEUP, for each shipment of the Equipment. Lien, if any, that could have been exercised by TPL, stands extinguished in view of the above circumstances.

7.4.39 TPL has taken the position that while it is not the owner of the Equipment, it is an unpaid seller as envisaged under the SOGA. Under Section 46 of the SOGA, an unpaid seller of goods has a lien on the goods, only while he is in possession of the goods. TPL is no longer in possession of the Equipment in terms of the TPL Supply Agreement and the Equipment is lying in its stores merely for TPL to undertake services and provide civil works. Under Section 49 of the SOGA, an unpaid seller of goods loses lien in case:

- a. When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- b. when the buyer or his agent lawfully obtains possession of the goods;
- c. by waiver thereof.

7.4.40 As per Sections 46 and 49 of the SOGA, the exercise of lien requires the seller to continue being in possession of the goods in question and the lien terminates when a buyer or his agent lawfully obtains possession of the goods. Even if the seller subsequently re-gains the possession of the sold goods, there is no right of lien which is created in favour of the seller. A

lien waived by implication if the seller assents to a sub-sale. In the instant case, in terms of the Tata Agreements, TPL was well aware of the contract between SEUP and Isolux and was also aware that SEUP was the owner of the Equipment.

7.4.41 Assuming but not conceding that Sections 46 and/or 49 of the SOGA are inapplicable, Section 53 of the SOGA would still be applicable in favour of SEUP. Section 53 of the SOGA provides for two exceptions to the unpaid seller's right of lien in case of a sub-sale

- a. when the seller has assented to the sub-sale; and
- b. where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration.

7.4.42 Both pre-requisites of Section 53 of the SOGA have been met in this case. TPL was aware and has duly recognized the sub-sale of the Equipment by Isolux to SEUP and it was also aware that SEUP was the owner of the Equipment. Therefore, TPL has implicitly waived of any right of lien over the Equipment.

7.4.43 Without prejudice to the foregoing, non-payment of any dues of TPL by Isolux or the non-admission of the claim of TPL in the liquidation process of Isolux, is wholly irrelevant, as ownership and possession stood transferred in favour of SEUP before the Equipment was delivered to TPL for

the limited purposes of execution of services. With ownership and possession in the Equipment having transferred to SEUP, TPL's status as an unpaid seller does not entitle it to any right of lien or resale of the Equipment owned by SEUP. V. Conclusion:

7.4.44 Lastly, the Equipment is customized only for the purposes of SEUP's Project and is suitable for this purpose alone. It stands admitted that the Equipment is of no use for any other Project and for parties other than SEUP, the Equipment is merely scrap value at best. Further, SEUP's Project is stalled due to the unavailability of the said Equipment. The value of the Equipment is deteriorating due to delay in releasing of Equipment to SEUP for the completion of its Project.

8. Considering the fact that voluminous arguments are made on behalf of the parties, a brief summary of the same is given below for the sake of convenience.

Submissions by Isolux

A. The locus standi of SEUP and the maintainability of RT CA No. 319/Chd/ALB/2022 originally filed as CA No. 319/2019 (Amended vide IA No. 283/2023) has been challenged on the ground that the reliefs have been sought under incorrect provisions of IBC, 2016. It is also contended that the NCLT Principal Bench had granted the liberty to SEUP to get itself impleaded in CA No. 139/2019 and any other proceedings as well, if it is relatable to the claim in so far as Agreement between SEUP and Isolux, subject to objections, if any, by the respondents on merits. It is also stated that the resolution plan in the CIRP of SEUP was approved.

B. As SEUP had not taken any warranty in relation to the Corporate Debtor over the assets in dispute in the present proceedings and the assets have been taken up on “as is where is basis”, there is no scope for recovery of any asset including the present one. Furthermore, the EPC agreement has been terminated thereby extinguishing the right of SEUP over these assets.

C. Issolux contends that although SEUP has been defined as the owner in the TPL agreement, it still does not give the resolved SEUP, the right to claim the ownership rights over the goods/equipments of the CD. In making its claim, SEUP overlooked the fact that only the completed facilities were to be transferred to the owner -SEUP. The term facilities has been defined in clause 1(1.1) (j) in Tata supply agreement, which means the permanent plant established by CD. The equipments, being mere raw material, the same cannot termed as facilities to be handed over to SEUP.

D. TPL cannot claim any title over the goods/equipments in its position under the TPL agreement because it has repeatedly asserted that the equipment in its possession shall be returned to the CD upon release of all outstanding payments. No question of keeping the goods/assets by TPL in its custody arises when the outstanding amount has already been admitted and the said application is pending for adjudication. TPL now falls within the definition of an Operational Creditor in terms of section 5(20) of the IBC.

