

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
Company Appeal (AT) (Insolvency) No. 1355 of 2022**

[Arising out of Order dated 01.09.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in IA (IBC)/984(KB)/2021 in C.P. (IB) No. 701/(KB)/2019]

**In the matter of:**

**Chinar Steel Segments Centre Pvt. Ltd.**

**...Appellant**

**Vs.**

**Samir Kumar Agarwal,  
Liquidator of Bhaskar Shrachi Alloys Limited  
(In Liquidation) & Anr.**

**...Respondents**

**For Appellant:**

**Mr. Anand Sukumar, Mr. S. Sukumaran and Mr. Bhupesh Kr. Pathak, Advocates.**

**For Respondents:**

**Mr. PBA Srinivasan, Mr. Sumit Swami, Mr. V. Aravind, Ms. Srishti Bansal, Advocates for R1.  
Ms. Maninder Acharya, Sr. Advocate with Ms. Madhumita Bhattacharjee, Ms. Srija Choudhury, Mr. Anant, Advocates for R2.**

**J U D G M E N T  
(11<sup>th</sup> October, 2023)**

**Ashok Bhushan, J.**

1. This Appeal has been filed by the highest bidder in liquidation of the Corporate Debtor challenging the order dated 01.09.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in IA (IBC)/984(KB)/2021 filed by the Appellant.

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

2.1. 'Damodar Valley Corporation'- Respondent No.2 herein filed an Application under Section 9 of the IBC before the Adjudicating Authority as Operational Creditor claiming arrears of unpaid electricity charges as operational debt against the Corporate Debtor- 'Bhaskar Sarchi Alloys Limited'. The Adjudicating Authority admitted Section 9 application by order dated 27.09.2019 commencing CIRP against the Corporate Debtor. No Resolution Plan having approved, the Adjudicating Authority passed an order of liquidation on 29.04.2020. Liquidator issued Public Announcement under Regulation 12 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 notifying 23.12.2020 as a last date of submission of claims. Different stakeholders including Financial Creditors, workmen, employees, Operational Creditors including 'Damodar Valley Corporation'- Respondent No.2 filed their claims. Liquidator admitted the claims of different stakeholders. 'Damodar Valley Corporation' filed its claim for arrears of electricity dues due on the Corporate Debtor for an amount of Rs.49,51,59,781/-. Liquidator admitted the full claim of Respondent No.2. List of stakeholders was issued by Liquidator on 29.09.2020 showing the admitted claim of Respondent No.2 as Rs.49,51,59,781/-.

2.2. Liquidator issued a sale notice dated 23.11.2020 for conducting e-auction of the Corporate Debtor as a going concern. Another sale notice was issued to conduct e-auction on 24.12.2020. Appellant- 'Chinar Steel Segments Centre Pvt. Ltd.' participated in the e-auction and was declared successful bidder for Rs.11.40 Crores being 100% of the reserve price. Sale certificate was issued by the liquidator and successful bidder has given an

acquisition plan detailing various reliefs and concession for which he has expressed willingness to approach the Adjudicating Authority.

2.3. I.A 144(KB)2021 was filed by the Appellant seeking various reliefs. The Adjudicating Authority disposed of the application by order dated 26.02.2021 granting various reliefs and concessions, with regard to certain other prayers, directions were issued which are contained in paragraph 6 of the order. The Appellant after having paid the entire sale consideration was handed over the assets of the Corporate Debtor. By order dated 26.02.2021, the Adjudicating Authority granted relief to the Appellant directing the concerned authorities to restore electricity and water connection upon application and payment of required fees/charges. Appellant wrote to the Respondent No.2 and made a request to restore the electricity supply at factory premises of Corporate Debtor. Various letters were written in August, 2021 by the Appellant to the Respondent No.2. On 03.09.2021, Appellant received a letter from Respondent No.2 by which Respondent No.2 informed the Appellant that they are bound by Clause 4.6.4 of WBERC Regulation dated 07.08.2013 which states that deemed termination of agreement has taken place, then on the basis of application of any consumer, new service connection can only be provided in the same premises if the outstanding dues against the deemed terminated consumer is cleared along with the late payment surcharge. The Appellant replied to the said letter stating that the claim of electricity department, if any, against the pending dues and arrears of the Corporate Debtor before the acquisition of the same already stood paid and settled in accordance with Section 53 of the Code. The electricity being not restored

Appellant filed an application under Section 60(5) of the Code being IA No.984(KB)2021 in which application, following reliefs were sought for:-

- “(a) The communication of the Respondent no.2 dated September 3, 2021 be set aside and/or quashed.*
- (b) Direct the Respondent No. 2 to either restore or grant fresh connection of electricity to the factory premises of Bhaskar Shrachi Alloys Limited situated at Varia Road, Mouza- Angadpur, Durgapur, District- Paschim Bardhaman- 713215, West Bengal.*
- (c) Direct the Respondent No.2 to allow the Applicant to apply for grant of new connection along with requisite fee;*
- (d) Direct the Respondent No.2 to provide a new electricity connection to the factory premises of Bhaskar Shrachi Alloys Limited situated at Varia Road, Mouza- Angadpur, Durgapur, District- Paschim Bardhaman- 713215, West Bengal;*
- (e) Ad interim order in terms of prayers above;*
- (f) Pass such further or other order or order and/or direction or directions be given as this Hon’ble Tribunal may deem fit and proper.”*

2.4. In reply to the application, an Affidavit was filed on behalf of the Respondent No.2. In the Affidavit, it was stated that in view of non-payment of bills of Respondent No.2 disconnection notice dated 25.07.2017 was issued and on 11.08.2017, Respondent No.2 disconnected the supply of the Corporate Debtor thereby terminating the contract of supply of electricity dated 26.11.1996. It was further pleaded that the Respondent No.2 filed an application under Section 9 before the Tribunal which was admitted on

07.09.2019. Adjudicating Authority by the impugned order dated 01.09.2022 dismissed the application. Adjudicating Authority in rejecting the application relied on an earlier order dated 16.02.2022 passed in IA No.713 of 2021. It is useful to quote paragraphs 4 and 5 of the impugned order, which is to the following effect:-

