S.No.2

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
17-04-2026 AT 11:30 AM

CP(IB) No. 69/7/HDB/2022
AND
IA (IBC) 2015 & 2016/2025 in CP(IB) No. 69/7/HDB/2022
u/s. 7 of IBC, 2016

IN THE MATTER OF:

M/s. JC Flowers Asset Reconstruction Pvt Ltd **…Financial Creditor**

AND

GVK Transportation Pvt Ltd **…Corporate Debtor**

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

O R D E R

IA (IBC) 2016/2025

Present: Mr. G P Yash Vardhan, Ld. Counsel for the Applicant.

Mr. Amir Bavani, Ld. Counsel for Respondent No.2 & 3.

Orders pronounced, recorded vide separate sheets.

In the result, this application is disposed of.

IA (IBC) 2015/2025

Present: Mr. G P Yash Vardhan, Ld. Counsel for the Applicant.

Mr. Amir Bavani, Ld. Counsel for Respondent No.2 & 3.

Orders pronounced, recorded vide separate sheets.

In the result, this application becomes infructuous.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Sridher/siva

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I

IA (IBC) No. 2016 of 2025 &
IA (IBC) No. 2015 of 2025 in
CP (IB) No. 69/7/HDB/2022

In the mater of

M/s JC Flowers Asset Reconstruction Private Limited, Financial Creditor
Vs.
GVK Transportation Private Limited, Corporate Debtor

Between:

Central Bank of India,
SAM Branch,
Central Bank of India Building,
1st Floor, Bank Street, Koti,
Hyderabad – 500 095,
Rep. by Mrs P G Sravya Prada,
Assistant General Manager.

....Applicant/
Member of SCC

And

1. M/s GVK Bagodara Vasad Expressway
   Private Limited,
   Plot No 54, Second Floor,
   Sri Amba Tara Residency,Viman Nagar Colony,
   Beside Mamata High School,
   Sardar Patel Road,
   Secunderabad – 500 003.

....Principal Borrower/
Respondent No.1

2. M/s GVK Transportation Private Limited,
   Plot No 54, Second Floor,
   Sri Amba Tara Residency,
   Viman Nagar Colony,
   Beside Mamata High School, S P Road,
   Secunderabad – 500 003,
   Rep. by its Resolution Professional
   Mr Harish Kant Kaushik.

....Corporate Guarantor/
Respondent No.2

3. Mr Harish Kant Kaushik,
   Aegis Resolution Services Private Limited,
   Liquidator of GVK Transportation

Private Limited,
106, Kanakia Atrium – 2, Cross Road `A',
Adjacent to Courtyard Marriot Hotel,
Chakala MIDC, Andheri East,
Mumbai – 400 093.

....Liquidator/
Respondent No.3

Date of order : 17.04.2026

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel present:

For the Applicant	:	Mr Krishna Grandhi along with Mr G P Yash Vardhan
For the Respondents 2 & 3	:	Mr Amir Bavani along with Ms Rishika Kumar, Ms Pavani Dada & Ms Divya

IA NO. 2016 of 2025

1. The present Application has been filed by the Central Bank of India under Section 60(5) read with Section 42 of IBC[1], assailing the decision of the Liquidator communicated vide email[2] dated 04.12.2025. By way of the impugned communication, the Liquidator [3] admitted the Applicant Bank's claim at a purely nominal value of INR 1/- as against the claimed amount of Rs 184,29,21,630.18/- in the liquidation process of GVK Transportation Pvt Ltd[4]. The Applicant seeks the quashing of the said decision as being illegal, arbitrary, and perverse, further praying for a direction to the Liquidator to admit its claim in full,

[1] Insolvency and Bankruptcy Code, 2016
[2] Page 1251 of the Application
[3] Respondent No.3
[4] Corporate Guarantor/Debtor (**CD**) & Respondent No.2

contending that the same stands squarely in accordance with the provisions of the Code and the Liquidation Regulations[5].

2. The Applicant has referred to the Concession Agreement[6] dated 21.02.2011 executed between GSRDCL[7] and GVK Bagodara Vasad Expressway Pvt Ltd[8] in relation to the Bagodara–Vasad BOT highway project. It is the Applicant's case that under the said Agreement, "Termination Payment" was contractually defined to comprise Debt Due and Adjusted Equity. The Applicant places considerable reliance on the contractual definition of the 'Debt Due' as well as Clause 37.3 governing 'Termination Payment', with the specific plea that, in the event of default by GSRDCL, the concessionaire was entitled to receive Debt Due together with 150% of the Adjusted Equity.