E. With regard to the claim of TPL, it has been stated by Isolux that TPL cannot claim the rights of an unpaid seller in terms of Section 45 read with Section 46 of the

Sales of Goods Act, 1930.

Submissions by SEUP

A. It is submitted by SEUP that the contractual provisions of the Mainpuri Supply Agreement prove a clear flow of title for the equipments in favour of SEUP alone. Relying on clause 8.4.1 of the Mainpuri Supply Agreement and also the endorsed lorry receipts in favour of SEUP for the total quantity of equipments for package 1(b), the SEUP has stated that the title and ownership for the equipments has passed to SEUP.

B. It is further stated that Clause 7.1 of the resolution plan of SEUP read with Clause 12.22.1(b) of the resolution plan regarding the assets of SEUP, specifically covers the equipments in questions. Such provisions require that the possession and ownership of all assets of SEUP (whether recorded in its books or not) remained vested with it, through all incumbrances.

C. It is also stated that the reliance of Isolux on the TPL's letters dated 05.02.2016 and 23.11.2016 regarding the lack of Owner Supply Material (OSM) is misleading because the list of equipments/ stock statement dated 31.03.2018 stipulates that OSM in fact was duly provided.

D. It is also stated that the contention of the Isolux qua list of invoices and documents as provided by the SEUP to prove title of equipment result to period prior to suspension of package 1(b) is illogical because for each of the shipment of equipment, there is a endorsed lorry receipt with SEUP.

E. It is also stated that the Isolux claim lack of privity of contract between SEUP and TPL for SEUP to claim ownership of the equipments is also untenable as SEUP is the

owner of the said equipments as it is entitled to proceed against any other party including its sub-contractor.

F. It is stated that SEUP had valid locus and the jurisdiction of this Adjudicating Authority does not extinguish on account approval of resolution plan of SEUP.

G. As regards TPL's claim over the equipments is concerned, it is made clear that TPL's reliance on provisions of Sale of Goods Act, 1930 (SOGA) is erroneous in both effect and law.

Submissions by TPL

A. The TPL has stated that the possession of the said equipments remains with TPL and has never been parted. As per the agreement, only the title has moved to the Corporate Debtor. SEUP has stated that Corporate Debtor- Isolux has further transmitted the goods to it that is a matter which is to be adjudicated between Corporate Debtor- Isolux and SEUP and does not concern the applicant- TPL.

B. The equipment list clearly categorized the owner supply material, which has been sold/ supplied by the TPL after its manufacturing/ procurement. The transactions come clearly under the provisions of Sale of Goods Act, 1930.

C. The applicant is prevented by the Corporate Debtor- Isolux on the strength of moratorium under Section 14 to realize its secured interest.

D. The status of the equipments as on date of filing of the application is to be restituted and TPL's right of unpaid seller has to be allowed to be exercised at the hand of TPL. Reliance has been placed on the decision of *Bharat Heavy Electrical Limited Vs. Anil Goyal*.

E. TPL place reliance on the provisions of Section 45 (“Unpaid Seller” definition), Section 46 (“Unpaid Seller” rights), Section 47 (“Unpaid Seller” Lien).

F. It is submitted that there is separate dispute between SEUP and Corporate Debtor- Isolux and the claim of SEUP can only be restricted to the Corporate Debtor- Isolux, being its counterparty to the contract. TPL has no privity of contract with SEUP, thus, no relief can be claimed against TPL by the other party. It is sure that ownership is primarily with the Corporate Debtor.

9. We have heard the learned counsels and have carefully gone through the relevant records.

10 Before analyzing the issue involved in these applications, we note the fact that the impugned equipments which is the subject matter of the claim of rival parties is specific to the project, which is being implemented now by SEUP, thus, those do not have any significant market value as they are customized for the project. As reported by TPL when it was directed by the RP of Isolux to find out its market value, these equipments have only scrap value.

11. At the core of several contentions raised by the rival counsels remains the issue of ownership of the impugned assets under the contractual obligations mutually agreed upon by the three parties. As is clear from the transactions in the foregoing paragraphs, Mainpuri JV constituted of several separate agreements

- i. Supply agreement dated 10.02.2012 (“**Mainpuri Supply Agreement**”);
- ii. Services agreement dated 10.02.2012 (“**Mainpuri Service Agreement**”); and

- iii. Civil Works agreement dated 10.02.2012 ("**Mainpuri Civil Agreement**").

The above agreements are collectively referred to as the "Mainpuri Agreements" and are the primary agreements in this matter.

