

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

Company Appeal (AT) (Insolvency) No. 536 of 2025

[Arising out of Order dated 31.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad, Division Bench, Court-1 in IA/270(AHM) of 2024 in CP (IB) No.305 of 2018]

In the matter of:

Profitplus Infra Pvt. Ltd. & Anr.

...Appellants

Vs.

Executive Engineer & Anr.

...Respondents

For Appellant: Mr. Vipul Ganda, Ms. Sakshi Panwar and Ishan Upadhayay, Advocates.

For Respondent: Mr. Anal Shah, Advocate.

J U D G M E N T

(16th December, 2025)

Ashok Bhushan, J.

This appeal has been filed challenging the order dated 31.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal) Division Bench, Court-1, Ahmedabad by which IA No. 270(AHM) of 2024 filed by the Appellant has been rejected.

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

2.1. The Corporate Insolvency Resolution Process (CIRP) against Pacific Pipe Systems Private Limited commenced on 18.12.2019. Adjudicating Authority passed an order on 04.11.2020 directing liquidation of the Corporate Debtor.

In the e-auction, Applicant No.1 was declared as Successful Auction Purchaser. Applicant filed an IA No.411 of 2021 seeking certain reliefs and concessions which was allowed on 04.10.2021. One of the reliefs and concessions granted was that all electricity charges accrued prior to liquidation commencement date shall stand permanently extinguished and any security deposit for connection shall continue in the name of Corporate Debtor. Respondent No.1 was directed to restore the electricity supply to the Corporate Debtor. An appeal was filed by the Respondent No.1 challenging the order dated 04.10.2021 being Company Appeal (AT) (Insolvency) No.1300 of 2022. When the Appeal came for hearing on 16.05.2023, Learned Counsel appearing for the Respondent No.1, who was the Appellant, made a statement that all dues with respect to the electricity connection of the Corporate Debtor has been collected and no further amount is due. It was also stated that the previous connection cannot be restored, hence, new connection in the name of the Corporate Debtor after compliance of necessary and legal formalities can be given. The Appeal was disposed of. After disposal of the Appeal, a fresh connection was granted to the Applicant No.1 and the security deposited was refunded to the Applicant No.1. Applicant No.1 filed an IA No.4473 of 2023 in disposed of Appeal seeking a direction to Respondent No.1 to pay the interest on security deposit due and payable from the date of termination of electricity i.e. 01.03.2016 in the name of Corporate Debtor till the date of adjudication of the application which application was disposed of by this Tribunal on 18.12.2023 giving applicant liberty to file an application before the Adjudicating Authority to consider and decide in accordance with law. Applicant thereafter filed IA No.270 of 2024 before the Adjudicating Authority

seeking a direction for payment of interest on the security deposit in which application reply was filed by Respondent No.1 pleading that security deposit has already been refunded and applicants are not entitled for any interest on security deposit. Applicant obtained a fresh connection and never prayed for restoration of the existing connection, hence, was not entitled for any interest. Adjudicating Authority heard the parties and by impugned order rejected the application filed by the Appellant, aggrieved by which order, this Appeal has been filed.

3. We have heard Shri Vipul Ganda, Learned Counsel for the Appellant and Shri Anal Shah, Learned Counsel appearing for the Respondents.

4. Learned Counsel for the Appellant submits that the Adjudicating Authority while allowing the IA No.411 of 2021 on 04.10.2021 has directed the Respondent No.1 to continue the security deposit in the name of the Corporate Debtor. The Respondent No.1 did not continue the security deposit in the name of the Corporate Debtor and refunded the same on 30.06.2023 without any interest. The Adjudicating Authority has taken erroneous view of the matter holding that the claim of interest on the security deposit raised by the Appellant does not arise from liquidation process and the Adjudicating Authority has wrongly taken the view that the application filed by the Appellant is not in the purview of the Adjudicating Authority and Appellant to take remedy before the Civil Court or before the electricity forum. It is submitted that the reliefs and concessions having been allowed and Respondent No.1 having directed to restore the electricity supply and keep the security interest in the name of the Corporate Debtor, entitlement of the

interest on the security deposit flows from the said order and the Adjudicating Authority committed error in taking the view that the Adjudicating Authority has no jurisdiction to adjudicate. It is further submitted that this Tribunal in order dated 18.12.2023 while deciding the application granted liberty to the applicants to approach the Adjudicating Authority to consider the claim of the Applicant for interest, hence, the Adjudicating Authority could not have refused to examine application on merits.