3. It is then submitted that, pursuant to novation of the original lending arrangement[9], the Applicant Bank sanctioned Rs100 crores under the Novation-cum-Amendment Agreement[10] dated 28.09.2012, and as a condition precedent, Respondent No.2 executed an unconditional and irrevocable Corporate Guarantee Agreement[11] dated 28.09.2012. The Application reproduces Clause 2 and Clause 4 of the Guarantee Agreement to emphasise that, upon termination of the Concession Agreement for any reason whatsoever, if there is any shortfall between Debt Due and Termination Payment, the Corporate Guarantor "*shall promptly arrange for additional funds*" and "*forthwith upon demand and without demur discharge the guaranteed obligations*".

4. The Applicant further pleads that the Guarantee Agreement also contains an independent indemnity covenant, under which Respondent

[5] IBBI (Liquidation Process) Regulations, 2016
[6] Pages 145 – 587 of the Application
[7] Gujarat State Road Development Corporation Limited
[8] Principal Borrower & Respondent No.1
[9] Common Loan Agreement dated 16.11.2022 at Pages 588 to 711 of the Application
[10] Pages 727 – 742 of the Application
[11] Pages 743 - 751 of the Application

No.2, the Corporate Debtor / Guarantor, agreed to indemnify and keep the lenders indemnified against all losses, damages, costs, claims and expenses whatsoever arising out of the guaranteed obligations. This indemnity limb is specifically linked with Section 124 of the Contract Act, with the Applicant's precise case being that the indemnifier's liability arises the moment loss is suffered or becomes inevitable.

5. It is in the above context that the Application states that disputes arose between GSRDCL and Respondent No.1, culminating in arbitration, where Respondent No.1 raised a counter-claim[12] including Rs 849.25 crores towards Termination Payment. According to the Applicant, the Arbitral Award dated 11.08.2023 rejected the said claim, thereby conclusively depriving the Applicant Bank of its primary source of recovery and causing an actual and crystalized loss. Though a Section 34 challenge[13] filed by Respondent No. 1 is pending, the Application specifically pleads that paragraph 1.120 to 1.130 of the Section 34 challenge-petition[14] do not assail rejection of Counter Claim No.3 relating to Termination Payment, and therefore "no adjudicatory proceeding exists that could alter the finality of the Termination Payment issue."

6. The major grievance raised in the Application is that, both during the CIRP and again in liquidation, the claim has been admitted only at Rs 1/- in a mechanical and routine manner. The Applicant assails the reasoning adopted by the Liquidator that, since the issue of Termination Payment remains *sub judice*, the liability is merely contingent and therefore warrants only a nominal admission. In this regard, specific reliance is placed on Regulation 25, with the plea that even in respect of a contingent claim, the Liquidator *"shall make the best estimate of the amount of the claim based on the information available with him."* It is

[12] As against the Claim of Rs 1084.19 cr made by GSRDCL
[13] Under the Arbitration and Conciliation Act, 1996
[14] Pages 906 – 1010 of the Application (pp 978 – 981)

contended that the assignment of a purely symbolic value of Rs 1/- does not amount to an "estimate" in the eye of law and defeats the very object and mandate of Regulation 25.

7. The Application further pleads that the Liquidator, unlike the RP, was bound under Section 39, Section 40 and Regulation 30 to undertake independent verification during liquidation, and could not simply state that the "facts and legal position remain unchanged". According to the Applicant, this amounts to mechanical adoption of the CIRP position and abdication of statutory duty.

8. The core legal case made is that once the arbitral determination rejecting Termination Payment has attained finality, "Termination Payment stands at zero", and therefore the shortfall under the Corporate Guarantee is equal to the entire outstanding Debt Due, rendering the guarantor's liability fully crystalized and no longer contingent. Even assuming any contingent element survives, the Liquidator was still duty-bound to make a reasonable positive best estimate, and token admission has effectively nullified the security furnished to the Applicant Bank.

9. The Applicant pleads grave prejudice, namely that admission at Rs 1/- directly distorts the stakeholder matrix and Section 53 waterfall, and if liquidation distributions proceed pending adjudication, the challenge would be rendered infructuous and a fait accompli. On this basis, it seeks setting aside of the communication dated 04.12.2025 and a direction to admit the full claim of Rs 184,29,21,630.18/-.