11.1 In the Mainpuri supply agreement, Isolux was the supplier of SEUP (the purchaser) and it was responsible for selecting the type of foundations for different towers based on technical parameters. Subsequently, the Mainpuri JV entered into six separate sub-agreements with TPL (three each for both Packages 1B and 2B) sub-contracting the Project works to TPL. Accordingly, the following agreements were entered into for Package 1B of the Project:

- i. Supply agreement dated 13.03.2012 ("Tata Supply Agreement")
- ii. Services agreement dated 13.03.2012 ("Tata Service Agreement")
- iii. Civil works agreement dated 13.03.2012 ("Tata Civil Works Agreement")

11.2 In short while SEUP procured the Equipment from Isolux in terms of the Mainpuri Supply Agreement, Isolux in turn procured most of the Equipment from TPL and Isolux also directly supplied a smaller part of the Equipment to SEUP (procured from sources other than TPL).

11.3 In the course of present proceedings, the SEUP submitted one set of documents constituting of endorsed lorry receipt in terms of Clause 8.4.1 of the Mainpuri Supply Agreement, invoice of TPL on Isolux and invoice of Isolux on SEUP and MIN(Material Issue Note) and MRN (Material Receipt Note) for the services and civil works leg. The flow of titles was sought to be explained through this series of interrelated documents.

In this connection, we refer to clause 8.4.1 of the Mainpuri Supply Agreement which reads as under:

“In case of inter-state supply in form of in-transit sale, the property in goods would pass from Supplier to Purchaser at the time of endorsement of the lorry receipt any such document of title to the goods, by Supplier in favour of Purchaser, during the course of movement of such goods... Otherwise, than as mentioned above, the ownership in Equipment shall be handed over to the Purchaser on physical handing over of such Equipment to the Purchaser at Site. (Emphasis added)”

The relevant definition of ‘**Equipment**’ includes equipment, machineries, ‘things of all kinds required for the commissioning of the Project’ such as single circuit / double circuit transmission line towers with body extensions, stub.

11.4 The following facts are specifically noticed by this Bench:

A. In the consignment note, there are handwritten endorsements which prove that there was movement of the equipment from TPL to Isolux and Isolux to SEUP. The endorsements are stamped by respective entities. The learned counsel for the other parties did not contest the veracity of these endorsed lorry receipts pertaining to Phase-1B of the project along with the entire set of invoices and other supporting documents, which were filed by the SEUP on 05.09.2023 except for stating that some of the documents are not legible.

B. As per the General Conditions of Contract (GCC) in the TATA Agreements, SEUP is defined as the “**owner**”. Clause 5.1 of the Tata Supply Agreement, TPL had the obligation to design, manufacture and supply the Equipment in such a manner that Isolux was able to transfer the facilities to the owner, i.e., SEUP within agreed timelines

for commercial use. Thus, Isolux as well as TPL were fully aware that the Equipment was to be further sold, passed and delivered by Isolux to SEUP.

C. Even Clause 11 of the Tata Supply Agreement which pertains to Intellectual Property, the rights of SEUP are recognised and as per Clause 27.2 of the Tata Supply Agreement, SEUP being the Owner of the Project is also co-insured under all insurance policies taken out by the Supplier.

D. Under the Mainpuri Services Agreement on the recital SEUP alone is the employer and Isolux is the service provider. Such agreement covers the equipments that SEUP provides Isolux in the provision of services and other works. It is thus logical to interpret that in the subsequent leg of the transaction with TPL, it is these equipments as was provided by SEUP under the Mainpuri Services Agreement, that Isolux would supply to TPL for the purposes of providing services and civil works under the respective Tata Service Agreement and Tata Civil Works Agreement. The definition of 'Project' again pertains to SEUP's Project.

E. Even in the Tata Services Agreement, the "**owner**" is defined as SEUP (Clause 1.1), whereas the

- i. '**Employer**' is Mainpuri JV (Isolux) and includes permitted assigns.
- ii. '**Goods**' means the equipment, machinery, etc. 'of all kinds' to be supplied by TPL.
- iii. '**Installation Services**' means 'all those services ancillary to the supply of Goods, Plant and Equipment for the Facilities to be provided' by TPL.
- iv. '**Owner**' is once again defined as SEUP in such agreement.

12. We have also considered the provisions of:

- i. Clause 2.6 (Cross Fall Breach Agreement) of the Supply Agreement dated 13.02.2012: Clause 3 (Scope of Supplies) of the Supply Agreement dated 13.02.2012: “....
- ii. Clause 7.1 of the Supply Agreement dated 13.02.2012: Clause 3 (Scope of Services) of the Service Agreement dated 13.02.2012:
- iii. Clause 3 (Scope of Work) of the Civil Works Agreement dated 13.02.2012:
- iv. Clause 25.2 of the TPL Supply Agreement states

13. In this context, we note that the aforementioned clauses, specifically cited by Isolux India, refer to the inter se arrangement between Isolux and TPL.

14. We have gone through the judicial decisions cited by the rival parties in these applications. While they are relevant for deciding issues between two parties under a contract, we do not find any particular ratio applicable to the peculiar facts of the present case.

