

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 281 of 2025**

**[Arising out of the Impugned Order dated 25.10.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-II in C.P. (IB) No. 4260/MB/2018]**

**In the matter of:**

**Brihanmumbai Elelectric Supply And  
Transport Undertaking**

BEST Undertaking,  
BEST Bhavan, BEST Marg,  
Colaba, Mumbai- 400001  
Email: [ucnayak@mvkini.com](mailto:ucnayak@mvkini.com)  
[ooshma@mvkini.com](mailto:ooshma@mvkini.com)

...Appellant

**Versus**

**MR. ASHOK KUMAR GOLECHA**

Liquidator for Spark Green Energy  
(Satara) Ltd.  
Flat No. B 703/704,  
7<sup>th</sup> Floor, River Park CHS,  
Dattani Park Road, Thakur Village,  
Kandivali (E), Mumbai City,  
Maharashtra – 400101  
[liquidationspark.satara@gmail.com](mailto:liquidationspark.satara@gmail.com)

...Respondent

**Present:**

For Appellant : Mr. Karan Bhide, Ms. Ooshma Jain, Advocates.

For Respondent : Mr. Prakhar Tandon, Mr. Agam H. Maloo, Advocates.

**J U D G M E N T**

**(Hybrid Mode)**

**Per: Barun Mitra, Member (Technical)**

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('IBC' in short) by the Appellant arises out of the Order dated 25.10.2024 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-II) in

C.P.(IB) No. 4260/MB/2018. By the impugned order, the Adjudicating Authority had upheld the decision of the Liquidator of not treating the Appellant as Secured Financial Creditor and for having admitted claim of only Rs 30 Cr. as against a claim made of Rs 156,23,71,177 by the Appellant. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant-Brihanmumbai Electricity Supply and Transport Undertaking (“**BEST**” in short).

**2.** Coming to the factual matrix of the present case, the Corporate Debtor-Spark Green Energy-(Satara) Ltd. was admitted into Corporate Insolvency Resolution Process (“**CIRP**” in short). Since the CIRP proved unsuccessful, the Corporate Debtor was put into liquidation on 28.07.2023. The Liquidator-Respondent made an announcement inviting claims following which the Appellant submitted their claim in Form-D on 24.08.2023 of Rs 156.23 Cr. as a Secured Financial Creditor of the Corporate Debtor. The Liquidator however classified the Appellant as an Unsecured Financial Creditor and out of the total claim of Rs 156.23 Cr. admitted only a claim of Rs 30 Cr. in respect of the principal amount but did not admit the interest amount of Rs 126.23 Cr. Aggrieved by the decision of the Liquidator, the Appellant had preferred an appeal before the Adjudicating Authority. The Adjudicating Authority dismissed the appeal on 25.10.2024 and held that the Liquidator had rightly rejected the interest component claimed by the Appellant and for treating the Appellant as an Unsecured Financial Creditor. Aggrieved by the impugned order, Appellant has preferred the present appeal.

**3.** Making his submissions, Shri Karan Bhide, Ld. Counsel for the Appellant submitted that the Corporate Debtor had approached the Appellant to make an

investment in the Corporate Debtor by way of providing an interest free deposit amounting to Rs 30 Cr. Accordingly, the Appellant had invested the said amount to be retained by the Corporate Debtor till the end of the fifth operational year of the Power Project set up by them. For this purpose, the Corporate Debtor and the Appellant had entered into an Investment Agreement (“**IA**” in short) dated 23.12.2008 and an Energy Purchase Agreement (“**EPA**” in short) dated 01.10.2009. The IA/EPA provided that in the event of delay in project commissioning beyond the stipulated period, Corporate Debtor was to compensate the Appellant for the loss of interest on the interest free deposit through an additional discounted rate of power units sold. These agreements also provided for a methodology for computing such compensation, which compensation was based on term-loan borrowing rate of 12% p.a. The IA/EPA therefore implicitly acknowledged the Appellant’s entitlement to interest and this therefore clearly signified that the compensation for delayed commissioning had implications of time value for money. Hence, the rejection of their claim in respect of the interest amount by the Liquidator was misconceived and was an erroneous interpretation of the contractual terms. It is the contention of the Appellant that deprivation of the interest component on the security deposit of Rs 30 Cr. would result in unjust denial of the legitimate dues of the Appellant. Being a government undertaking, it was asserted by the Appellant that BEST may not be subjected to undue loss.