COUNTER OF RESPONDENT NOS 2 & 3

10. In the counter filed by Respondent Nos. 2 & 3, being the Corporate Debtor and its Liquidator, it is submitted that the Corporate Guarantee was furnished only for a very limited liability, namely "meeting the shortfall amount between the Debt Due and the Termination Payment." The Counter repeatedly emphasizes that the guarantee is not for the total debt due,

but only for the "Shortfall Amount", and that such liability arises only upon determination of the said shortfall amount, which in turn necessarily requires the Borrower to receive the Termination Payment from GSRDCL.

11. The central contractual submission in the Counter is built around Clause 2 of the Guarantee Agreement, under which the obligation of the Corporate Debtor arises only "after receipt of the Termination Payment from [GSRDCL]" and only if there is shortfall of funds between Debt Due and Termination Payment. The Counter therefore stresses that receipt and determination of Termination Payment is the foundational trigger, and unless that event occurs, no enforceable or crystalized liability can be fastened upon the Corporate Debtor.

12. On the concession dispute, the Liquidator points out that the Concession Agreement was terminated before the Project Completion Date, and therefore under Clause 37.3.1, "no Termination Payment shall be due and payable" where termination occurs on account of concessionaire default before project completion. It is specifically pleaded that all three Arbitrators rejected the Borrower's counter claim relating to Termination Payment on this ground, namely that the project had not reached completion and hence the concessionaire was not entitled to termination payment.

13. The Counter, however, relies heavily on the fact that the Arbitral Award dated 11.08.2023 is itself under challenge in Section 34 proceedings before the Commercial Court at Ahmedabad, and therefore the issue of Termination Payment "has not attained finality or crystallization." On this basis, the Liquidator's consistent case is that the claim remains contingent owing to Appeal pending before the competent District Court against the Arbitral Award.

14. The defense to the Rs 1/- admission is that the Liquidator, after examining the claim strictly in accordance with the Code and Liquidation Regulations, rightly noted the pendency of adjudication of the appeal filed challenging the arbitral award as well as absence of crystalized liability, and therefore admitted the claim only at a nominal value of Rs 1/-. The Counter expressly denies that this was arbitrary or mechanical, and instead describes it as a "conscious affirmation of a continuing and unchanged factual situation".

15. On law, the Counter invokes Section 128 of the Contract Act, 1872, specifically stressing the qualifying phrase "*unless it is otherwise provided by the contract*". The submission is that this is a case where the contract itself restricts the surety's liability only to the shortfall amount, and therefore the Applicant cannot invoke the general principle of co-extensive liability to enlarge the guarantor's exposure beyond the contractual framework.

16. As regards the Applicant's indemnity argument, the Counter disputes that Clause 5 creates an independent indemnity, and pleads that the Applicant has deliberately misread Clause 5 and artificially elevated the same to an independent and unconditional contract of indemnity. The Liquidator's specific stand is that Clause 5 is "inextricably dependent upon the occurrence and quantification of the Shortfall Amount", and that indemnity can arise only when "loss caused is ascertained and not when the loss is yet to be crystalized."

17. A significant legal plank of the Counter is the reliance on ***Essar Steel Ltd. v. Satish Kumar Gupta*** [15], where the according to the Respondents, Supreme Court upheld notional admission at Rs 1/- due to pendency of disputes. The Liquidator uses this authority to justify the present treatment, pleading that the Resolution Professional /

[15] (2020) 8 SCC 531

Liquidator was correct in only admitting the claim at a notional value because the underlying liability remains disputed before another competent forum.

18. The Counter also raises a maintainability objection, contending that the Application under Section 60(5) is not maintainable, since the Code provides a specific and efficacious remedy under Section 42 against the Liquidator's decision. It is submitted that the Applicant is attempting to invoke residuary jurisdiction under Section 60(5) to override a specific statutory remedy, which is impermissible in law. Reliance is also placed on ***V. Nagarajan v. Sanjeev Maheshwari***[16] to submit that where Section 42 provides a clear remedy, the same relief cannot be sought under Section 60(5).

19. Finally, the Respondents deny that the Applicant suffers prejudice by continuation of liquidation, pleading that the claim has not been rejected but only admitted on a notional basis, remains subject to modification on receipt of further information, and therefore no vested right stands extinguished. The stay prayer[17] is characterized as an afterthought intended to delay and obstruct the liquidation process, and the Counter closes with a prayer that the Application be dismissed in limine as false, misconceived and bad in law.