*“4. This Tribunal faced with an identical situation passed an order on 16<sup>th</sup> February, 2022 paragraph 48 of the order is reproduced hereinafter:-*

*"In these circumstances, the question of maintainability is decided against the applicant. The application of the applicant is not maintainable before the NCLT because the electricity had been disconnected long before the CIRP actually started, for reason of non-payment of the outstanding dues. The CIRP process was initiated long thereafter. If the electricity had been disconnected on initiation of CIRP, then the position would have been different."*

*5. In these circumstances, question of maintainability is decided against the applicant. We are of the view this application being similar in nature is liable to be rejected.”*

2.5. Aggrieved by the impugned order, the Appellant has come up in this Appeal.

**3.** We have heard Shri Mainak Bose, Learned Counsel for the Appellant, Ms. Maninder Acharya, Sr. Advocate with Ms. Madhumita Bhattacharjee, Learned Counsel for the Respondent No.2 and Shri PBA Srinivasan, Learned Counsel for the Respondent No.1.

**4.** Learned Counsel for the Appellant submits that it was the Respondent No.2 who had filed an application under Section 9 against the Corporate

Debtor on which CIRP was initiated against the Corporate Debtor and after liquidation order, claim was also filed by the liquidator. The Appellant being the highest bidder in e-auction sale of the Corporate Debtor as a going concern was handed over the assets of the Corporate Debtor and the Adjudicating Authority has also granted relief to the Appellant by order dated 26.02.2021 in IA No.144(KB)2021 filed by the Appellant, the relief granted was that electricity and water connections shall be restored by the concerned authorities upon application and payment of required fees/charges by the applicant company. Appellant has made a request to the Respondent No.2 to restore the connection which was refused by letter dated 03.09.2021 where the Respondent No.2 informed that unless the arrear outstanding dues of the pre-CIRP and post-CIRP was paid, the electricity cannot be restored. It is submitted that the said stand taken by the Respondent No.2 is illegal and against the settled law. In the liquidation proceeding, when the claim of Respondent No.2 who was an Operational Creditor has been settled as per Section 53 of the IBC, the claim for arrear stands extinguished and cannot be pressed by indirect method of asking the Appellant to pay all arrears which stood extinguished in the liquidation proceedings. The order impugned rejecting the application is not maintainable and is clearly erroneous. Application praying for restoration of electricity was consequent to IBC proceeding and was fully maintainable under Section 60(5) of the Code. The order which has been relied by rejecting the application was not in accordance with law. It is submitted that the relied order of the Adjudicating Authority in **“Bank of Baroda vs. Shri Badrinarayan Alloys & Steels Ltd.- CP (IB) No.1370/KB/2018”** is contrary to the judgment of this Tribunal in **“Eastern**

***Power Distribution Company of Andhra Pradesh Limited vs. Maithan Alloys Limited & Ors.- Company Appeal (AT) (Ins.) No.961 of 2021***

decided on 26.05.2022. Regulation 8.4 of the Regulation relied by Respondent No.2 shall stand overridden in view of Section 238 of the IBC. Learned Counsel for the Appellant has also relied on the judgment of this Tribunal in ***“Damodar Valley Corporation vs. Karthik Alloys- (2022) SCC OnLine NCLAT 109”***. It is submitted that in view of the settled law, it be declared that the Appellant is not liable to make payment of pre-CIRP and post-CIRP dues of the Corporate Debtor with a direction to Respondent No.2 to restore supply of electricity to the factory premises of the Corporate Debtor. It is submitted that the due to non-supply of electricity inspite of Appellant being highest bidder of the Corporate Debtor as a going concern is unable to receive electricity connection which is against the object and purpose of the IBC.

5. Ms. Maninder Acharya, Learned Senior Counsel for Respondent No.2 refuting the submissions of the Appellant submits that the application filed by the Appellant under Section 60(5) was not maintainable. Electricity of the premises was disconnected on 11.08.2017 whereas CIRP was admitted on 27.09.2019. The disconnection was not related to or arising out of the insolvency of the Corporate Debtor. Learned Senior Counsel relying on the judgment of the Hon’ble Supreme Court in ***“Gujarat Urja Vikas Nigam Limited vs. Amit Gupta & Ors.- (2021) 7 SCC 209”*** submits that the NCLT has jurisdiction to adjudicate dispute which arise from or which relate to the insolvency of the Corporate Debtor. Learned Senior Counsel also relied judgments of the Hon’ble Supreme Court in ***“Tata Consultancy Services***

***Ltd. Vs. Vishal Ghisulal Jain- (2022) 2 SCC 583***” as well as ***“Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka Ors.- (2020) 13 SCC 308”***. It is submitted that the Corporate Debtor was not a going concern, electricity being disconnected two years before CIRP commencement. It is submitted that as per Regulation 4.6.4 of the WBERC Regulation dated 07.08.2013, Appellant has to pay statutory dues including the arrear of the electricity dues and other charges prior to disconnection.

**6.** We have heard the submissions of the Learned Counsel for the parties and perused the record.

**7.** From the submissions of the parties and materials on the record, following questions arise for consideration:-

(i) Whether Application filed by the Appellant Company IA No.984(KB)2021 was maintainable under Section 60(5) of the IBC?

(ii) Whether the Appellant was entitled for the reliefs claimed in IA No.984(KB)2021 i.e. reconnection on payment of all necessary charges except arrears of electricity charges which was payable to the Corporate Debtor i.e. pre-CIRP dues?

