IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1161 OF 2020
IN
FIRST APPEAL NO.1539 OF 2012

Rajendra Prasad Bansal)
Aged 65.5 years, Occupation : Nil)
Indian Inhabitant residing at Tower B5 – Flat)
801, Sea Breeze Towers, Sector 16, Nerul (W),)
Navi Mumbai – 400 706) ….Applicant

In the matter of :

Reliance Communication Limited)
A Company incorporated under the provisions)
of Companies Act, 1956 and having their)
Registered Office at "H" Black, 1st Floor, DAKC,)
Koparkhairane, Navi Mumbai – 400 710) ….Appellant

V/s.

Rajendra P. Bansal)
Aged 65.5 years, Occupation : Nil)
Indian Inhabitant residing at Tower B5 – Flat)
801, Sea Breeze Towers, Sector 16, Nerul (W),)
Navi Mumbai – 400 706) ….Respondent

Mr. Cyrus Bharucha a/w. Mr. Tushad Kakalia, Mr. D.J. Kakalia, Ms. Bhavna Singh Jaipuria and Mr. Paresh Patkar i/b. Mulla and Mulla and CBC for appellant.
Mr. Rajendra P. Bansal, respondent present in person.
Mr. Naushad Engineer, Amicus Curiae.

CORAM : K. R. SHRIRAM & KAMAL KHATA, JJ.
RESERVED ON : 14th DECEMBER 2022.
PRONOUNCED ON : 4th JANUARY 2023

JUDGMENT (PER K.R. SHRIRAM, J.) :

1 The preliminary issue that falls for consideration in the present Interim Application is whether respondent can be allowed to withdraw the monies deposited by appellant pursuant to this Court's order dated

10th December 2012 towards stay of execution of the impugned judgment given that appellant is undergoing CIRP.

2 Appellant is a company incorporated under the provisions of the Companies Act, 1956 and is, *inter alia*, engaged in the business of telecommunication services. Appellant is undergoing Corporate Insolvency Resolution Process ("CIRP") under the Insolvency and Bankruptcy Code, 2016 ("IBC") pursuant to the order dated 15th May 2018 passed by the National Company Law Tribunal, Mumbai ("NCLT") in C.P. No.(I.B.) 1387 (MB) of 2017. Appellant is being represented in the present proceedings through its Resolution Professional.

3 Respondent in the abovementioned First Appeal, who is applicant in the Interim Application, is a former employee of appellant.

4 **LIST OF DATES AND EVENTS :**

Sr. No.	*Date*	*Particulars*
1.	29th November 2001	Respondent joined appellant as an employee pursuant to an Appointment Letter dated 29th November 2001 issued by appellant.
2.	31st October 2006	Appellant unilaterally terminated respondent's employment.
3.	10th February 2010	Respondent filed Special Civil Suit No. 127/2010 ("Suit") in the Court of Civil Judge, Senior Division, Thane ("Trial Court"), *inter alia*, challenging the termination of his employment by appellant.
4.	28th April 2010	Appellant filed its written statement in the Suit.
5.	March 2011	Respondent and appellant filed their respective

	29th February 2012	affidavits in lieu of examination-in-chief in the Suit.
6.	30th June 2012	The Trial Court passed a judgment ("Impugned Judgment") directing appellant to pay the following sums of money to respondent: a) Rs.4,82,112/- towards 3 months' salary along with interest @18% p.a. from 1st November 2006 till the date of realization. b) Rs.9,24,006/- towards leave encashment along with interest @18% p.a. from 1st November 2006 till the date of realization. c) Rs.2,50,000/- towards damages within 3 months from the date of the decree.
7.	5th October 2012	Respondent filed the present appeal challenging the impugned judgment.
8.	**10th December 2012**	This Court passed an order directing the stay of execution of the impugned judgment subject to appellant depositing the entire decretal amount (payable as of 10th December 2012) with the Trial Court within a period of four weeks from 10th December 2012.
9.	**3rd January 2013**	This Court passed an order recording appellant's statement that the entire decretal amount had been deposited with the Trial Court in terms of the order dated 10th December 2012. Appellant had deposited a sum of Rs.32,16,909/- with the Trial Court.
10.	18th February 2013	This Court passed an order admitting the First Appeal.
11.	**18th February 2013**	This Court passed an order in Civil Application No.405 of 2013 filed by respondent in the First Appeal, *inter alia*, directing that: a) Respondent was entitled to withdraw Rs.5,00,000/- without furnishing any security. b) Respondent was allowed to withdraw Rs.10,00,000/- on furnishing security to

		the satisfaction of the Executing Court. c) The Executing Court was directed to invest the remaining amount in a fixed deposit scheme of any nationalised bank with renewal clause. NOTE: In terms of the order dated 18th February 2013, respondent has withdrawn Rs.5,00,000/- without furnishing security and Rs.10,00,000/- on furnishing security. The balance sum of Rs.17,16,909/- continues to be deposited with the Trial Court.
12.	4th January 2018	None appeared for appellant and matter listed for dismissal.
13.	15th January 2018	Appeal dismissed as none appeared for appellant.
14.	**15th May 2018**	The NCLT passed an order admitting appellant into insolvency.
15.	18th May 2018	The NCLT appointed the Interim Resolution Professional of appellant-Corporate Debtor.
16.	18th June 2018	Appeal restored. Appeal again dismissed.
17.	19th September 2018	Appellant's Interim Application No.25147 of 2018 for condonation of delay allowed.
18.	13th January 2020	**Respondent filed Interim Application No.1161 of 2020** in the First Appeal seeking, *inter alia*, the following reliefs: a) Release the sum of Rs.17,16,909/- deposited by appellant in the Trial Court and order appellant to pay the balance amount due with applicable interest immediately. b) Discharge the surety for Rs.10,00,000/-. This interim application is under consideration now.
19.	27th September 2022	Appellant filed its affidavit in reply to Interim Application No.1161 of 2020 filed by respondent.
20.	4th October 2022	This Court passed an order in Interim Application No.1161 of 2020, *inter alia*, observing that "even assuming that the First

		Appeal fails on merits, so long as there is a moratorium in place, the law does not permit a court to allow Bansal to withdraw the amount deposited pending the CIRP.”

5 When the Interim Application No.1161 of 2020 referred to in item 18 of the chronology given above, i.e., this interim application, came up for hearing, the counsel for appellant submitted that this Court will not have jurisdiction to entertain and dispose the Interim Application and the amount deposited by appellant in the Trial Court pursuant to order dated 10th Deceased 2012 will be affected by the moratorium granted under Section 14 of the IBC since appellant is undergoing CIRP under IBC.

6 In order to answer this issue of jurisdiction raised by Mr. Bharucha, the following questions arise for consideration :

(i) Whether this Court has the jurisdiction to entertain and dispose of the Interim Application?

(ii) Whether the amount deposited by appellant in the Trial Court pursuant to the order dated 10th December 2012 is affected by the moratorium under Section 14 of the IBC?