5. Learned Counsel appearing for the Respondents submits that after reliefs and concessions was granted on 04.10.2021 to the applicant, the Respondent No.1 had already initiated proceeding for recovery from erstwhile company who had taken electricity connection in which proceeding under the deposit made by the erstwhile company in the High Court the dues were satisfied, hence, in the Appeal which was filed by the Appellant challenging the order dated 04.10.2021, statement was made that dues of the Respondent No.1 has been satisfied. It is submitted that however, after the disposal of the Appeal, Appellant did not press for restoration of the connection rather insisted for taking a fresh connection and fresh connection was granted and the security deposit amounting to Rs.86,33,681.35/- was refunded to the Appellant on 30.06.2023. Applicant entered into new arrangement and fresh connection was granted. Applicant cannot claim any interest on the security deposit under the Gujarat Electricity Regulatory Commission (GERC) (Security Deposit) Regulations 2005. In the facts of the present case, there is no liability of the Respondent No.1 to pay interest to the applicant. The Adjudicating Authority has rightly taken the view that the claim of interest

raised by the applicant does not arise out of liquidation proceeding and the claim of the interest on security deposit can be raised by the applicant before the grievance redressal forum of electricity department or before the Civil Court. Adjudicating Authority has rightly held that the application filed by the Appellant claiming interest on security deposit was not entertainable. This Tribunal neither in the first order disposing of the appeal dated 16.05.2023 and the subsequent order dated 18.12.2023 directed the Adjudicating Authority to decide the application of the Appellant on merits regarding interest on the security deposit. It is submitted that the applicant is free to approach the grievance redressal forum of the electricity department or take such remedy before the Civil Court.

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

7. The reliefs and concessions which was granted by the Adjudicating Authority in IA No.411 of 2021 was to the following effect:-

“IX. We hold that all electricity charges accrued prior to liquidation commencement date shall stand permanently extinguished and any security deposit for connection shall continue in the name of the Corporate Debtor. We further direct Uttar Gujarat Vij Company Limited to restore the electricity supply to the Corporate Debtor so that the Corporate Debtor can be run as a going concern. The charges after the liquidation commencement date and till acquisition date shall also stand extinguished quo Successful Auction Bidder.”

8. Again the reliefs and concessions granted on 04.10.2021, Appeal being Company Appeal (AT) (Insolvency) No.1300 of 2022 was filed by Executive Engineer, Uttar Gujarat Vij Company. The Appeal was disposed of on 16.05.2022. It is useful to notice paragraph 3 to 6 of the order, which is as follows:-

“3. When the Appeal was taken today, Learned Counsel for the Appellant submits that Appellant has already recovered all dues on the electricity connection and there are no further dues to be recovered. He further submits that the electricity connection was disconnected permanently in 2017 and Appellant is ready to give fresh connection to the Successful Bidder provided that Application and/or Form are filled up. It is further submitted that security which was already deposited with the Appellant shall be continued in the name of the Corporate Debtor. It is further submitted that electricity shall be restored within six weeks if application/form is made within two weeks from today for the restoration of the electricity.

4. It is made clear that no financial charges shall be asked from the Corporate Debtor for giving fresh connection.

5. Learned Counsel for Respondent submits that there was some entitlement of interest on the security deposited. With regard to said, the Appellant may consider in accordance with applicable rules and regulations.

6. The Appeal is disposed of, accordingly.”

9. The Appellant has filed the application being IA No.270 of 2024 in which IA the Appellant has made following prayers:-

“a) Allow the present Application;

b) Direct the Respondent No.1 to pay the interest due and payable from the date of termination of the electricity connection i.e. March 01, 2016 in the name of the Corporate Debtor, till the date of adjudication of the present application or actual payment, at the interest rate prescribed in Gujarat Electricity Regulatory Commission (GERC) (Security Deposit) Regulations 2005 published vide Notification No: 8 of 2005;

c) Such other and further relief(s) as may deem fit in the interest of justice.”

10. In the application IA No.270 of 2024, reply was filed on behalf of Uttar Gujarat Vij Company wherein paragraphs 10 and 13, following was pleaded:-

“10. I say that subsequent to the said order dated 04.10.2021 and the proceedings of Company Appeal (AT) (INS) No. 1300 of 2022 before the Hon'ble NCLAT, the Applicant insisted and opted for a new LT connection (Single Phase Electricity Connection) vide the application dated 23.05.2023 and paid the charges for the same. The said connection was subsequently released. It is further to say that contrary to the aforesaid order dated 04.10.2021 to continue the Security Deposit, the Applicant sought for the refund of the security deposit of the Corporate Debtor vide its application dated 16.06.2023, The said application was processed by the Respondent and the amount of security deposit of Rs.