**Question No.(i) & (ii)**

**8.** Section 60(5) of the IBC provides: -

***“60. Adjudicating Authority for corporate persons. –***

*xxx*

*xxx*

*xxx*

*(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National*



*Company Law Tribunal shall have jurisdiction to entertain or dispose of –*

*(a) any application or proceeding by or against the corporate debtor or corporate person;*

*(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and*

*(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.”*

**9.** The Adjudicating Authority rejected the IA filed by the Appellant relying on an earlier order dated 16.02.2022 passed by the Adjudicating Authority in IA No.713/KB/2021. Paragraph 48 of the order dated 16.02.2022 which is relied by the Adjudicating Authority is as follows:-

*“48. In these circumstances, the question of maintainability is decided against the applicant. The application of the applicant is not maintainable before the NCLT because the electricity had been disconnected long before the CIRP actually started, for reason of non-payment of the outstanding dues. The CIRP process was initiated long thereafter. If the electricity had been disconnected on initiation of CIRP, then the position would have been different.”*

**10.** The reason given by the Adjudicating Authority is that the Application is not maintainable before the NCLT because electricity had been

disconnected long before the CIRP actually started, for reasons of non-payment of outstanding dues.

**11.** The submission advanced by the Counsel for the Appellant is that the impugned order as well as the judgment of the Adjudicating Authority in **“Badrinarayan Alloys & Steels Ltd.”** (supra) dated 16.02.2022 is contrary to the judgment of this Tribunal in **“Eastern Power Distribution Company of Andhra Pradesh Limited”** (supra).

**12.** Before we come to the judgments relied by the respective parties in support of respective submissions, we may notice certain features of the present case which are undisputed: -

(i) The CIRP against the Corporate Debtor was initiated on an application filed under Section 9 by the Respondent No.2 for claiming operational debt i.e. arrears of electricity dues due on the Corporate Debtor till the date electricity connection was disconnected.

(ii) The Respondent No.2 has filed its claim before the Liquidator which was admitted in full.

**13.** Liquidator after sale of the Corporate Debtor as a going concern has received the sale consideration and completed the distribution of the sale proceed as per Section 53 of the IBC.

**14.** The Adjudicating Authority on an application filed by the Appellant in IA No.144 of 2021 has granted various reliefs and concessions to the Appellant consequent to sale in favour of the Appellant. One of the reliefs and

concessions granted was “the electricity and water connection shall be restored by the concerned authorities upon application and payment of required fees/charges by the Applicant Company”. We, thus, have to proceed to examine the maintainability of application of the Appellant under Section 60(5) in light of the admitted facts of the present case, as noted above.

**15.** Learned Counsel for the Respondent has placed reliance on the judgment of the Hon’ble Supreme Court in “**Gujarat Urja Vikas Nigam Limited**” (supra). In “**Gujarat Urja Vikas Nigam Limited**”, Learned Counsel for the Respondent has placed reliance on paragraphs 69, 71 and 74, which are to the following effect:-

*“69. The institutional framework under IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. In the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful reorganisation or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner. Pursuing this theme in Innoventive this Court observed that: (SCC p. 422, para 13)*

*“13. One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process.”*

*The principle was reiterated in ArcelorMittal where this Court held that: (SCC p. 88, para 84)*

*"84.... The non obstante clause in Section 60(5) is designed for a different purpose: to ensure that NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings."*

*Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor. However, in doing so, we issue a note of caution to NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the corporate debtor. The nexus with the insolvency of the corporate debtor must exist.*

*xxx*

*xxx*

*xxx*

*71. In the present case, PPA was terminated solely on the ground of insolvency, since the event of default contemplated under Article 9.2.1(e) was the commencement of insolvency proceedings against the*

*corporate debtor. In the absence of the insolvency of the corporate debtor, there would be no ground to terminate PPA. The termination is not on a ground independent of the insolvency. The present dispute solely arises out of and relates to the insolvency of the corporate debtor.*

*xxx*

*xxx*

*xxx*

*74. Therefore, we hold that the RP can approach NCLT for adjudication of disputes that are related to the insolvency resolution process. However, for adjudication of disputes that arise dehors the insolvency of the corporate debtor, the RP must approach the relevant competent authority. For instance, if the dispute in the present matter related to the non-supply of electricity, the RP would not have been entitled to invoke the jurisdiction of NCLT under IBC. However, since the dispute in the present case has arisen solely on the ground of the insolvency of the corporate debtor, NCLT is empowered to adjudicate this dispute under Section 60(5) (c) of IBC.”*

**16.** What has been laid down by the Hon’ble Supreme Court in the above case is that the NCLT has jurisdiction to adjudicate dispute which arise solely from or which relate to the insolvency of the Corporate Debtor. When we look into Section 60(5), the provision clearly provides that NCLT shall have jurisdiction to entertain or dispose of any application or proceeding by or against the Corporate Debtor or corporate person or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the Corporate Debtor. Thus, essential ingredients for maintainability of application are that:-

- (i) In the Application, any question of law or facts arising out of or in relation to the insolvency resolution;
- (ii) for any question of law or facts arising out of or in relation to the liquidation proceedings.

17. Learned Counsel for the Appellant submitted that in **“Gujarat Urja Vikas Nigam Limited”** (supra), application was held to be maintainable since the insolvency proceeding arose out of termination of PPA as was noted in the judgment. We may also refer to paragraph 91 of the judgment in **“Gujarat Urja Vikas Nigam Limited”**, which is as follows:-

*“91. The residuary jurisdiction of NCLT under Section 60(5) (c) of IBC provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings. If the jurisdiction of NCLT were to be confined to actions prohibited by Section 14 of IBC, there would have been no requirement for the legislature to enact Section 60(5) (c) of IBC. Section 60(5) (c) would be rendered otiose if Section 14 is held to be exhaustive of the grounds of judicial intervention contemplated under IBC in matters of preserving the value of the corporate debtor and its status as a "going concern". We hasten to add that our finding on the validity of the exercise of residuary power by NCLT is premised on the facts of this case. We are not laying down a general principle on the contours of the exercise of residuary power by NCLT. However, it is pertinent to mention that NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters would fall outside the realm of IBC. Any other*

*interpretation of Section 60(5) (c) would be in contradiction of the holding of this Court in Satish Kumar Gupta.”*