7 Since respondent was appearing in person, this Court by an order dated 6th December 2022 appointed Mr. Naushad Engineer, Advocate, as Amicus Curiae. We must express our appreciation for the assistance rendered and endeavour put forth by Mr. Naushad Engineer, learned Amicus Curiae, for it has been of immense value

in rendering the judgment.

Submissions of Mr. Engineer, learned Amicus Curiae :

8 The learned Amicus Curiae submitted that this Court will have jurisdiction to entertain and dispose the Interim Application. Mr. Engineer submitted as under :

(a) NCLT is a statutory tribunal and, therefore, its powers are circumscribed by the provisions of IBC. Unlike a Civil Court, the NCLT does not have general jurisdiction under Section 9 of the Code. This has been clarified by the Apex Court in ***Embassy Property Developments Pvt. Ltd. V/s. State of Karnataka***[1];

(b) IBC does not confer any such statutory power upon NCLT to adjudicate upon the First Appeal or the Interim Application in First Appeal;

(c) Section 60(5) of IBC cannot be stated to divests this Court of its jurisdiction to dispose of the First Appeal and the Interim Application because NCLT's jurisdiction is only to entertain or dispose of any application or proceeding by or against the corporate debtor or corporate person and any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries. The Apex Court in ***Embassy Property*** (Supra) and ***Gujarat Urja Vikas Nigam Ltd. V/s. Amit Gupta***[2], has construed this provision narrowly;

1. (2020) 13 SCC 308
2. (2021) 7 SCC 209

(d) In ***Embassy Property*** (Supra), the Apex Court has held that NCLT does not have general jurisdiction like that of a Civil Court and NCLT cannot, under Section 60(5) of the IBC, exercise jurisdiction over any and every issue concerning the corporate debtor. In ***Gujarat Urja*** (Supra), the Apex Court held that NCLT can adjudicate upon only those disputes which arise solely from the insolvency of the corporate debtor under Section 60(5). Therefore, NCLT cannot exercise jurisdiction over every issue concerning the corporate debtor simply because the corporate debtor is in insolvency. Wherever the matter in question falls outside the purview of the IBC, it is the forum which is otherwise vested with jurisdiction in law that is the right forum to adjudicate upon the said matter;

(e) Appellant has not established anywhere that the First Appeal and the Interim Application arise solely from the insolvency of the corporate debtor. Since the First Appeal arises out of a challenge against the impugned judgment passed by the Trial Court on the issue of termination of respondent's employment, it has nothing to do with the insolvency of the corporate debtor. In so far as the Interim Application is concerned, it relates to monies deposited as a condition for stay of execution of the impugned judgment and, therefore, by no means can be stated to be arising solely from the insolvency of the corporate debtor, particularly since the monies were deposited much prior to the commencement of CIRP.

Moreover, the impugned judgment was passed on 30th June 2012, the First Appeal was filed on 5th October 2012, monies were deposited by appellant pursuant to the order dated 10th December 2012, much before the insolvency commencement date of 15th May 2018. Therefore, cannot be arising solely from the insolvency of appellant;

(f) Section 231 of the IBC also does not create a bar since that applies only where the Adjudicating Authority, i.e., NCLT, has jurisdiction over a given issue. Since NCLT does not have jurisdiction to adjudicate upon the First Appeal or the Interim Application, Section 231 cannot bar the jurisdiction of this Court;

(g) The moratorium under Section 14 of the IBC does not prohibit the withdrawal of monies deposited by appellant in the Trial Court.

(i) The moratorium extends only to the assets which belong to the corporate debtor and monies deposited by appellant in the Trial Court do not constitute an asset of appellant.

(ii) The moratorium that is imposed under Section 14 applies only to proceedings against the corporate debtor and if monies deposited in Court does not belong to the corporate debtor, the moratorium would not preclude a creditor from enforcing its rights against the monies and it is clear from Section 14 of the IBC. Section 14(1) of IBC under sub-clause (a) only prohibits the institution or continuation of suits or proceedings against the corporate debtor and here is a First Appeal that has been filed by the

corporate debtor. Hence, moratorium would not apply.

(iii) the monies deposited by appellant pursuant to a Court order is a property that is under the custody and control of this Court. Hence, NCLT cannot decide and determine how this Court should deal with the property that is in its control and custody.

(iv) when First Appeal is being decided by this Court, Interim Application can not be decided by NCLT. That also has to be decided by this Court only in the First Appeal. The Interim Application seeking withdrawal of monies pending the adjudication does not amount to execution as held by this Court in ***Nahar Builders Limited V/s. Housing Development and Infrastructure Ltd***[3].

Sub-clause (b) of Section 14(1) of IBC also is inapplicable because it applies only to the assets belonging to the corporate debtor and as held by the Calcutta High Court in ***Chowthmull Maganmull V/s. Calcutta Wheat and Seeds Association***[4], Apex Court in ***P.S.L. Ramanathan Chettiar & Ors. V/s. O.R.M.P.R.M. Ramanathan Chettiar***[5], Madras High Court in ***Kamakshi Ammal V/s. Pappathi***[6], Apex Court in ***Roshanlal Kuthalia V/s. R.B. Mohan Singh Oberoi***[7], Apex Court in ***Bank of India V/s. Vijay Transport & Ors.***[8], this Court in ***Nahar Builders*** (Supra) and in ***Raj Shipping Agencies V/s. Barge Madhwa***[9] and Apex Court in ***Chitra Sharma V/s. Union of India***[10],

3. Unreported Judgment dated 21st January 2020 in Commercial Arbitration Petition No.74 of 2017
4. 1924 SCC OnLine Cal 335
5. (1968) 3 SCR: AIR 1968 SC 1049
6. 1975 SCC Online Mad 23
7. (1975) 4 SCC 628
8. (2000) 8 SCC 512
9. 2020 SCC Online Bom 651
10. (2018) 18 SCC 575

the monies deposited by appellant in the Trial Court pursuant to the order dated 10th December 2012 do not constitute the asset of appellant.

Sub-clause (c) of Section 14(1) of IBC also is inapplicable since the present proceedings do not constitute enforcement or recovery of any 'security interest' created by the corporate debtor within the meaning of Section 3(31) of IBC.

Sub-clause (d) of Section 14(1) of IBC would apply only in instances where the property is occupied by the owner or in the possession of the lessor. Since the monies deposited by appellant in the Trial Court are not within the occupation or possession of the corporate debtor, this provision also is inapplicable.

Therefore, the moratorium under Section 14(1) does not have any bearing on the rights of respondent to withdraw the monies deposited in Court. Hence, there is no bar in hearing the Interim Application and the Court may on the merits of the application decide whether to allow withdrawal of balance amount deposited and on what terms.