**4.** Further assailing the impugned order, it was submitted that the Appellant has been erroneously treated as Unsecured Financial Creditor and not as a Secured Financial Creditor. It was pointed out that the ground on which the

Liquidator had held that the Appellant cannot be treated as a Secured Financial Creditor was the absence of non-registration of charge in the register of the Registrar of Companies (ROC). It was also contended that the Corporate Debtor had assured that the second charge in favour of the Appellant would be registered once the first charge of the project lenders was created. Since the Corporate Debtor had deliberately failed to register the charge which constituted a breach of their statutory obligation under Section 77 of the Companies Act, 2013 besides violating their contractual commitments, they cannot be allowed to derive an unfair advantage of their own wrong doing. In such circumstances, for a wrong committed by the Corporate Debtor, the Appellant could not have been denied the benefit of being a Secured Financial Creditor.

**5.** Refuting the contentions made by the Appellant, Shri Prakhar Tandon, Ld. Counsel for the Respondent strenuously contended that both the EPA and IA provided for interest free deposit and hence the Appellant could not have claimed entitlement to interest on the said deposit. It was also contended that the receipt of power from the Corporate Debtor at a subsidised price on account of delay did not amount to time value of money or interest. The Liquidator is required to admit the claims on the basis of records/documents placed before it and cannot be expected to read beyond the terms of agreement placed before it. It was asserted that the Liquidator had correctly pointed out that in terms of Section 77 of the Companies Act, 2013 the security interest can be created through charge with the ROC. It is mandatory for the Corporate Debtor to register the charge under Section 77 of Companies Act and obtain a certificate of registration of charge. It was equally the responsibility of the Financial

Creditor to create the security interest at the time of extending the facility to secure its rights. However, since the Liquidator did not receive any proof with regard to recording of the security having been created either with the information utility or proof of Certificate of Registration of Charge issued by the ROC, he was precluded from treating the Appellant as a Secured Financial Creditor.

**6.** We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully.

**7.** A lot of emphasis was laid by the Appellant that the EPA and IA being commercial documents which outlined the commercial obligations of the parties concerned, it was inappropriate on the part of Liquidator to remain fixated on the plain wordings of the contractual documents in denying entitlement of interest on the Rs 30 Cr. deposit made by BEST. The Liquidator should have instead ascertained the intention of the parties entering into the two contractual agreements. When the IA and EPA are read in their totality, even though there are no express terms of interest payment in the commercial arrangement contained therein, there was a clear intent to compensate the Appellant for the sum advanced as an interest free deposit in a manner that it entailed payment of interest. The selective and fragmented reading of the agreements led to a distorted view taken by the Liquidator that the security deposit did not have any interest component. This misplaced interpretation of the IA/EPA by the Liquidator was untenable and ought not to have been affirmed by the Adjudicating Authority.

8. Per contra, it is the case of the Respondent that the deposit of Rs 30 Cr. made by the Appellant was interest free and the benefit arising out of supply of power to the Appellant by the Corporate Debtor at a discounted rate on account of delay in project commissioning cannot be treated as interest having time value for money. It is also the contention of the Respondent that the contractual terms and conditions of the EPA had been looked into by Maharashtra Electricity Regulatory Commission (MERC) as the competent authority for adjudicating on disputes arising out of such contractual agreements. While upholding the termination of two EPAs, the MERC after considering the terms of the EPAs did not award any interest amount and held the security deposit to be interest free.

9. At this stage it may be useful to refer to the relevant provisions of the IA which reads as below:

*“Whereas:*

*(1) .....*

*(2) .....*

*(3) The Company needs funding to set up, construct, develop, operate and maintain a 25 MW biomass based power project at Lonand MIDC, Taluka Khandala, District Satara, Maharashtra in accordance with the Business Plan ("Project"), and accordingly the Company Promoters had approached the Investor with a proposal to make an investment in the Company vide an Interest Free Deposit amounting to Rs.30 crores at the time of signing of this Agreement, and the Investor has agreed to make such an investment on certain mutually agreed terms and conditions as mentioned below:*

*The BEST needs renewable energy to meet its Renewable Purchase Obligation as per the Honourable Maharashtra State Electricity Regulatory Commission's RPS Order of August 2006 for which an EOI for supply of 300 million units per annum of Renewable Energy required by BEST was advertised in major newspapers and also uploaded on their website in First Week of September 2007 to which only the Spark Green Energy Group Companies (Spark Green Energy (Ahmednagar) Pvt. Ltd. and Spark Green Energy (Saturn) Ltd), expressed their interest*

to supply offering together the entire 300 million units or more per annum of renewable energy at a rate of Rs 5 per kwh for the first year of supply of Renewable Energy (R.E.) which is beginning from April of 2009 or actual date of commissioning whichever is later. A separate Energy Purchase Agreement (EPA) is to be signed OR a LOI for Purchase of Green Energy is to be issued by BEST to the company within 30 days of signing of this Investment Agreement to decide the detailed terms and conditions of the power purchase/ sale. A compounded escalation from the second operational year onwards of 5% per annum under 5 years energy purchase agreement/LOI valid upto F.Y. 2013-14 or beyond. This Investment agreement and/or the EPA/LOI is extendable by another period of 5 years (together comprising 10 years) on mutually acceptable rates terms & conditions which are to be negotiated at the time of renewal/extension of this Investment Agreement and/ or EPA/LOI.