**18.** The law is settled that an application can be entertained only when it raises a question which arises or relates to the insolvency of the Corporate Debtor. Judgment of the Hon’ble Supreme Court in **“Embassy Property Developments Pvt. Ltd.”** (supra) has also been relied upon by the Counsel for the Respondent. Embassy’s case was a case where Adjudicating Authority has issued a direction to the Government of Karnataka to execute a supplemental lease deed for extension of mining lease which was held beyond the jurisdiction of the Adjudicating Authority. In Embassy, paragraphs 41 and 46, following has been laid down:-

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

xxx

xxx

xxx

*46. Therefore, in fine, our answer to the first question would be that NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute supplemental lease deeds for the extension of the mining lease. Since NCLT chose to exercise a jurisdiction not vested in it in law, the High Court of Karnataka was justified*

*in entertaining the writ petition, on the basis that NCLT was coram non iudice.*

**19.** The judgment of the Embassy was a case where the Adjudicating Authority has issued direction pertaining to exclusion of supplementary lease which was in the jurisdiction of the Government under the MMDR Act, 1957. It was held that directions issued by the NCLT were beyond the jurisdiction vested in the NCLT.

**20.** Another judgment of the Hon'ble Supreme Court relied by the Counsel for the Respondent is "**Tata Consultancy Services Ltd.**" (supra) wherein the Hon'ble Supreme Court relying on "**Gujarat Urja Vikas Nigam Limited**" (supra) laid down following in paragraphs 28, 29 and 30:-

*"28. In Gujarat Urja, the contract in question was terminated by a third party based on an ipso facto clause i.e. the fact of insolvency itself constituted an event of default. It was in that context, this Court held that the contractual dispute between the parties arose in relation to the insolvency of corporate debtor and it was amenable to the jurisdiction of NCLT under Section 60(5)(c). This Court observed that: (SCC pp. 262-63, para 69)*

*"69... NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of corporate debtor... The nexus with the insolvency of corporate debtor must exist." (emphasis supplied) Thus, the residuary jurisdiction of NCLT cannot be invoked if the termination of a contract is based*



*on grounds unrelated to the insolvency of corporate debtor.*

*29. It is evident that the appellant had time and again informed corporate debtor that its services were deficient, and it was falling foul of its contractual obligations. There is nothing to indicate that the termination of the facilities agreement was motivated by the insolvency of corporate debtor. The trajectory of events makes it clear that the alleged breaches noted in the termination notice agreement was dated 10-6-2019 were not a smokescreen to terminate the agreement because of the insolvency of corporate debtor. Thus, we are of the view that NCLT does not have any residuary jurisdiction to entertain the present contractual dispute which has arisen dehors the insolvency of corporate debtor. In the absence of jurisdiction over the dispute, NCLT could not have imposed an ad interim stay on the termination notice. NCLAT has incorrectly upheld the interim order of NCLT.*

*30. While in the present case, the second issue formulated by this Court on bearing, we would like to issue a note of caution to NCLT and NCLAT no Even if the contractual dispute arises in relation to the insolvency, a party e can be restrained from terminating the contract only if it is central to the success of CIRP. Crucially, the termination of the contract should result in the corporate death of corporate debtor. In Gujarat Urja, this Court held thus: (SCC pp. 309-10, paras 176-177)*

*"176. Given that the terms used in Section 60(5)(c) are of wide import, as recognised in a consistent line of authority, we hold that NCLT was empowered to restrain the appellant from terminating PPA. However, our decision is premised upon a recognition of the centrality of PPA in the present case to the success of CIRP, in the factual matrix of this case, since it is the sole contract for the sale of electricity which was entered into by corporate debtor. In doing so, we reiterate that NCLT would have been empowered to set aside the termination of PPA in this case because the termination took place solely on the ground of insolvency. The jurisdiction of NCLT under Section 60(5)(c) of IBC cannot be invoked in matters where a termination may take place on grounds unrelated to the insolvency of corporate debtor. Even more crucially, it cannot even be invoked in the event of a legitimate termination of a contract based on an ipso facto clause like Article 9.2.1(e) herein, if such termination will not have the effect of making certain the death of corporate debtor. As such, in all future cases, NCLT would have to be wary of setting aside valid contractual terminations which would merely dilute the value of corporate debtor, and not push it to its corporate death by virtue of it being corporate debtor's sole contract (as was the case in this matter's unique factual matrix).*

*177. The terms of our intervention in the present case are limited. Judicial intervention should*

*not create a fertile ground for the revival of the regime under Section 22 of SICA which provided for suspension of wide-ranging contracts. Section 22 of the SICA cannot be brought in through the back door. The basis of our intervention in this case arises from the fact that if we allow the termination of PPA which is the sole contract of corporate debtor, governing the supply of electricity which it generates it will pull the rug out from under CIRP, making the corporate death of corporate debtor a foregone conclusion." (emphasis supplied)*

**21.** In **“Tata Consultancy Services Ltd.”** (supra), agreement was entered between the Appellant and the Corporate Debtor. Under the facility agreement, either party was entitled to terminate the agreement immediately by written notice. Termination notice was issued by the Appellant to the Corporate Debtor on 10.06.2019 which came into effect. Application was filed before the Adjudicating Authority for quashing the termination notice. In the above context, the observations as noted above were made by the Hon’ble Supreme Court.

**22.** After noticing the law laid down by the Hon’ble Supreme Court in the above cases, now we refer to the admitted facts of the present case as noted above. The question to be answered is as to whether the question raised in the application filed by the Appellant seeking direction for reconnection arises out of or in relation to the liquidation proceedings of the Corporate Debtor. We have noted above that in the liquidation proceedings of the Corporate

Debtor, the Respondent No.2 had filed its claim which was admitted. The liquidator has filed a reply in the Appeal where it has been stated by the liquidator that after receipt of entire sale consideration he had distributed the same amongst the stakeholders. Paragraph 9 of the reply of the liquidator is as follows:-

*“9. It is submitted that the Respondent No.1 on receipt of entire sale consideration had distributed the same amongst the stakeholders as per Section 53(1) of the Code. It is further submitted that even the claim of Respondent No.2, which was admitted to the tune of Rs.49,51,59,781/- was dealt in accordance with provisions of the Code.”*