Submissions by Mr. Bharucha :

9 Mr. Bharucha, at the outset, submitted that the Interim Application ought not to be considered as it is barred by the principles of *res judicata*. This was because applicant had earlier made an application on 18th February 2013 in Civil Application No.405 of 2013 filed by respondent in First Appeal, permitting respondent to withdraw Rs.5,00,000/- without

furnishing any security and allowing respondent to withdraw a further sum of Rs.10,00,000/- on furnishing security to the satisfaction of the Executing Court and the Executing Court was directed to invest the remaining amount in a fixed deposit scheme of any nationalised bank with renewal clause. In other words, a similar application has been made earlier and disposed and, therefore, the current application is hit by the principles of *res judicata*.

10 We could dispose this objection of Mr. Bharucha before going into the other major issues. In our view, the said contention is wholly misconceived and unsustainable, *inter alia*, for the following reasons :

(a) This Court vide order dated 18th February 2013 had allowed the withdrawal of a part of the amount deposited. Thereafter, as can be seen from paragraphs 5 to 15 of the Interim Application, there have been various subsequent events that have taken place. Nearly a decade has passed since the partial withdrawal was allowed. Respondent has submitted that he is suffering from osteoarthritis in both his knees and it is difficult for him to walk. The orthopaedic surgeons had advised him to go for knee replacement surgeries in both his knees and hence respondent is in urgent need of money.

(b) In addition, respondent in the First Appeal had filed Interim Application No.1923 of 2017 for early hearing. The said application was allowed on 25th July 2017. The First Appeal was listed on 4th January 2018 when none appeared for appellant and the matter was listed for dismissal.

On 15th January 2018, the matter was again listed when none appeared for appellant and the appeal came to be dismissed. Appellant filed an application for restoration which was allowed vide order dated 18th June 2018. However, appellant did not comply and the First Appeal again came to be dismissed. Appellant again filed Interim Application No.25147 of 2018 for condonation of delay, which was allowed vide order dated 19th September 2018. Though the appeal was listed for final hearing, the same could not be taken up due to the weight of the board. That being so, it is clear that the delay has been caused by appellant.

(c) All this constitutes a change in facts and circumstances which would warrant respondent/judgment creditor from applying again for release of the amount deposited in this Court if this Court so pleases.

I. The amount deposited by appellant in the Trial Court pursuant to the order dated 10th December 2012 is affected by the moratorium under Section 14 of the IBC?

11 This Court, by its order dated 10th December 2012, granted a stay of the impugned judgment on the condition that appellant deposit the decretal amount in the Trial Court. Appellant duly deposited the decretal amount. The amount deposited by appellant is thus, "*security*" given by appellant for the due performance of the impugned judgment, as contemplated in Order 41 Rule 5(3)(c) of the Code of Civil Procedure, 1908 ("CPC").

12 The nature of a deposit made by a judgment debtor for the purpose of obtaining a stay of a decree, particularly the question of whether title in such a deposit passes to the decree holder, has been dealt with by the Hon'ble Supreme Court in ***P.S.L. Ramanathan Chettiar*** (Supra), where the Hon'ble Supreme Court held that the facts of a judgment-debtor's depositing a sum in Court to purchase peace by way of stay of execution of the decree on terms that the decree holder can draw it out on furnishing security, does not pass title to the money to the decree holder. He can, if he likes, take the money out in terms of the order but so long as he does not do it, there is nothing to prevent the judgment debtor from taking it out by furnishing other security, say, of immovable property.

13 The judgment in ***P.S.L. Ramanathan Chettiar*** (Supra) thus unequivocally holds that the title to money deposited by a decree holder in Court to obtain stay of a decree does not pass to the decree holder. This necessarily means that title to the money remains with the judgment debtor. The effect of the deposit of the money in Court, the judgment in ***P.S.L. Ramanathan Chettiar*** (Supra) says in paragraph 13 "*The real effect of deposit of money in court as was done in this case is to put the money beyond the reach of the parties pending the disposal of the appeal. The decree holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment-debtor in case of his success in the*

appeal. Pending the determination of the same, it was beyond the reach of the judgment debtor".

14 In the premises, although the money deposited by a judgment debtor in Court is placed beyond its reach, the title in the money remains with the judgment debtor. In other words, the money continues to remain the property of the judgment debtor. The principle that money deposited by a decree holder effectively remains the property of the judgment debtor has been affirmed by the Hon'ble Andhra Pradesh High Court in ***Kothamasu Venkata Subbaya V/s. Udattha Pitchayya***[11].

15 Relying upon ***Keshavlal V/s. Chandulal***[12], the Court said "*In my opinion this is the correct way of regarding the deposit in the present case also; it was primarily a deposit of security rather than a deposit of the decretal debt, and the decree-holder cannot claim it as his own unless the judgment-debtor fails to satisfy the decree by the payment of the money due under the decree*." The Court held that all that the decree-holder could claim was the sum found due under the decree with interest and that no more could be given to him, while the profit must go to the person who had made the deposit. The amount which had been deposited did not go towards the satisfaction of the decree, and the decree-holder was entitled in law to proceed against either of the judgment-debtors for the realisation of the entire decretal amount. It follows that the appellant had not made out a

11. 1959 SCC OnLine AP 216
12. AIR 1935 Bom. 200

case for restitution.

The Hon'ble Andhra Pradesh High Court in ***K.V. Subbayya*** (Supra) has, therefore, held that even the dismissal of the judgment debtor's appeal does not, on its own, make the amount deposited by the judgment debtor under Order 41 Rule 5(3)(c) the property of the decree holder. The amount deposited is not towards satisfaction of the decretal debt. It is only upon judgment debtor's failure to satisfy the decretal debt that the decree holder would be able to claim the deposited amount as his own. Implicit in this is the principle that the amount deposited by the judgment debtor remains the property of the judgment debtor while it is deposited in Court and pending the appeal. Even after dismissal of the appeal against the judgment debtor the deposit continues to remain the property of the judgment debtor. The judgment debtor's title in the deposit does not pass till the Court makes an order to apply the same in satisfaction of the decretal debt. The judgments cited by the learned Amicus Curiae do not detract from the above principle at all. In fact, the said judgments will show Courts in India have time and again, affirmed the principle that money deposited in Court is merely placed beyond the reach of the judgment debtor pending the appeal. The principle that the deposited money remains the property of the judgment debtor pending the appeal, as laid down in ***P.S.L. Ramanathan Chettiar*** (Supra), has not been disturbed.

16 The judgment of the Hon'ble Madras High Court in ***Kamakshi Ammal*** (Supra) is not at odds with the judgment of the Hon'ble Supreme Court in ***P.S.L. Ramanathan Chettiar*** (Supra). A necessary implication of the observation that the decree holder merely has a lien over the amount deposited by the judgment debtor in Court is that the ownership of the money remains with the decree holder. Moreover, the postponement of the vesting of the decree holder's right to the money to a point of time beyond his success in the appeal, once again means that the deposit remains the property of the judgment debtor pending such appeal. This is precisely what the Hon'ble Supreme Court has held in ***P.S.L. Ramanathan Chettiar*** (Supra). Only when a decree holder succeeds in the appeal does his right to the amount deposited in Court relate back to the date of the deposit.