The investor decided to invest Rs. 30 crores in the Company vide an Interest Free Deposit to be kept with the Company till the end of the 5<sup>th</sup> Operational Year of the proposed 25 MW Green Renewable Generation Power Plant for which the Company will give the investor a discount of Rs. 0.50 paise per unit on the above mentioned EOI Rate for the entire EPA Term of 5 years of operation on all power generated by the Company and sold to the investor i.e. BEST Undertaking. The Company further hereby agrees that all energy generated from the proposed project will be sold to the investor as per the Terms & Conditions of this agreement, however after starting the power plant operation and green power generation if the Company decides not to sell the green power so generated to BEST, and sells the same to some other power offtaker, the company, agrees to pay to the Investors the penalty as paid to MERC by BEST on the number of units sold to the other power offtaker other than BEST.

In case of delay in refund of deposit after expiry of the 60 months (i.e:- 5 years term, starting on the date of the commissioning of the project and ends 60 months thereafter) term of this agreement and the EPA/LOI the company shall continue to sell the energy at the rate of last year and other terms remaining the same to BEST till the date of refunding of Deposit. In case of delay in commissioning of the project beyond the stipulated 18 months from the date of the signing of this agreement, subject to Force Majeure Conditions defined elsewhere in this agreement, the company shall give additional discount spread evenly on the power units sold in the first year of operation proportionally to compensate the Investor for the loss of interest on their interest free deposit advanced to the company.”

*(Emphasis supplied)*

**10.** From a plain reading of the above clauses of the IA, it becomes clear that an investment was made by BEST-Appellant in the Corporate Debtor by way of an interest free deposit amounting to Rs.30 crores. The compensation for delay on account of non-commissioning of the project was provided for in the IA in terms of the charging of the units and the discounted rate thereof. When the IA did not provide for interest component in clear and precise terms, the Liquidator could not on his own have expanded the scope of the IA by way of his own interpretation of the clauses. The Liquidator after examining the IA and not having found any enabling clause which provided for interest on the deposit invested by the Appellant in the Corporate Debtor has rightly treated the security deposit to be interest-free. The Liquidator is not expected to interpret the contractual terms contained in the IA/EPA so as to unearth the underlying intent of such contractual agreements. The Liquidator therefore did not commit any error in concluding that the deposits were interest free and that the Appellant could not have claimed interest on security deposits which was interest free. We do not find any error on the part of the Liquidator to have admitted only a claim of Rs 30 Cr. in respect of the principal amount and rejecting the claim made in respect of the interest amount of Rs 126.23 Cr.

**11.** Given this backdrop, the Adjudicating Authority also did not commit any infirmity in upholding the decision of the Liquidator that the deposit was interest-free and that neither the Liquidator nor the Adjudicating Authority can read into the agreement terms beyond what is explicitly contained therein. We are also of the considered view that the Adjudicating Authority in the exercise of

its summary jurisdiction is not capacitated to determine the terms and conditions of the contractual agreement. The Adjudicating Authority is not expected to go into the commercial intent of the parties in trying to interpret the contractual provisions in the IA beyond a plain reading of the same. We also do not find that the Appellant provided any other supporting documentary evidence to substantiate the interest clause in the EPA. In such circumstances, it has been rightly held by the Adjudicating Authority that if at all the Appellant was aggrieved, the appropriate remedy before it was to enforce the contractual obligation on the part of the Corporate Debtor before an appropriate forum of law. When the clauses of the IA did not specifically provide for interest on security deposit, the Adjudicating Authority had correctly taken the view that the Liquidator could not have interpreted the IA to the contrary.

**12.** This brings us to the other principal contention of the Appellant that since the Corporate Debtor had failed to commission the project, the security interest of the Appellant stood crystallised. It was also contended by the Appellant that the security interest which had been created by the Corporate Debtor in their favour was in the form of a floating charge over the assets of the Corporate Debtor. It was vehemently contended by the Appellant that it was wrong on the part of the Liquidator to have held that the charge was invalid merely on grounds of the non-registration of charge with the ROC. Argument was canvassed that the absence of prior registration did not invalidate a floating charge as it is an equitable interest that becomes enforceable upon crystallization. It was asserted that floating charge remains effective and enforceable even in the absence of prior registration. It is also the case of the Appellant that it was the responsibility

of the Corporate Debtor to create the charge on its assets in favour of the Appellant pursuant to the IA/EPA which however, the Corporate Debtor had failed to get done. In such circumstances, for a wrong committed by the Corporate Debtor, the Appellant could not have been denied the benefit of being a Secured Financial Creditor and the Corporate Debtor cannot be allowed to take advantage of their own wrong. In support of their contention reliance was placed on the judgment of this Tribunal in ***Canara Bank Vs S. Rajendaran, Liquidator of M/s Cape Engineers Pvt. Ltd. in CA(AT)(Ins.) No. 277 of 2023*** wherein it was held that non-registration of a mortgage as per Section 77 of the Companies Act, 2013 was not a sufficient ground to decide on whether a Creditor was 'secured' or not.