**23.** As noted above, the claim filed by the Respondent No.2 in the liquidation proceeding was admitted and has been dealt with in accordance with Section 53 of the IBC. We have noted above that an Application IA No.144 of 2021 was filed by the Appellant before the Adjudicating Authority claiming certain reliefs and concessions consequent to the Appellant having been declared successful bidder of the Corporate Debtor as a going concern. Paragraph 6 of the order contains certain reliefs and concessions and the order of the Adjudicating Authority has also been noted in paragraph 2 of the order. We may notice paragraphs 5 and 6 of the order, which is to the following paragraphs:-

*“5. This is an unusual case where the company could not be revived through a Resolution Plan during the CIRP and has been sold off by the liquidator as a going*

*concern. To keep the company as a going concern, the buyer-successful bidder is seeking certain reliefs and concessions that are generally sought for in a Resolution Plan filed under the section 30 of the Code.*

*6. In the interest of justice and keeping the goal of the Code, i.e, resolution of the Corporate Debtor with maximised value in mind, we are inclined towards considering the prayers for reliefs and concession and give our decision as follows:*

<i>S. No.</i>	<i>Reliefs/concessions sought</i>	<i>Orders thereupon</i>
<i>1</i>	<i>Issue a direction/order thereby directing the concerned authorities to restore the electricity and water connection at the company office and plant on immediate basis, in absence thereof, the Applicant Company will not be in a position to resume work of the corporate debtor.</i>	<i>Granted. The electricity and water connection shall be restored by the concerned authorities upon application and payment of required fees/charges by the Applicant Company</i>

**24.** The reliefs and concessions which was granted by the Adjudicating Authority by the order dated 26.02.2021 clearly directed electricity and water connection be restored by the concerned authorities upon application and payment of required fees/charges by the applicant company. It is relevant to notice that the order dated 26.02.2021 was not challenged by Respondent No.2 and the said order has become final. IA No.984 of 2021 was filed by the Appellant when after the order of the Adjudicating Authority dated 26.02.2021 it has written several letters to Respondent No.2 for re-connection

and by letter dated 03.09.2021, the Respondent No.2 communicated the Appellant in following manner:-

*"To* *3<sup>rd</sup> September, 2021*  
*Ravi Shankar Mishra*  
*Director,*  
*Bhaskar Srachi Alloys Pvt. Ltd.*  
*21, Hemanta Basu Sarani, Suite No.301*  
*Kolkata- 700001*

*Re- Your Letter dated 27.08.2021*

*Sub-Resumption/ Restoration / Re-connection of Electricity supply at factory premises of M/s Bhaskar Shracchi Alloys Ltd. Waria Road, Mouza- Angadpur, Raturia, Durgapur, Dist. Bardhaman-713215.*

*Dear Mr. Mishra,*

*We are in receipt of your letter dated 27.08.2021. After perusal of your letter, we noticed that the copy of the E-auction notice and sale agreement are not enclosed. Kindly provide us the copy of the E- Auction Notice and copy of the Sale Agreement which contains the terms and conditions of the agreement.*

*This is also to inform you that we are bound by Clause 4.6.4 of WBERC Regulation dated 07.08.2013 which states as follows, "Notwithstanding anything contained contrary elsewhere in these regulations were deemed termination of agreement has taken place, then on the basis of application of any consumer, new service can only be provided in the same premises if the outstanding dues against the deemed terminated consumer is cleared along with the late payment surcharge.*

*Without prejudice of the afore going, we would be able to take action in this regard once the above mentioned documents are provided to us.*

*Thanking you,*

*Yours sincerely*

*Chief Engineer (Commercial)"*

**25.** The above letter communicated that by virtue of clause 4.6.4 of WBERC Regulation dated 07.08.2013, any new service connection can only be provided in the same premises if the outstanding dues against the deemed terminated consumer is cleared along with the late payment surcharge. Letter dated 03.09.2021 was questioned by IA No.984 of 2021. We have already noticed above that the Respondent No.2 has filed its claim which was against the Corporate Debtor of arrears of electricity dues prior to termination of its connection which claim was admitted by the liquidator and has been dealt with as per Section 53. It is settled law that claim which has been filed and dealt with in the resolution process or in the liquidation proceedings shall extinguish the claim and cannot be re-agitated after the process is completed. When claim of the Respondent No.2 was dealt with in the liquidation proceedings as per Section 53, it is not open for the Respondent No.2 to renew the said claim and insist for payment of entire dues which has been dealt in the liquidation process. In event the submission of the Respondent No.2 is accepted that even though its claim which was filed in the liquidation proceeding has been finally dealt with under Section 53 should again be allowed to renew and re-agitated when subsequent application is filed by the successful bidder that will be permitting claim to become alive even after it has extinguished in the liquidation proceedings. The interpretation put by Respondent No.2 is contrary to the whole object and purpose of the IBC. Corporate Debtor should have been liquidated and claim of all stakeholders has been dealt with and distributed, the stakeholders cannot be allowed to

again re-agitate the claim against an entity which has taken the Corporate Debtor as a going concern.

**26.** This Appellate Tribunal has occasioned to consider the said question in Company Appeal (AT) (Ins.) No.78 of 2021- **“Damodar Valley Corporation vs. VSP Udyog Pvt. Ltd.”** wherein CIRP of the Corporate Debtor, DVC has submitted its claim which was admitted claim of Rs.950.919 out of which only an amount of Rs.0.24 Crore was approved for payment to the Operational Creditor in the plan. Approval of the plan was assailed by the DVC for filing an appeal before this Tribunal Company Appeal (AT) (Ins.) No.17 of 2021. The Appeal was dismissed and it was held that the challenge to approval of the Resolution Plan cannot be sustained.