17 The judgment of the Hon'ble Supreme Court in ***Roshanlal Kuthalia*** (Supra) is similarly consistent with the above principle, as it says that a mere security deposit does not become an automatic satisfaction of the decree when the appeal fails is simple enough. The judgment of the Hon'ble Supreme Court in ***Roshanlal Kuthalia*** (Supra), therefore, recognises : (i) the principle that the security furnished by the judgment debtor does not automatically amount to satisfaction of the decree upon the failure of the appeal; (ii) the principle that the title to money deposited in Court changes only upon dismissal of the appeal in favour of the decree holder as it is only then that such deposit may not be withdrawn or

substituted by the depositor/judgment debtor; and (iii) the principle that there exists equity in favour of the judgment debtor to the extent of the amount deposited by such judgment debtor in Court. In other words, the Hon'ble Supreme Court, in ***Roshanlal Kuthalia*** (Supra) recognised the fact that the title in the money deposited in Court remains with the judgment debtor. A careful perusal of ***Roshanlal Kuthalia*** (Supra) and the judgment in ***Sheo Gholam Sahoo V/s. Rahut Hossein, ILR***[13] referred to therein makes it clear that the Hon'ble Supreme Court's observation that the Court holds money deposited in trust for the decree holder applies only to a situation in which the judgment debtor's appeal has failed. The said observations cannot be applied to the present case to conclude that the deposit made by appellant does not belong to it pending the appeal.

18 There can be no quarrel with the proposition that money deposited in Court by a judgment debtor is *custodia legis* to the credit of the party who is ultimately successful, as has been held by the Hon'ble Supreme Court in ***Bank of India*** (Supra). This does not, however, mean that the title in the money so deposited would cease to exist in the judgment debtor upon its deposit in Court, particularly when an appeal is pending. Even the judgment of the Learned Single Judge of this Court in ***Nahar Builders*** (Supra) relied upon by the learned Amicus Curiae recognises that neither party can automatically claim a right to money deposited in Court without an adjudication. In any event, it is most pertinent to note in the judgment of

13. (1906) 4 Cal 6

this Court in ***Nahar Builders*** (Supra) :

(a) The award in ***Nahar Builders*** (Supra) had attained finality and was not subject to the outcome of any pending challenge. This is a position contrary to the facts as existing in the present case in that the decree in the present case is the subject matter of challenge in a First Appeal filed by appellant; and

(b) The judgment of the Learned Single Judge was carried in appeal to a Division Bench of this Court. The appeal culminated in the judgment in ***HDIL V/s. Nahar Builders***[14]. Although the appeal was dismissed, the Division Bench noted in paragraph 6 of its judgment "*Learned Senior counsel for the Respondent states that any amount received by the Respondent has to be subject to orders which may be passed by the NCLT and learned counsel for the appellant states that in that view of the matter, the Appeal could be disposed of recording that the amount received by the Respondent pursuant to the impugned order would be subject to such orders which may be passed by the NCLT. In view of the stand taken by the learned Senior counsel for the Respondent, it is obvious that the amount received by the Respondent would be subject to orders which may be passed by the NCLT.*"

What the Division Bench effectively did was to permit withdrawal of the amount deposited in Court by the award holder upon an undertaking by the award holder that the amount would be subject to

14. Judgment dated 30th January 2020 in Comm. Appeal (L) No.32 of 2020

orders of the NCLT. This completely militates against the principle that the money deposited is the unfettered property of the award holder. It however upholds the principle that the money remains the property of the corporate debtor since otherwise, there would be no question of the money realised by the award holder being subject to the order of the NCLT. The judgment of the Learned Single Judge cannot be read *de hors* the judgment of the Division Bench of this Court.

19 Lastly, the judgment of the Hon'ble Calcutta High Court in ***Chowthmull*** (Supra)*, relied upon by the learned Amicus Curiae* also does not run contrary to the above submissions. In fact, the judgment of the Hon'ble Supreme Court in ***P.S.L. Ramanathan Chettiar*** (Supra) expressly says so in dealing with the judgment in ***Chowthmull*** (Supra) "*The observations in Chowthmull case do not help respondent. In that case, the appeal was not proceeded with by the Official Assignee. Consequently, the decree holder could not be deprived of the money which had been put into court to obtain stay of execution of the decree as but for the order, the decree holder could have levied execution and obtained satisfaction of the decree even before disposal of the appeal"*. The distinction drawn by the Hon'ble Supreme Court applies with equal force to the facts of the present appeal. Unlike in ***Chowthmull*** (Supra) the appeal in the present case is pending and is being proceeded with. The impugned judgment has been stayed. It is, therefore, not open to respondent to proceed with execution of

the impugned judgment, whether against the amount deposited in Court or otherwise.

What, therefore, emerges from the facts set out above is that money deposited by a judgment debtor in Court under Order 41 Rule 5(3)(c) of the CPC, remains the property of the judgment debtor (in this case, appellant), although it may be placed beyond its reach pending the appeal.

20 Under Section 14(1)(a) of the IBC, *inter alia*, the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority from the insolvency commencement date is prohibited.

21 Under Section 14(1)(a) of the IBC, the continuation of *any and all* proceedings against a corporate debtor is prohibited. The mention of execution proceedings in Section 14(1)(a) is inclusive in nature and does not restrict the prohibition therein merely to such proceedings. In the circumstances, the present Interim Application for withdrawal of the money deposited in Court by appellant, and of which, appellant is even now the owner, cannot be proceeded with in view of the express bar contained in Section 14(1)(a). Section 14(1)(a) is a salutary provision to preserve the insolvency estate of appellant. In the premises, the amount deposited by appellant in the Trial Court pursuant to the order dated 10th December 2012 is covered by the moratorium under Section 14 of the IBC.

II. This Court does not have the jurisdiction to entertain and dispose the Interim Application?

22 The IBC contains a jurisdictional bar in respect of any matter which the NCLT is empowered thereunder, to entertain. This bar is contained in Section 231, which provides :

> *231. No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority under this Code.*

23 Section 60(5) of the IBC also provides for the matters which the NCLT has the jurisdiction to entertain. Section 60(5) is provides :

> *60.(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.*

24 The present Interim Application is both : (i) an application/ proceeding against the corporate debtor, i.e., appellant; and (ii) a claim made against the corporate debtor. The jurisdiction of this Court to entertain the present Interim Application is, therefore, barred on a conjoint reading of Sections 60(5) and 231 of the IBC. The judgments of the Hon'ble Supreme

Court in ***Embassy Property*** (Supra) and ***Gujarat Urja*** (Supra), buttress the above submission.