APPLICANT'S REJOINDER

20. The Applicant Bank, in rejoinder, primarily assails the Liquidator's approach as resting on a selective and legally flawed reading of the Guarantee Agreement, by confining the entire liability framework to Clause 2 alone while ignoring the effect of Clauses 3, 4 and 5. It is specifically emphasized that the guarantee is a continuing and binding security until full discharge, enforceable forthwith upon demand and

[16] CA(AT)(Ins) No. 1647 of 2023
[17] In IA No. 2015 of 2025 filed along with the present Application

without demur, and that Clause 5 constitutes an independent covenant of indemnity, which the Liquidator has, according to the Applicant, artificially subordinated to the shortfall mechanism. The rejoinder therefore reframes the dispute as one of misconstruction of the guarantee as a whole rather than mere pendency of arbitral proceedings.

21. A substantial additional contention in the Applicant's Rejoinder is that the Liquidator has proceeded on a fundamental error in indemnity law by treating "crystalized loss" as synonymous with completion of all collateral litigation. The specific plea is that loss becomes actionable once it is suffered or becomes inevitable, and since the Debt Due remains unpaid, the account stands as NPA, and the rejection of Termination Payment has deprived the Bank of a principal recovery source, the financial prejudice is pleaded as real and subsisting loss, neither speculative nor contingent. This is coupled with the assertion that the Liquidator, by insisting on finality of every connected proceeding, has conflated uncertainty of recovery with absence of presently existing loss.

22. In the Rejoinder the Applicant further challenges Rs 1/- admission itself, repeatedly asserting that "admission at Rs 1/- is not an estimate, it is a refusal to estimate." The Applicant points out that the communication dated 04.12.2025 discloses no analytical exercise, computation methodology, contractual interpretation, or evaluation of exposure under the Corporate Guarantee Agreement, and therefore amounts to abdication of the mandatory best-estimate duty under Regulation 25. It is further pleaded that such symbolic admission distorts the stakeholder matrix and materially affects the Section 53 waterfall, thereby causing present prejudice to the Applicant's participation and eventual entitlement in liquidation.

MEMO DATED 24.03.2026

23. During the course of arguments, learned counsel for the Applicant Bank was specifically queried as to whether the Guarantee furnished by the Corporate Debtor had ever been invoked for recovery of the debt in default by the Principal Borrower.

24. In response thereto, the Applicant Bank filed a Memo dated 24.03.2026 placing on record the recall notice dated 16.05.2019 issued under the Guarantee Agreement dated 28.09.2012. By way of the said Memo, it has been specifically pleaded that the recall notice (issued under the aforesaid Guarantee Agreement) was addressed to Respondent No. 1 (Principal Borrower) as well as Respondent No. 2 (Corporate Guarantor), calling upon them, "jointly and severally", to repay the outstanding loan amounts specified therein.

25. The annexed recall notice is about the term loan account having been classified as NPA on 30.11.2016, which quantifies the amount due as on 15.05.2019 at Rs76,70,32,131/-, and expressly calls upon both noticees to pay 'jointly and severally' within seven days, while reserving the Bank's rights to proceed under the DRT, SARFAESI and the IBC.

26. Learned Counsel of the Respondents Nos. 2 & 3, did not object to filing of this document, but maintained his position vis-à-vis the claim having been admitted at the notional value of Rs 1/-.

RESPONDENT NO. 1

27. Respondent No. 1, being the Principal Borrower, has remained unrepresented throughout the course of the present proceedings despite valid service of notice and is, accordingly, proceeded *ex parte*.

28. In any event, although the contractual arrangements between Respondent No. 1 (the Principal Borrower) and GSRDCL do have a bearing on the issues arising in the present matter, the substantive

relief sought by the Applicant pertains to the admission of its claim by the Liquidator (Respondent No. 3) in the liquidation of the Corporate Debtor (Respondent No. 2), both of whom have been duly and ably represented through learned counsel.

FINDINGS & DECISION

29. We have given our anxious consideration to the submissions advanced by Shri Krishna Grandhi, learned counsel for the Applicant Bank, and Shri Amir Bavani, learned counsel appearing for the Corporate Debtor and the Liquidator. We have also carefully examined the pleadings and the material placed on record.

30. Upon such consideration, we find that the core controversy in the present case does not concern the existence of the underlying debt per se, but rather the character of the liability arising under the Corporate Guarantee Agreement at the stage of liquidation of the Corporate Guarantor/Debtor i.e. whether such liability under the Guarantee Agreement has crystallized into an enforceable debt or whether it continues to remain contingent in nature.