**27.** Another judgment of this Appellate Tribunal in Company Appeal (AT) (Ins.) No.1111 of 2020- **“Damodar Valley Corporation vs. Kharkia Steels Pvt. Ltd.”** was also a case where claim was filed by the DVC which according to the DVC was not adequately considered and only 0.16% of admitted claim given in the approved Resolution Plan. Appeal filed by the DVC was dismissed and following was held in paragraph 28:-

*“28. We thus note that the liabilities of DVC that relate to past dues prior to the Effective Date have been extinguished under the approved Resolution Plan and DVC is prohibited from raising any further demand on this account. The clause (d) in Para 6 Section VI of the Resolution Plan directs DVC to restore the power connection immediately after the Effective Date and not withhold/disconnect power supply on the ground*



*of pending old dues whose claim has been submitted to Resolution Professional during CIRP and which have been taken care of in the resolution plan and clause (1) directs DVC to commit supply of power to the plant of CD immediately after the Effective Date. The other condition that is approved as part of resolution plan relates to withdrawal of all legal cases, if any, immediately after the Effective Date. Since the admitted claim of DVC has been paid in accordance with the provisions of IBC, DVC cannot claim any further payment of pre-CIRP dues which are now extinguished. Also as the successful resolution applicant has to apply for fresh connection, payment of security deposit and any other charges that may be admissible under WBERC Regulations will have to be paid by the successful resolution applicant.”*

**28.** The judgment of this Tribunal dated 15.03.2022 in the above case has also affirmed by the Hon’ble Supreme Court by its judgment dated 22.07.2022 in Civil Appeal No.4633 of 2022. Counsel for the Appellant has also relied on judgment of this Tribunal in **“Shiv Shakti Inter Globe Exports Pvt. Ltd. vs. KTC Foods Pvt. Ltd.- 2022 SCC OnLine NCLAT 85”**. In the above case, Corporate Debtor was sold in e-auction and the liquidator allocated payment to respective creditors in terms of Section 53 and the liquidation process was prayed to be closed and thereafter on 18.06.2021, ‘Uttar Haryana Bijli Vitran Nigam’ informed that an amount of Rs. 81,34,157/- is overdue against the Corporate Debtor. It was held that there being no claim having been filed by ‘Uttar Haryana Bijli Vitran Nigam’, the claim stands extinguished. In paragraphs 23 and 24, following was laid down: -

*“23. Adverting to the contention of the Learned Counsel for the Appellant that the Adjudicating Authority has erred in denying the sale of the 'Corporate Debtor' as a going concern to the Appellant without including any contingent liabilities, we hold that it is a settled law that when the sale proceeds of a 'Corporate Debtor' are duly distributed in the Order of priority and in the manner prescribed under Section 53 of the Code, claims of any other Creditor cannot be entertained contrary to the provisions entailed under Section 53; subsequent to the distribution of sale proceeds under Section 53 no other entity including any Government entity can claim any past unpaid or outstanding dues against the Appellant who has purchased the 'Corporate Debtor Company as a going concern. It is significant to mention that the second Respondent/Liquidator has specifically submitted that even these claims by the Uttar Haryana Bijili Vitran Nigam were not submitted in the prescribed form either during the CIRP Process or at the Liquidation stage. We are of the considered view that at this stage subsequent to the sale of the 'Corporate Debtor Company as a 'going concern, these claims cannot be foisted upon the Appellant. The scope and objective of the Code is to extinguish all claims specifically the ones which were not even made during the CIRP or in the Liquidation stage, to aid the purchaser of the Company as a 'going concern to start on a 'clean slate. The Hon'ble Supreme Court in 'Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd., Civil Appeal No. 8129 of 2019 and in 'CoC of*

*Essar Steel India Ltd. v. Satish Gupta' (2020) 8 SCC 531 has laid down the proposition that the purchaser of the Company even in the Liquidation stage cannot be burdened with past liabilities when it is not mentioned in the 'Sale Notice'.*

*24. It is no longer Res Integra that while approving a 'Corporate Debtor' sale as a going concern in Liquidation Proceedings without its dissolution in terms of Regulation 32(e) of the Liquidation Process Regulations, 2016, it is essential to see that the 'Corporate Debtor' is not burdened by any past or remaining unpaid outstanding liabilities prior to the sale of the Company as a 'going concern' and after payment of the sale proceeds distributed in accordance with Section 53 of the Code. The Impugned Order in I.A. 889 of 2020 is modified to the extent that the sale of the first Respondent as a 'going concern' is upheld and the direction sought for in prayer (c) & (e) in CA No. 1189 of 2019 seeking extinguishment of past/remaining unpaid outstanding liabilities including contingent liabilities, prior to the sale as a 'going concern', after payment of sale proceeds distributed in accordance with Section 53 of the Code, is allowed. This Appeal is allowed to the extent indicated above.”*

**29.** It was held that while approving a Corporate Debtor sale as a going concern, Corporate Debtor cannot be bounded by any past or remaining unpaid outstanding liabilities prior to the sale of the Company as a going concern.

**30.** The above judgment fully supports the submission of the Appellant. No liability can be fastened by Respondent No.2 of its past dues for which he has already filed a claim in the liquidation proceedings which stands satisfied as per distribution carried out by the liquidator under Section 53 of the IBC. Counsel for the Appellant has also referred to the judgment of the Hon'ble Supreme Court in **"Telangana State Southern Power Distribution Company Limited and Anr. vs. Srigidhaa Beverages- (2020) 6 SCC 404"**. Judgment of the Hon'ble Supreme Court in the above case was a case where auction was conducted under the SARFAESI Act, 2002 and in the auction notice outstanding dues including electricity was also clearly mentioned. Paragraph 3 of the judgment is as follows:-

*"3. In order to appreciate the controversy before us, it is necessary to reproduce some of the relevant clauses of the auction notice:-*

*"The property described below is being sold on "AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS" under Rules 8 and 9 of the Security Interest (Enforcement) Rules (hereinafter referred to as "the Rules") for the recovery of the dues detailed as under:-*