25 In ***Embassy Property*** (Supra), the Hon'ble Supreme Court, after considering the scheme of the IBC and the provisions therein relating to *inter alia*, the jurisdiction of the NCLT, held "*Therefore in 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 public law, they cannot, through the resolution professional, take a bypass and go before the NCLT for the enforcement of such a right.*"

26 The above principle has been reiterated and further clarified by the Hon'ble Supreme Court in ***Gujarat Urja*** (Supra), where the Court held "*Therefore, we hold that the RP can approach the 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 the NCLT under the 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 the IBC.*"

27 The present Interim Application is an application against the corporate debtor, viz., appellant in the present case. Section 60(5) of the IBC confers power only upon the NCLT to hear such application. Section 60(5) is a *non obstante* provision and consequently overrides all other laws for the time being in force. Section 231 of the IBC does not permit any civil Court to hear or adjudicate that which the NCLT is empowered to hear or adjudicate upon. The Hon'ble Supreme Court in ***Embassy Property*** (Supra) has held that the resolution professional cannot by virtue of Section 60(5) of the IBC avoid other fora if they have jurisdiction to hear the concerned matter and go only to the NCLT. The Hon'ble Supreme Court in ***Gujarat Urja*** (Supra) has, however, clarified that if the issue arises solely on the ground of the insolvency of the corporate debtor, then it is the NCLT who would adjudicate the same in light of Section 60(5) of the IBC. In cases arising other than on the ground of insolvency of the corporate debtor, the same must be agitated before the relevant fora having jurisdiction to adjudicate such case. In the present case, the main issue is whether or not the judgment creditor (respondent) is entitled to the money deposited by appellant in Court pending the present appeal and pending its ongoing CIRP. The main issue in the present case thus is an issue arising solely on the ground of the insolvency of appellant. In light of the above and in light of Section 60(5) read with Section 231 of the IBC, the NCLT is the appropriate forum to adjudicate the above issue.

28 Therefore, this Court does not have the jurisdiction to entertain and dispose the Interim Application.

FINDINGS AND CONCLUSIONS :

We hereby proceed to answer two questions that has arisen for our consideration.

WHETHER THIS COURT HAS JURISDICTION TO ENTERTAIN AND DISPOSE THE INTERIM APPLICATION :

29 (a) The jurisdiction to adjudicate upon the issue of withdrawal of the monies deposited in the Trial Court pursuant to the order dated 10th December 2012 lies with this Court and not with the NCLT.

(b) It is important to note, at the outset, that the NCLT is a statutory Tribunal and, therefore, its powers are circumscribed by the provisions of the statute which confers jurisdiction upon it. Unlike a civil court, the NCLT does not have general jurisdiction under Section 9 of CPC. This was clarified by the Hon'ble Supreme Court in ***Embassy Property*** (Supra) where it held in paragraph 30 as follows:

> "*30. The NCLT is not even a civil court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature excepting suits, of which their cognizance is either expressly or impliedly barred. Therefore NCLT can exercise only such powers within the contours of jurisdiction as prescribed by the statute, the law in respect of which, it is called upon to administer. Hence, let us now see the jurisdiction and powers conferred upon NCLT.*"
>
> (emphasis supplied)

(c) Therefore, the NCLT can exercise jurisdiction and adjudicate upon the First Appeal or the Interim Application only if it is statutorily empowered to do so. The IBC does not confer any such statutory power upon the NCLT to sit in appeal over a judgment and decree of a Civil Court, nor decide an interim application arising out of such civil appeal. This is a power that is solely vested in a civil court under Section 96 of CPC. Appellant has argued that Section 60(5) of the IBC divests this Court of its jurisdiction to dispose the First Appeal and the Interim Application. This would not be a correct reading of the provision. Section 60(5) reads as follows :

> "*60.(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.*"

(d) Although at first blush, the language of Section 60(5) appears to be all encompassing and gives the impression that it would include within its ambit virtually all matters concerning the corporate debtor, the Hon'ble Supreme Court in ***Embassy Property*** (Supra) and ***Gujarat Urja*** (Supra) has construed this provision narrowly.

(e) In ***Embassy Property*** (Supra) after underscoring that the NCLT does not have general jurisdiction like that of a Civil Court, the Hon'ble Supreme Court held that under Section 60(5)(c) of the IBC, the NCLT cannot exercise jurisdiction over any and every issue concerning the corporate debtor. The Court held as follows :

> *"37. …The only provision which can probably throw light on this question would be sub-section (5) of Section 60, as it speaks about the jurisdiction of the NCLT. Clause (c) of sub-section (5) of Section 60 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the Government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution" appearing in clause (c) of sub-section (5).* ***Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of the IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under Section 260-A of the Income Tax Act, 1961. Therefore the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results.*** *[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(20). 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.]*
>
> *……*
>
> *40. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(1)(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In*

> *fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property". Another important aspect is that under Section 25(2)(b) of the IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Sections 25(1) and 25(2)(b) reads as follows…*
>
> ***This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).***
>
> *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****."*
>
> *(emphasis supplied)*

(f) In ***Gujarat Urja*** (Supra) the Hon'ble Supreme Court laid down the test to ascertain the matters which can be adjudicated upon by the NCLT under Section 60(5)(c) and held that only those disputes which arise solely from the insolvency of the corporate debtor can be entertained by the NCLT under this provision. The Court observed as follows:

> "*69. … 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.*"
>
> (emphasis supplied)

(g) Therefore, the position of law which emerges from the decisions in ***Embassy Property*** (Supra) and ***Gujarat Urja*** (Supra) is that :

(i) The NCLT cannot exercise jurisdiction over every issue concerning the corporate debtor simply because the corporate debtor is in insolvency. It is only those issues which arise solely out of the insolvency of the corporate debtor that can be adjudicated upon by the NCLT under Section 60(5)(c) of the IBC.

(ii) The Interim Resolution Professional/Resolution Professional cannot short-circuit its obligation under Section 25(2)(b) of the IBC of representing the corporate debtor in judicial/quasi-judicial proceedings by bringing all matters before the NCLT. Wherever the matter in question falls outside the purview of the IBC, it is the forum which is otherwise vested with jurisdiction in law that is the right forum to adjudicate upon the said matter.

(h) It is therefore clear that in order for appellant to establish that this Court is divested of its jurisdiction to entertain the First Appeal or the Interim Application, it would have to be established that the First Appeal and the Interim Application arise solely from the insolvency of the corporate

debtor. Such is clearly not the case here, since the First Appeal arises out of a challenge against the Impugned Judgment passed by the Trial Court on the issue of termination of respondent's employment. It has nothing to do with the insolvency of the corporate debtor. The NCLT could never sit in appeal over the judgment/decree of a Civil Court. Such a judgment/decree can only be corrected in appeal and, therefore, the NCLT would not have jurisdiction to hear and decide the First Appeal.

(i) Insofar the Interim Application is concerned, it concerns monies deposited by appellant pursuant to an order passed by this Court in the First Appeal as a condition for stay of execution of the Impugned Judgment. By no means is the Interim Application arising solely from the insolvency of the corporate debtor since the monies were deposited much prior to the commencement of CIRP.