86,33,681.35 was refunded to the Applicant on 30.06.2023. Hence, the Applicant has entered into a new arrangement by opting for a LT electricity connection of 95KW against 2500KVA HT connection and seeking refund of the amount of security deposit. Therefore, the order dated 04.10.2021 can no longer be pressed into service by the Applicant for the purpose of the present application.

13. I say and submit that the electricity connection of the Corporate Debtor was disconnected on 01.03.2016. At the time of disconnection, there was an outstanding as arrears of the erstwhile consumer of the factory premises. Therefore, the Security Deposit was with-held against the pending arrears in view of the provisions of the Supple Code, 2005 and the Undertaking dated 13.04.2009 submitted to Respondent No. 1 whereby CD undertook and agreed to bear all the liabilities which may arise in future out of the agreement dated 29.04.2006 for power connection executed between Respondent No. 1 and the erstwhile consumer M/s Spentex Industries Limited.”

11. The Adjudicating Authority in the impugned order after noticing the detailed pleadings of the parties have rejected the application holding that there is no direct nexus between the non-payment of interest and sale of Corporate Debtor and its functioning as going concern, hence, application cannot be entertained under Section 60(5) of the IBC. The Adjudicating Authority in the impugned order in paragraph 8 (vi), (vii) & (viii) made following observations:-

“VI. Therefore, the disputes unrelated to insolvency must be decided by appropriate forums not by this Tribunal. In the present case, the claim for interest is not directly linked to the insolvency resolution of the Corporate Debtor. Instead, it pertains to contractual obligations under electricity regulations, which either fall under the purview of the CGRF set up under section 42(5) of the Electricity Act, 2003 or civil courts.

VII. In light of the above stated observations and judicial precedents this Tribunal is of the opinion that, the question as to the Interest on the Security Deposit which is sought in the present application is not something which is not going to adversely affect or create any obstacle or hindrance in the proper functioning of the Corporate Debtor as a Going Concern, nor non-payment of interest on Security Deposit is in any case breach of the Relief which was granted qua the electricity charges by this Tribunal.

VIII. Hence, we do not find direct nexus between the non-payment of interest and sale of the Corporate Debtor and its function as a Going Concern, as a result of which we are not inclined to exercise our jurisdiction under section 60(5) of the IBC, 2016.”

12. As noted above, the prayer made in the application filed by the Appellant was payment of interest on the security deposit which was made by Pacific Pipe Systems Pvt. Ltd. for taking electricity connection which electric connection was permanently disconnected in the year 2016. The CIRP against the Corporate Debtor had commenced on 18.12.2019 and liquidation proceeding commenced on 04.11.2020. Appellant was declared successful

auction purchaser by letter dated 09.03.2021. We have already noticed the reliefs and concession which was granted to the successful auction purchaser which directed Uttar Gujarat Vij Company to restore the electricity connection of the Corporate Debtor so that the Corporate Debtor may run as a going concern. While disposing of the appeal on 16.05.2023, we have noted that permanent disconnection was made in the year 2017 and Uttar Gujarat Vij Company was ready to give fresh connection to successful bidder and electricity was to be restored within six weeks. It is admitted fact between the parties that fresh electricity connection was taken by the successful auction purchaser vide his application dated 23.05.2023 which was processed in which application the applicant has opted for LT electricity connection of 95KW against 2500KVA HT connection which was granted to the earlier company. Reliefs and concessions which was granted to the successful auction purchaser on 04.10.2021 only directed for restoration of electricity supply to the corporate debtor and the security deposit for connection was directed to continue in the name of Corporate Debtor. The fact remains is that the earlier connection was not restored rather a fresh connection was taken which is an admitted fact. We have already noticed paragraph 10 of the reply given by the Uttar Gujarat Vij Company where details of the fresh connection have been made. Request application for refund of security deposit was made on 16.06.2023 which was processed and security deposit was paid to the Appellant on 30.06.2023.

13. The reliefs and concessions granted to the Appellant by the Adjudicating Authority cannot be read to mean any direction with regard to

payment of interest on the security deposit. The claim of payment of interest of security deposit cannot be said to have arisen out of liquidation proceeding. Reliefs and concessions which has been granted to the Appellant as extracted above cannot be read to mean that the reliefs and concessions also include claim of the Appellant for grant of interest on security deposit from the date when electricity was permanently disconnected in the year 2017.

14. Coming to the order which was passed by this Tribunal on an application which was filed by the Appellant in the disposed of Appeal on 18.12.2023 in IA No.4473 of 2023. This Tribunal noticed earlier order dated 16.05.2023 while disposing of the application. In paragraphs 5 to 8, following was observed:-

“5. Subsequent to the aforesaid order an application was filed by Executive Engineer, Uttar Gujarat Vij Company Limited being I.A. No. 3972/2022. Now in this application the grievance of the applicant is that the interest of the security deposits is not being paid which according to the regulation the respondent was entitled. The issues which are sought to be raised in this application were not before the Adjudicating Authority in this appeal.