14.1 Now coming to the claim of the TPL as an unpaid seller under the Sale of Goods Act, 1930 (SOGA), we note that under Section 46 of SOGA an unpaid seller of goods has a lien on the goods, only when he is in possession of the goods. Further, under Section 49 of SOGA an unpaid seller of goods loses lien in the following cases:

- a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- b) when the buyer or his agent lawfully obtains possession of the goods;
- c) by waiver thereof.

Thus, in the present case, we are of the view that lien of TPL stands extinguished because ownership has already passed on to SEUP. TPL was very much aware of the contract between Isolux and SEUP and was also aware that SEUP was the owner of the equipments.

14.2 A lien is understood to be waived by implication if the seller assents to a sub-sale under Section 53 of the SOGA. In the instant case, TPL was aware of the contract between SEUP and Isolux and was also aware that SEUP was the owner of the Equipment. Further another exception under Section 53 of SOGA to the unpaid seller's rights of lien is where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for a consideration. We note the fact that both these elements are present in the contract under discussion. Relating to the equipments, we further note that TPL has already submitted a claim before the RP of Isolux India on 26.10.2023 in the prescribed form-B under Regulation IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Amounting to INR 28,72,17,097/-. This has been done on the basis of a joint reconciliation inspection by the parties.

14.3 In view of the above, we are of the considered opinion that TPL's claim as an unpaid seller is not tenable whereas its claim already filed before the liquidator has been admitted and payments be made as per the waterfall mechanism of Section 53 of the Code.

14.4 After analysing the agreements, we are of the view that it is not a single agreement, but rather two back-to-back sets of three separate contracts for (a) supply (b) Services and (C) Civil works, respectively. None of these contracts can be interpreted in isolation. SEUP has title and ownership over the equipment in view of the Mainpuri supply agreement and is not dependent on the contract between Isolux and TPL to demonstrate its title over the equipment. As the terms of the agreement suggest, the title has already passed to SEUP, and as the owner of the equipment, SEUP is entitled to proceed against any other party, including its subcontractor, who has its assets. We are not persuaded by the argument that SEUP does not have the privity of contract and hence has no claim over the equipments currently lying with TPL. The argument that SEUP has not issued a supply completion certificate has no relevance in the present cases as in any case clause. 8.4.3 of the Mainpuri supply agreement provides that the supply completion certificate shall be deemed to have been issued on the last day of the 28-day period. Furthermore, under Clause 6.5.1.(a) of the Mainpuri supply agreement, the transfer of title with respect to each shipment takes place with the endorsement of the lorry receipt for such shipment in favour of SEUP. Keeping in view our finding that SEUP is the owner of the equipments under question, we reject the plea that SEUP did not have locus in the present case to make its claim over the said equipments.

14.5 Now coming to the issue of claims and counterclaims of the parties in the context of the changed scenario resulting from the approval of the Resolution Plan of SEUP and the liquidation of Isolux India, we notice that Isolux India had filed its claim before the

RP of SEUP and an amount of Rs. 36.24 crores was admitted by the later. Isolux's challenge to the decision of the RP of SEUP before this Adjudicating Authority vide its IA 318/2021 was withdrawn by Isolux itself, as noted in our order dated 18.07.2022. Thereafter, Isolux's appeal against the resolution plan approval order was rejected by the Hon'ble NCLAT vide order dated 04.11.2022. Subsequently, Isolux's appeal against Hon'ble NCLAT's order dated 04.11.2022 was rejected by the Hon'ble Supreme Court vide its order dated 27.01.2023. Thus, we note that Isolux does not have any surviving claim against the SEUP.

14.6 We hold that the termination of EPC contract has nothing to do with the issue of SEUP's title and ownership over the equipments since the same was already transferred to SEUP at the time at the time of endorsement of lorry receipt and its favour in terms of Clause 8.4.1 of the Mainpuri Supply Agreement. Therefore, subsequent to termination of Mainpuri Supply Agreement has no impact on the SEUP's title to the equipments.

14.7 In view of the above discussions, we do not accede to the prayer of Isolux to be given possession of the equipments in question and also reject the claim of TPL to be treated as an "unpaid seller" under the provision of Sales of Goods Act (SOGA). As regards the claim of TPL already filed with the corporate debtor- Isolux, we hold that the TPL is entitled to a part of the proceeds from the sale of liquidation of assets on its distribution as per the provisions of Section 53 of the Code.

15. In the result, CA No. 139/2019, 170/2019 are dismissed, RT CA No. 319/Chd/ALB/2022 originally filed as CA No. 319/2019 (Amended vide IA No. 283/2023)

is allowed. The above-mentioned CAs along with IA No. 477/2021 stand disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

December 08, 2023

RS/ASG/SM