31. The Liquidator has proceeded mainly on the premise that the liability of Respondent No.2 is confined only to the "Shortfall Amount" between Debt Due and Termination Payment, and that since the arbitral award dated 11.08.2023 is under challenge in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, the issue of Termination Payment has not attained finality or crystallization, thereby justifying admission of the Applicant's claim only at a nominal value of Rs 1/-.

32. The Applicant Bank, on the other hand, has consistently pleaded that the Section 34 petition does not assail the rejection of Counter Claim No.3 relating to 'Termination Payment', and therefore the Liquidator's assumption that the entire issue remains sub judice is founded on a misreading of the record.

33. We find substance in the Applicant's grievance that the Liquidator's approach discloses no meaningful exercise of the statutory duty of estimation under Regulation 25. Even if it were assumed that some component of the liability retained a contingent character, the Liquidator was still required to undertake a '*best estimate*' on the basis of the material available, and not reduce a quantified claim of more than Rs 184 crores to a purely symbolic figure of Rs 1/- without disclosing any methodology, analytical exercise, or contractual reasoning.

34. It is also pertinent to record that the Applicant's earlier Interlocutory Application, assailing the restriction of its claim to Rs 1/-, came to be disposed of without any examination on the merits of the claim, inasmuch as, by that stage, the Corporate Debtor had already been put into liquidation and the Applicant was directed[18] to pursue its claim before the Liquidator in accordance with law. The consequence of such disposal was that the issue relating to the nature and quantification of the Applicant's claim remained expressly open for an independent determination by the Liquidator under the liquidation framework, uninfluenced by the prima facie treatment accorded during the CIRP stage.

35. It is in this backdrop that the communication dated 04.12.2025 issued by the Liquidator falls for consideration. The said communication, as it stands, does not disclose any examination of the loan documents, the Corporate Guarantee in its entirety, the arbitral award, or the legal effect of the pending Section 34 proceedings, but merely proceeds on the broad statement that the facts and legal position remain unchanged from the CIRP stage. Such a mechanical reiteration of the earlier position, despite the claim having remained undecided on merits and having been specifically relegated for adjudication before the Liquidator,

[18] Order Dated 21.11.2025 in IA No. 383 of 2025

in our considered view, falls short of the mandate of Sections 39 and 40 of the Code read with Regulation 25 of the Liquidation Regulations.

36. We are of the considered view that the recall notice dated 16.05.2019, materially fortifies the Applicant Bank's case that the liability was not merely hypothetical. The said recall notice, issued to both the Principal Borrower and the Corporate Guarantor, specifically called upon them to 'jointly and severally' repay the quantified dues of Rs 76,70,32,131/- as on 15.05.2019, with continuing interest and charges. The existence of this contemporaneous recall notice demonstrates that the Debt Due had already been quantified and formally demanded from both notices long prior to the insolvency proceedings, thereby furnishing an objective basis for the Liquidator to undertake a reasoned estimation exercise instead of adopting a purely nominal figure.

37. At the same time, we believe that it would not be appropriate, in exercise of jurisdiction under Section 42 of the Code, for us to quantify the Applicant Bank's claim at the full amount claimed. The precise effect of the shortfall mechanism under Clause 2 of the Guarantee Agreement, the continuing guarantee and indemnity covenants under Clauses 3 to 5, the legal impact of the arbitral rejection of Termination Payment, and the true scope of the pending Section 34 proceedings, are all matters which ought to be considered by the Liquidator in the first instance while carrying out the statutory verification and estimation exercise.

38. Accordingly, the communication dated 04.12.2025 admitting the Applicant Bank's claim at Rs 1/- is set aside, and the Liquidator is directed to reconsider and re-determine the Applicant's claim afresh by passing a reasoned order in accordance with Sections 39 and 40 of the IBC read with Regulation 25 of the IBBI (Liquidation Process) Regulations, 2016, within a period of two weeks from the date of receipt of this order, and take consequent actions as per law.

39. It is clarified that we have not expressed any final view on the exact quantum to be admitted, and all contentions of the parties on the merits of the claim, including the effect of the Guarantee Agreement and the pending Section 34 proceedings, are left open for consideration by the Liquidator in the fresh exercise.

The Application is accordingly disposed of.

IA No. 2015 of 2025

This IA filed by the Applicant Bank seeking stay of the liquidation process pending adjudication of IA No. 2016 of 2025, does not survive in view of the disposal of IA No. 2016 of 2025 by the present order, whereby the Liquidator has been directed to re-determine the Applicant's claim afresh by a reasoned order within two weeks, and proceed further in accordance with law. The relief sought herein has, therefore, become infructuous.

The Application is accordingly disposed of.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

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