(j) Appellant has contended that the since the issue in the Interim Application is whether the judgment creditor can withdraw the money deposited by appellant in this Court pending the corporate insolvency resolution process, the issue arises solely from the insolvency of the corporate debtor and therefore, must be adjudicated by the NCLT under Section 60(5). This submission is incorrect for the following reasons :

(i) The Impugned Judgment was passed on 30 June 2012. The First Appeal was filed on 5 October 2012. The monies were deposited by

appellant in this Court pursuant to the order dated 10th December 2012. This is much before the insolvency commencement date of 15th May 2018. Therefore, the deposit of monies by appellant and the consequent withdrawal of monies by respondent is not arising solely from the insolvency of appellant.

(ii) The pendency of corporate insolvency resolution process may have a bearing on a whole host of matters pending before various judicial/quasi-judicial fora, but that does not in any manner imply that the issue before the judicial/quasi-judicial fora is one which arises *solely* from the insolvency of the corporate debtor. It is one thing for the insolvency to give rise to a cause of action (which would fall within the ambit of NCLT's jurisdiction under Section 60(5) as per *Gujarat Urja*), and it is another thing to contend that all legal proceedings would have to be transferred to the NCLT merely because one party is in CIRP/liquidation. This has expressly been negatived in ***Embassy Property*** (Supra) and ***Gujarat Urja*** (Supra).

(k) Therefore, it is this Court which is the only appropriate forum to exercise jurisdiction over the First Appeal and the Interim Application, and not the NCLT.

(l) Appellant has also sought to rely upon Section 231 of the IBC to contend that the jurisdiction of this Hon'ble Court is barred. Section 231 creates a bar on the jurisdiction of a civil court only where the

Adjudicating Authority (i.e., NCLT in this case) has the jurisdiction over a given issue. Since, as held above, the NCLT does not have jurisdiction to adjudicate upon the First Appeal or the Interim Application, Section 231 cannot bar the jurisdiction of this Court.

THE MORATORIUM UNDER SECTION 14 OF THE IBC DOES NOT PROHIBIT THE WITHDRAWAL OF MONIES DEPOSITED BY APPELLANT IN THE TRIAL COURT

30 (a) The moratorium that has come into existence under Section 14 of the IBC as a result of appellant going into insolvency does not preclude respondent from seeking withdrawal of the monies deposited pursuant to the order dated 10th December 2012. This is because (**A**) the moratorium extends only to the assets which belong to the corporate debtor and (**B**) the monies deposited by appellant in the Trial Court do not constitute an asset of appellant.

A. The scope of moratorium under Section 14 of the IBC

(b) The moratorium that is imposed under Section 14 applies only to proceedings against the corporate debtor and only applies qua the assets and properties of the corporate debtor. If monies deposited in court or any other asset/property does not belong to the corporate debtor, the moratorium would not preclude/prevent a creditor from enforcing its rights against the monies/assets/properties. This is clear from a plain reading of Section 14 of the IBC.

(c) Sub-section (1) of Section 14 of the IBC reads as follows:

> "*14.(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -*
>
> *(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
>
> *(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
>
> *(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
>
> *(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor….*"

(d) A bare perusal of Section 14(1) makes it clear that sub-clause (a) only prohibits the institution or continuation of suits or proceedings against the corporate debtor. This clearly would not be attracted in the present case as the present proceedings are an appeal filed by the corporate debtor. That being so, the moratorium can never apply to the present First Appeal since it is filed by the corporate debtor.

(e) As set out below, the monies that are deposited in court pursuant to a court order are not the assets of the corporate debtor, but is property that is under the custody and control of this Hon'ble Court pursuant to the order dated 10th December 2012. In that view of the matter,

it could hardly be contended that the NCLT is to decide the present Interim Application and determine how this Court should deal with property that is in its custody and control.

(f) Since the First Appeal is being decided by this Court, all interlocutory applications would also have to be decided by this Court.

(g) The Interim Application seeking withdrawal of monies pending the adjudication does not amount to execution as held by this Court in ***Nahar Builders*** (Supra).

(h) Sub-clause (b) is also inapplicable because it applies only to the assets belonging to the corporate debtor. As explained later, the monies deposited by appellant in the Trial Court pursuant to the order dated 10th December 2012 do not constitute the asset of appellant.

(i) Sub-clause (c) on its own terms is inapplicable since the present proceedings do not constitute enforcement or recovery of any 'security interest' created by the corporate debtor within the meaning of Section 3(31) of the IBC.

(j) Sub-clause (d) applies in instances where the property is occupied by the owner or in the possession of the lessor. The monies deposited by appellant in the Trial Court are obviously not within the occupation or possession of the corporate debtor.

(k) Therefore, the moratorium under Section 14(1) does not have any bearing on the rights of respondent to withdraw the monies deposited in Court.

(l) In ***Embassy Property*** (Supra), in paragraph 45, the Hon'ble Supreme Court has held that the purpose of Section 14 of IBC is to preserve status quo and not to create a new right in favour of the corporate debtor. Therefore, if it is found, as demonstrated below, that as on the date of the commencement of CIRP, the monies deposited by appellant with the Trial Court did not constitute a part of the assets/property of the corporate debtor, allowing the withdrawal of the deposited sum does not contravene Section 14 of the IBC.

B. The monies deposited in the Trial Court do not constitute the assets of Appellant

(m) The sum of Rs.32,16,909/- which has been deposited by appellant with the Trial Court as a condition for stay of the execution of the Impugned Judgment does not constitute the asset of appellant.

(n) The position of law on the status of monies deposited in court as a condition for stay of execution of a decree has been settled for almost a century. The Hon'ble Calcutta High Court in ***Chowthmull*** (Supra) was called upon to consider an almost identical issue. In that case, the judgment debtor had filed an appeal challenging the decree passed against

him. The judgment debtor deposited monies in court as a condition for stay of the decree. During the pendency of the appeal, the judgment debtor was declared as an insolvent. The Official Assignee of the judgment debtor contended that the monies deposited in court by the judgment debtor formed a part of the estate of the judgment debtor and therefore, ought to be distributed amongst the creditors of the judgment debtor. The Court negatived this submission and held that the monies deposited in Court did not constitute a part of the estate of the judgment debtor, and that such monies were of plaintiff subject to him succeeding in the suit. The Hon'ble Court observed as follows:

> "*In my judgment the effect of the order was that the money was paid into Court to give security to the plaintiffs that in the event of their succeeding in the appeal they should obtain the fruits of their success. See Bird v. Barstow [[1892] 1 Q.B. 94.] . It may be put in other words, viz., that* ***the amount paid into Court was the money of the plaintiff respondents subject to their succeeding in the appeal and thereby showing that the decree in their favour by the learned Judge on the Original Side was correct.*** *The words which were used by Lord Justice James in the case of Ex parte Banner, in re Keyworth [(1874) L.R. 9 Ch. App. 379.] are applicable to this case. The learned Lord Justice said that the effect of the order was that 'the money which was paid into Court belonged to the party who might be eventually found entitled to the sum.*"
>
> (*emphasis supplied*)