<i>The total amount due as on 30-4-2017</i>	<i>Rs. 13,97,26,258.77/- (Rupees thirteen crores ninety- seven lakhs twenty-six thousand two hundred fifty- eight and paisa seventy-seven) with future interest and costs till date of payment Accounts Nos. (1) 373OSLB140940002 and (2) 30151010006439</i>
<i>Details of encumbrances over the property, as known to the bank</i>	<i>For Property No. 1: Nil For Property No. 2: Subsequent to our MOD, the following transactions observed in EC 1. As per Doc No. 2611/2016 dated 15-6-2016, the mortgager has sold the property to the extent of 540 sq. yd. to private party, for worth of Rs. 9,72,000. 2. As per Doc No. 657/2015 dated 5-2-2015, the mortgager has sold the property to the extent of 620.83 sq. yd. to the Executive Officer,</i>

	<p>Ramapally Gramapanchayat for worth of Rs. 12,42,000.</p> <p>3. As per Doc No. 2721/2014 dated 5-8-2014, the mortgager has sold the property to the extent of 204.75 sq. yd. to the Gramapanchayat Executive Officer, Ramapally for worth of Rs. 2,48,000.</p>
<p>Details outstanding of dues of local Government (property tax, water sewerage, electricity bills, etc.)</p>	<p>Rs. 83,17,152 (Rupees eighty-three lakhs seventeen thousand one hundred fifty-two only)</p>
<p>Reserve price of property</p>	<p>For Property No. 1: Rs. 77,63,000</p> <p>For Property No. 2 Reserve price: Rs 5,83,37,000 (Rupees five crores eighty-three lakhs thirty-seven thousand only)</p> <p>Total 28 nos. of machineries items reserve price: Rs. 3,25,28,000 (Rupees three crores twenty-five lakhs twenty-eight thousand only)</p>

#### *Terms and conditions*

21. *The successful bidder shall bear the stamp duties, charges including those of sale certificate, registration charges, all statutory dues payable to the Central/State Government, taxes and rates and outgoing, both existing and future relating to the properties.*

24. *The property is sold in "AS IS WHERE IS, WHAT IS THERE IS AND WITHOUT ANY RECOURSE BASIS" in all respects and subject to statutory dues, if any. The intending bidders should make discrete enquiry as regards any claim, charges/encumbrances on the properties, of any authority, besides the bank's charges and should satisfy themselves about the title, extent, quality and quantity of the property before submitting their bid. For any discrepancy in the property, the participating bidder is solely responsible for all future recourses from the date of submission of bid.*

25. *No claim of whatsoever nature regarding the property put for sale, charges/encumbrances over the property or on any*

*other matter, etc. will be entertained after submission of the bid/confirmation of sale.*

*26. The authorised officer will not be responsible for any charge, lien, encumbrance, property tax dues, electricity dues, etc. or any other dues to the Government, local authority or anybody, in respect of the property under sale."*

**31.** In the above context, after auction sale, question arose as to whether successful bidder is liable to pay electricity charges. It was in the facts of the above case that court held that there is no doubt that the liability to pay electricity dues exists on the respondent. In paragraphs 16.2, following was laid down:-

*"16.2. Where, as in cases of the e-auction notice in question, the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on "as is where is, whatever there is and without recourse basis", there can be no doubt that the liability to pay electricity dues exists on the respondent (purchaser)."*

**32.** The above judgment has no application in the facts of the present case which arose out of the liquidation process as per Liquidation Regulations, 2016. Respondent No.2 has filed its claim which was admitted in the proceeding and has dealt with. The judgment of the Hon'ble Supreme Court in **"Telangana State Southern Power Distribution Company Limited"** does not help the Respondent No.2 in any manner in the present case.

**33.** Learned Counsel for the Appellant has heavily relied on judgment of this Tribunal in Company Appeal (AT) (Insolvency) No. 961 of 2021- **"Eastern Company Appeal (AT) (Insolvency) No. 1355 of 2022**

**Power Distribution Company of Andhra Pradesh Limited**” (supra) decided on 26.05.2022. In the above case, in the liquidation proceeding of the Corporate Debtor in e-auction Maithon Alloys Ltd. was declared as Successful Auction Purchaser of the Corporate Debtor. The Corporate Debtor had electricity connection from Appellant- **“Eastern Power Distribution Company of Andhra Pradesh Limited”** (supra). Respondent No.1 filed an IA No.748 of 2021 before the Adjudicating Authority seeking restoration of the electricity supply to the premises of the Corporate Debtor. The Appellant- **“Eastern Power Distribution Company of Andhra Pradesh Limited”** opposed the application stating that the Respondent No.1 is liable to pay all outstanding dues of the Corporate Debtor as per Regulation 8.4 of General Terms and Conditions of Supply and if auction purchaser clears the entire dues of the Corporate Debtor only then the fresh connection can be granted. Adjudicating Authority allowed the Application and directed to energise the connection. The Eastern Power challenging the order of the Adjudicating Authority before the Appellate Tribunal. The question which was framed by this Tribunal is noticed in paragraph 7 of the judgment, which is as follows:-

*“7. The question to be answered in the present Appeal is:  
Whether the Respondent No.1, the Successful Auction Purchaser in the liquidation proceeding of the Corporate Debtor, is liable to pay electricity dues due on the Corporate Debtor both pre-CIRP and during the CIRP?”*

**34.** This Tribunal also noticed paragraph 8.4 of the Regulations and laid down following in paragraph 13:-

*“13. When in the IBC proceedings, the Appellant has lodged his claim before the Liquidator pertaining to pre-CIRP dues, the same has to be dealt with as per the provisions of the Code. Pre-CIPR dues of the Appellant have been treated as operational debt and the same required to be paid as per Section 53 of the Code. The payment under Section 53 of all debts including operational debt has to be made in accordance with Section 53. Thus, the Appellant is entitled to receive pre-CIRP dues as per provisions of section 53. Hence, the Appellant cannot be heard in contending that he should realize the said amount from the Successful Auction Purchaser. The claim of the Appellant to realize the pre-CIRP dues from Successful Auction Purchaser is clearly in conflict of the statutory scheme as laid down in the Code.”*