6. Recording the statement of counsel for the respondent (who is applicant before us) that the appellant may consider in accordance with the application rules and regulations the appeal was disposed of. In event, the said consideration is not favourable to the applicant it is always open to the

applicant to file appropriate application before the Adjudicating Authority for relief, if any.

7. We are of the view that said issues cannot be entertained in this application nor adjudicated by this Tribunal in this appeal. We, however, make it clear that we are not expressing any opinion on merits of the claim in the application filed by the applicant and it is for the Adjudicating Authority to consider and decide in accordance with law.

8. With these observations, we dispose of this application.”

15. The observations made by this Tribunal in paragraph 7 cannot be read to mean that this Tribunal expressed any opinion on merits of the claim of the Appellant in the application nor observations can be read that this Court held that Adjudicating Authority has jurisdiction to entertain the application filed by the Appellant. The said issue neither was gone into nor was required to be gone into while disposing of IA No.4473 of 2023. Thus, the submission of the Appellant that in view of the observations made by this Tribunal on 18.12.2023, Adjudicating Authority had jurisdiction to decide the application on merits cannot be accepted. The claim of interest on security deposit having not arisen out of the insolvency resolution process nor can be read arising from reliefs and concessions granted on 04.10.2021 by the Adjudicating Authority, we do not find any error in the order of the Adjudicating Authority rejecting the application filed by the Appellant claiming interest on security deposit. In paragraph 8(IX), Adjudicating Authority made following observations:-

“IX. However, we hereby clarify that this Tribunal has not adjudicated on the merits of the question as to the entitlement of the Corporate Debtor to the Interest on the Security Deposit which has been sought by way of this Application. The Applicants are at liberty to take recourse in accordance with law before the Competent Court/Tribunal/Authority of jurisdiction to enforce their legal rights.”

16. One of the submissions raised by the Counsel for the Appellant is that by virtue of Regulation 4.11 of the GERC Regulations, the Appellant was clearly entitled for interest on the security deposit which was made by erstwhile company. It is further submitted that this Tribunal in its order had already observed that claim of the Appellant for interest on security deposit be considered as per Regulation but Adjudicating Authority failed to consider the entitlement of the Appellant as per Regulation 4.11. Regulation 4.11 of GERC Regulations relied by the Appellant provides as follows:-

“4.11: "The licensee shall pay interest on Security Deposit of consumer for the electricity supplied, at the Bank Rate (as on 1st April of every year) notified by Reserve Bank of India or such higher rate as may be fixed by the Commission from time to time. The interest accrued to the credit of the consumer during the previous year shall be adjusted in electricity bills of May of every year for consumers covered under the monthly billing cycle and in electricity bill of May or June for those covered under two monthly billing cycles.”

17. When we look into the above Regulation that Regulation requires licensee to pay interest on security deposit of consumer for the electricity supplied at the bank rate which interest accrued to the credit of the consumer during previous year shall be adjusted in the electricity bills of May of every year. In the present case, the electricity supply of erstwhile company was permanently disconnected in the year 2016-17. Regulation 4.11 was mechanism to adjust the interest on the security deposit in the bill of next year. In the present case, there was due on the erstwhile company due to which security deposit was withheld and after prolonged litigation with Uttar Gujarat Vij Company, the dues could be paid under the orders of the High Court where deposit was made by the Company. Appellant who is a successful auction purchaser came in the scene only in the year 2021 cannot claim interest from permanent disconnection of electricity supply and when under the litigation between the Uttar Gujarat Vij Company and erstwhile company, terminated by withdrawing the amount by Uttar Gujarat Vij Company deposited by its company in the High Court. Any claim for interest on security deposit cannot be claimed by Appellant- Successful Auction Purchaser, hence, we are of the view that Regulation 4.11 on which reliance is placed by Appellant to claim interest on the security deposit cannot help the Appellant in the present case nor by virtue of Regulation 4.11, the Respondents were obliged to make payment of interest on security deposit from 2017 till 2023. We, thus, do not find any substance in the above submission of the Appellant.

18. In the reply which was filed by Uttar Gujarat Vij Company, it was pleaded in paragraph 6 that for the grievances of a consumer a separate and

specialized Forum i.e. Consumer Grievance Redressal Forum is set up under Section 42(5) of the Electricity Act, 2003, if so advised, the petitioner can raise its grievance before the said forum.

19. In view of the foregoing discussions, we are of the view that no ground has been made out to interfere in the impugned order. Appeal is dismissed subject to observations as made above.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi

Anjali