(o) Subsequently, the Hon'ble Supreme Court in ***P.S.L. Ramanathan Chettiar*** (Supra) in paragraph 13, held that once the money has been deposited in court as a condition for stay of execution of appeal, it is put beyond the reach of the judgment-debtor. The Court held as follows:

> "*13.* ***The real effect of deposit of money in court as was done in this case is to put the money beyond the reach of the parties pending the disposal of the appeal.*** *The decree-holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment-debtor in case of his success in the appeal. Pending The determination of the same, it was beyond the reach of the judgment-debtor.*"
>
> (*emphasis supplied*)

(p) The Hon'ble Madras High Court in ***Kamakshi Ammal*** (Supra) has followed the decision of the Hon'ble Calcutta High Court in ***Chowthmull*** (Supra) and in paragraph 3 and 7 has held that once monies are deposited, the money does not belong to either the judgment debtor or the decree holder but is *custodia legis*:

> "*3. In a case like this it is essential to view the subject on a broader perspective, as any other approach to it may lead to inequitable results.* ***When the money was deposited by the judgment-debtor as a condition precedent for the grant of stay at the time when the second appeal was admitted, then such money so deposited into court is in custodia legis and is no longer under the control of either the judgment-debtor or the decree-holder. Once the second appeal has been dismissed, the money so deposited and which is in the custody and control of the court automatically becomes the property of the decree-holder and he has a vested right in him to withdraw the said amount.*** *The mere lapse on his part to take out a petition for withdrawal of the amount soon after the dismissal of the second appeal will not militate against him nor will it adversely affect his vested right. When once the second appeal has been dismissed and in consequence the decree for money, though for arrears of rent, has been upheld by this court, then the money deposited by the judgment-debtor loses its character as arrears of rent. It is simply the country's coin, which the decree-holder is entitled to as a result of the money decree obtained by him. Such a vested right which enables him to withdraw the amount in court deposit would not make that amount an 'outstanding rent' payable by the cultivating tenant-judgment-debtor. The relief granted under Section 3 of the Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1972 (Act 21 of 1972), is to the effect that all arrears of rent payable by a cultivating tenant to the landlord and outstanding on the 30th June, 1971*

shall be deemed to be discharged, whether or not a decree or order has been obtained therefor…. The question is whether that portion of the amount which has been deposited by the cultivating tenant into Court in legal proceedings pursuant to the orders of court as stated above can any longer be impressed with the badge of rent which can be said to be outstanding and payable by the cultivating tenant. A metamorphosis has come in. The cultivating tenant has paid money into court and this money will find its level and way according to the decision in the second appeal and once the second appeal filed by the judgment-debtor has been dismissed, there is an automatic vesting of a right to collect that money in court deposit in the decree-holder and the said amount can no longer be characterised as arrears of rent or rent which was outstanding on the notified date.

…….

7. ***The ratio of the above decisions makes it clear that the plaintiff decree-holder has a lien over the amount deposited in court by the judgment-debtor and the Court holds the said amount in trust for the person who might ultimately succeed in the action. There is only a postponement of the right of the plaintiff to receive the said amount which is necessitated because of the pendency of the second appeal.*** *As soon as the second appeal is disposed of against the judgment-debtor eo instanti the decree-holder is the person, who is entitled to the said amount, as on the date when it was deposited it belonged to him and there was only a postponement of the right to collect the money because of the pendency of the civil proceeding.*"

(*emphasis supplied*)

(q) The Hon'ble Supreme Court in ***Roshanlal Kuthalia*** (Supra) in paragraphs 37 and 38 has quoted with approval the decision in ***Chowthmull*** (Supra). The Court held as under:

"*37. What are the principles vis-a-vis the problem here? That a mere security deposit does not become an automatic satisfaction of the decree when the appeal fails is simple enough. But when the judgment-debtor has paid into court cash by way of security conditioned by its being made available to discharge the decree on disposal of the appeal and for reasons beyond the control or conduct of the judgment-debtor the money is not forthcoming to liquidate the liability can he be asked to pay over again? In Chowthmull Manganmull v. Calcutta Wheat and Seeds*

Association [ILR (1930) 51 Cal 1010] , Sanderson, C. J. observed (at p. 1013) :

'In my judgment the effect of the order was that the money was paid into court to give security to the plaintiffs that in the event of their succeeding in the appeal they should obtain the fruits of their success*. See Bird v. Barstow [(1892) 1 QBD 94] .* ***It may be put in other words viz. that the amount paid into court was the money of the plaintiff respondents subject to their succeeding in the appeal and thereby showing that the decree in their favour by the learned Judge on the original side was correct****. The words which were used by Lord Justice James in the case of Ex parte Banner, in re Keyworth [(1874) 9 Ch 379 : 30 LT 620] are applicable to this case. The learned Lord Justice said that the effect of the order was that 'the money which was paid into court belonged to the party who might be eventually found entitled to the sum'.'*

38. The headnote in Sheo Gholam Sahoo v. Rahut Hossein [ILR (1906) 4 Cal 6] reads :

'When money or movable property has been deposited in court on behalf of a judgment-debtor in lieu of security, for the purpose of staying a sale in execution of a decree pending an appeal against an order directing the sale, which is afterwards confirmed on appeal, neither the depositor, nor the judgment-debtor, can afterwards claim to have such deposit refunded or restored to him, notwithstanding that the decree-holder has omitted to draw it out of court for more than three years, and that more than three years have elapsed since any proceedings have been taken in execution of the decree, and that the decree for that reason is now incapable of execution.

*Semble.—****When money or movable property is deposited in court in such a case as the above, the court, upon confirmation of the order for a sale, holds the deposit in trust for the decree-holder, and is at liberty to realise it and pay the proceeds over to him to the extent of his decree.'***

The equity in favour of an obligor, who has deposited the obligated sum into court pending proceedings in which he assails his liability, is underscored by these rulings and the principle cannot be different *merely because the obligee who ordinarily would have, without reference to the obligor, drawn the money from court is unable to get it for extralegal reasons as here…*"

(*emphasis supplied*)

(r) Thus, the Supreme Court in ***Roshanlal Kuthalia*** (Supra) categorically affirmed the principle that a court holds money deposited

before it in trust for the decree holder. In such a situation, the judgment debtor, i.e., appellant herein, cannot claim any rights over the monies deposited with the Court and such monies are left outside the scope of assets of the judgment debtor under the IBC.

(s) Similarly, the Hon'ble Supreme Court in ***Bank of India*** (Supra) in paragraph 37 has held that monies deposited in Court by way of security and held by the Court is *custodia legis* to the credit of the party which is ultimately successful.