**35.** Earlier judgments of the Appellate Tribunal in **“Shiv Shakti Inter Globe Exports Pvt. Ltd.”** and **“Damodar Valley Corporation vs. Karthik Alloys”** (supra) were also relied by this Tribunal. The submission of the Appellant that it is entitled to recover the entire pre-CIRP and post-CIRP dues from the Successful Auction Purchaser was rejected. In paragraphs 21 and 22, following was held:-

*“21. The submission raised by learned counsel for the Appellant claiming payment of entire pre-CIRP and post-CIRP dues from Successful Auction Purchaser in liquidation in event is accepted, the same will be in contravention of IBC. If even for argument sake it is accepted that entire pre-CIRP and post-CIRP dues are to be recovered from the Successful Auction Purchaser*



*satisfying the entire dues of the Appellant, hence, in event, as in the present case, Electricity Supply Provider files a claim in the liquidation proceeding which is partly paid in the liquidation proceeding then the said payment shall be in excess to the entire dues realized by the Appellant from the Successful Auction Purchaser, which is not the intend of the IBC proceeding nor a claimant even if it is Electricity Supply Provider can realize its claim against a Corporate Debtor in liquidation contrary to the scheme of IBC.*

*22. We, thus, are fully satisfied that the submission of the Appellant that they are entitled to recover the entire pre-CIRP and post-CIRP dues from the Successful Auction Purchaser i.e. Respondent No. 1 cannot be accepted. The Adjudicating Authority did not commit any error in issuing the directions as contained in the order dated 05.10.2021. We, however, are of the view that the Appellant is entitle to claim its electricity dues both pre-CIRP and post-CIRP in accordance with Section 53 of the Code. Ends of justice be served in granting liberty to the Appellant to move the Adjudicating Authority regarding aforesaid claims, if not already filed, which may be considered and decided in accordance with law. In result of the above discussion, we uphold the impugned order of the Adjudicating Authority dated 05.10.2021 with liberty to the Appellant to file appropriate application, if not already filed, before the Adjudicating Authority with regard to its entitlement of pre-CIRP and post-CIRP cost. The Appeal is disposed of accordingly.”*

**36.** The above judgment fully supports the submission of the Appellant and was delivered by this Tribunal in similar facts and issues.

**37.** The issues raised in the present Appeal are fully covered in favour of the Appellant by a recent judgment of the Hon'ble Supreme Court dated 11.09.2023 in Civil Appeal No.5556 of 2023- **"Tata Power Western Odisha Distribution Limited (TPWODL) & Anr. vs. Jagannath Sponge Private Limited"**. Appellant in the above case was also insisting for payment of arrears of electricity dues. The Hon'ble Supreme Court relied on the earlier judgment of the Hon'ble Supreme Court in **"Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Limited & Ors.- 2023 SCC Online SC 842"** and has also noted the judgment of the Hon'ble Supreme Court in **"Embassy Property Developments Pvt. Ltd."** and distinguished the same. It is useful to extract the entire judgment of the Hon'ble Supreme Court dated 11.09.2023, which is to the following effect:-

*"In our opinion, the legal issue is covered by the judgment of this Court in "Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Limited and Others"<sup>1</sup> and the order of this Court in "Southern Power Distribution Company of Andhra Pradesh Limited vs. Gavi Siddeswara Steels (India) Pvt. Ltd. and Another."<sup>2</sup> The appellant – Tata Power Western Odisha Distribution Limited cannot insist on payment of arrears, which have to be paid in terms of the waterfall mechanism, for grant of an electricity connection. However, the successful resolution applicant will have to comply with the other requirements for grant of electricity connection. The*

*clean slate principle would stand negated if the successful resolution applicant is asked to pay the arrears payable by the corporate debtor for the grant of an electricity connection in her/his name.*

*In “Embassy Property Developments Private Limited vs. State of Karnataka and Others”<sup>3</sup>, this Court clarified that a decision by public authority etc. may fall within the jurisdiction of the tribunals constituted under the Code, where the issue relates to or arises out of the dues payable to an operational or financial creditor, by observing:*

*“37...It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression “operational debt” under Section 5(21), making the Government an “operational creditor” in terms of Section 5(2). The moment the dues to the Government are crystallised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the adjudicating authority, namely, the NCLT.”*

*The above-quoted observations from Embassy Property Developments Private Limited (supra) would confer jurisdiction on the tribunal constituted under the Code insofar as the appellant – Tata Power Western Odisha Distribution Limited is insisting on payment of the dues of the corporate*

*debtor for restoration/grant of the electricity connection. The dues of the corporate debtor have to be paid in the manner prescribed in the resolution plan, as approved by the adjudicating authority. The resolution plan is approved when it is in accord with the provision of the Code. Thus, the issue of corporate debtor's dues falls within the fold of the phrase 'arising out of or in relation to insolvency resolution' under section 60(5)(c) of the Code.*

*Therefore, we do not find any good ground and reason to interfere with the impugned judgment(s)/order(s) and hence, the present appeals are dismissed.*

*Pending application(s), if any, shall stand disposed of."*

**38.** In view of the law laid down by the Hon'ble Supreme Court in "**Tata Power Western Odisha Distribution Limited**" (supra), submission advanced on behalf of the Respondent- Damodar Valley Corporation cannot be accepted. The Respondent cannot insist that unless the arrears of the electricity dues which dues were payable by the Corporate Debtor prior to disconnection are paid by the Appellant only then communication can be issued. The stand taken by the Respondent is contrary to the law laid down by this Tribunal as well as the Hon'ble Supreme Court as noted above.

**39.** In view of the foregoing discussions, we are satisfied that the Adjudicating Authority committed error in rejecting IA No. 984 of 2021 as not maintainable. We hold that the application is fully maintainable under Section 60(5) for the reasons as indicated above. The Appellant has made out

a case for grant of reliefs as claimed in the application. In result, we allow the Appeal in following manner:-

The impugned order dated 01.09.2022 is set aside. IA No.984 of 2021 is allowed. Respondent No.1 to grant fresh connection of electricity after taking all necessary charges for fresh connection except outstanding dues of the Corporate Debtor which stood satisfied and extinguished as per the liquidation proceedings against the Corporate Debtor.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**New Delhi**  
Anjali