**13.** When we look at the impugned order, we find that the Adjudicating Authority took notice of Clause 3.3(a)(iv) of the IA which provided that: “A Corporate Guarantee specifying a Second Charge after the Project Lenders have created a 1<sup>st</sup> Charge on all the fixed assets of the Company to be given by the Company to the BEST Undertaking for the amount of Rs. 30 crores.” The Adjudicating Authority also noted that since the charge was not registered with the ROC, no fault could have been found with the order passed by the Liquidator for not classifying the Appellant as a Secured Financial Creditor. We also find that the Adjudicating Authority in upholding the decision of the Liquidator in not treating the Appellant as a Secured Financial Creditor had relied on Section 77 of the Companies Act, 2013 which provides that no charge created by a Corporate Debtor Company shall be taken into account by the Liquidator unless

it is registered in terms of sub-sections (1) and (2) of Section 77 of the Companies Act, 2013.

**14.** Before we dwell into the tenability of the rival submissions made by the Appellant and the Liquidator in this regard, we may quickly run our eyes through the relevant provisions of the IBC and the Liquidation Process Regulations framed thereunder as well as Section 77(3) of the Companies Act, 2013. ‘Charge’, ‘Secured Creditor’ and ‘Security Interest’ is defined in Section 3 of the IBC. Section 3(4) defines ‘charge’; Section 3(30) defines ‘secured creditor’ and Section 3(31) defines ‘security interest’ which reads as under:

**“3. Definitions.-**

**(4) “charge”** means an interest or lien created on the property or assets of any person or any of its undertakings or both, as the case may be, as security and includes a mortgage;

**(30) “secured creditor”** means a creditor in favour of whom security interest is created;

**(31) “security interest”** means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person; Provided that security interest shall not include a performance guarantee.”

**15.** When we look at Regulation 21 of Insolvency of IBBI (Liquidation Process) Regulations, 2016, it clearly provides the various modalities by which security interest can be proven by a Secured Creditor. Liquidation Process Regulation 21 is as reproduced below:

**21. Providing security interest-** The existence of a security interest may be proved by a secured creditor on the basis of-

(a) the records available in an information utility, if any;

(b) certificate of registration of charge issued by the Registrar of Companies;

or

*(c) Proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India.*

**16.** We may now peruse Section 77(3) of Companies Act 2013 wherein a question of creation of charge comes into play under the liquidation process for being taken into account by the Liquidator which provision reads as follows:-

*“Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the ‘liquidator’ or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration of such charge is given by the Registrar under sub-section (2).*

**17.** When we look at the facts of the present case, we find that the Liquidator did not receive any proof with regard to recording of the security having been created either with the information utility or proof of Certificate of Registration of Charge issued by the ROC or registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India. Even if the requirement of the registration of charge is side-stepped for the time being in deciding the status of the Appellant as a secured financial creditor, the need to possess documents of charge creating the interest cannot be waived as this requirement was clearly envisaged in the IA. The IA at clause 3.3(a)(iv) clearly stated that second charge has to be created by the Corporate Debtor to the Appellant for an amount of Rs 30 Cr after the project lenders had created a first charge on the fixed assets of the Corporate Debtor. There is no whiff of any floating charge concept propounded in the IA. The floating charge concept is clearly a unilateral creation of the Appellant with no roots in the IA/EPA. Only if there is a charge document, that security interest could have been created and the Appellant entitled to the status of a Secured Financial Creditor. In the

absence of charge document, the Creditor could not have been treated as a Secured Financial Creditor of the Corporate Debtor. It is not for the Liquidator to look into whose fault it was for not creating the security charge. All that the Liquidator was expected to perform was whether the charge has been created. The Appellant on a pointed query made by this Bench also admitted that there was no charge document created in their favour by the Corporate Debtor. In such circumstances, when the Appellant has not controverted the fact that no charge was created on the deposit invested by them, we do not find any infirmity in the decision of the Liquidator in not treating the Appellant as a Secured Financial Creditor.

**18.** In view of the foregoing reasons, we find no good reason to interfere with the impugned order. The Appeal not having any merits stands dismissed. No Cost.

**[Justice Ashok Bhushan]  
Chairperson**

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

**[Arun Baroka]  
Member (Technical)**

**Place: New Delhi  
Date: 25.04.2025**

Abdul/Harleen