(t) A very recent decision which is on identical facts is the decision of this Hon'ble Court in ***Nahar Builders*** (Supra). In this case, Housing Development and Infrastructure Limited ("**HDIL**") had deposited a sum of Rs. 8 crores in court pursuant to an order passed in a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("**1996 Act**"). HDIL suffered an award which attained finality. Nahar Builders Limited ("**Nahar**") sought to withdraw the sum of Rs. 8 crores. At the time of Nahar's request for withdrawal, HDIL had become insolvent. Therefore, HDIL took the defence that in light of the moratorium under Section 14 of the IBC, Nahar could not be allowed to withdraw any amount. This Hon'ble Court rejected HDIL's submission in the following terms:

> "*7. The opposition from HDIL is that since there is a moratorium that has came in to play in view of the insolvency proceedings under the Insolvency & Bankruptcy Code, 2016, the amount of Rs. 8 crores deposited in this Court is 'the property of HDIL' within the meaning of Section 14 of the IBC. That submission*

does not commend itself. Once an amount is deposited in this Court, it is placed beyond the reach of either party without permission of the Court. It is, therefore, not 'the property' of either party pending an adjudication as to entitlement by the Court. Once the Arbitrator held that it was Nahar Builders that was entitled to this amount, and that award became enforceable as a decree of this court, then no question remained of the amount being claimed by HDIL. In another manner of speaking, from the time the deposit was made until the time withdrawal is ordered, that amount is not the property of either party to the dispute.

8. It is true that an execution against HDIL is presently stayed but this is not an application for execution, nor is it, within the meaning of Section 14(1)(d), an application for 'the recovery of any property by an owner or lessor where such property is occupied by or is in the possession of corporate debtor'. *To read only the words 'recovery of any property' as Ms Patil does, but not to read the rest of clause (d) is materially incorrect.*

9. The provisions regarding a moratorium cannot possibly apply to such cash deposits made in this Court. As Mr Dwarkadas for Nahar Builders put it, money has no colour. Once it is deposited in Court no party can automatically claim any right to it without an adjudication by a Court. There is no dispute that there is an unchallenged and unsatisfed award in favour of Nahar Builders against HDIL. There is also no dispute that an amount of Rs. 8 crores is available with this Court.

…

10. There is no bar to this application for withdrawal. The application for withdrawal cannot be conceivably be considered a suit, proceeding or execution within the meaning of Section 14(1)(a)."

(*emphasis supplied*)

Therefore, the decision in ***Nahar Builders*** (Supra) emphatically holds that the right of a decree-holder/award holder to withdraw monies deposited in court prior to the commencement of CIRP is not affected by the moratorium under Section 14 of the CIRP.

(u) It must be noted that the judgment of the learned Single Judge in ***Nahar Builders*** (Supra) was challenged before the Hon'ble Division

Bench of this Court. This Court, *vide* its Judgment dated 30th January 2020, passed in ***HDIL V/s. Nahar Builders*** (Supra) did not interfere with the order of the learned Single Judge and recorded that there was nothing shown in the appeal which would militate against the legal principle set out in the decision of the Learned Single Judge.

(v) A learned Single Judge of this Court has, in ***Raj Shipping*** (Supra) held that when a ship is arrested, it becomes *custodia legis* and if it is sold under the orders of the Court and the money is received by the Court, the interest of the owner is limited to the extent of receiving the balance of the sale proceeds after satisfaction of all claims. By drawing an analogy, the principle can be applied even to the facts of the present case. Once the decretal sum is deposited by the judgment debtor in court, it ceases to be the property of the judgment debtor and is *custodia legis*. The interest of the judgment debtor would only be to receive any balance after the claims of the judgment creditor are satisfied.

(w) At this stage, it is important to deal with the decision of the Hon'ble Supreme Court in ***Chitra Sharma*** (Supra). Mr. Bharucha for appellant has relied upon paragraphs 48 and 48.1 of the said decision to contend that the monies deposited with the Trial Court cannot be withdrawn by respondent. This contention in our view, is based on an erroneous reading of the decision in ***Chitra Sharma*** (Supra) for two reasons :

(a) In ***Chitra Sharma*** (Supra), the Hon'ble Supreme Court had directed the deposit of a sum of Rs.2000 Crores (out of which Rs.750 Crores were deposited) after the commencement of CIRP of the corporate debtor. Therefore, as on the date of commencement of CIRP, the amount belonged to the entity which had deposited the money. On the other hand, in the present case, appellant was directed to deposit the decretal amount as far back as on 10th December 2012, i.e., way prior to the commencement of CIRP of appellant. Once the amount had been deposited in court, appellant ceased to be entitled to/owner of the amount and, therefore, as on the date of commencement of CIRP, the amount did not belong to appellant.

(b) The homebuyers who sought the pro-rata distribution of the sum of Rs. 750 crores did not have any decree in their favour. Nor was there any adjudication of their entitlement to this amount. Therefore, the Court was not holding the amount in trust for the homebuyers. On the other hand, in the present case, respondent has already obtained a decree in his favour and the monies deposited by appellant are being held in trust by the Court for the party that eventually succeeds in the appeal.

(x) Further, the observations of the Hon'ble Supreme Court in paragraph 12 of ***P.S.L. Ramanathan Chettiar*** (Supra) also do not further appellant's case. This is for two reasons :

(a) The Court's observation that deposit of money in court by a judgment debtor does not pass title to the money to the decree holder was

made in the background of the facts of ***Keshavlal*** (Supra) referred to by the Court in paragraph 11. In that case, this Hon'ble Court had rejected the decree-holder's attempt to claim entitlement to the accretions on the money deposited by the judgment-debtor in court. It is in this context that the Hon'ble Supreme Court in ***P.S.L. Ramanathan Chettiar*** *(Supra)* held in paragraph 12 that deposit of money in court does not transfer title to the decree-holder.

(b) In the paragraph 12, although the Hon'ble Supreme Court has held that the deposit of money in court by a judgment debtor does not pass title to the money to the decree holder, it has also at the same time emphasised (in paragraph 13) that the money deposited in court is beyond the reach of the judgment debtor. There is no finding in the decision of the Hon'ble Supreme Court that the judgment debtor continues to be the owner of the money deposited in court.

(y) Appellant has also relied upon the decision of the Hon'ble Andhra Pradesh High Court in ***K.V. Subbayya*** (Supra) to contend that the decree holder, i.e., respondent herein does not automatically become the owner of the money deposited in court as a condition for stay of execution of the decree. Reliance on the judgment is inapposite for the following reasons:

(a) The judgment related to a case where one judgment debtor alleged collusion between the judgment creditor and another judgment

debtor. The facts of the case were that despite the judgment creditor succeeding in the appeal, the monies deposited were withdrawn by one of the judgment debtors. Therefore, the other judgment debtor submitted that it should be assumed that the claim of the judgment creditor had been satisfied since the judgment creditor and the judgment debtor were colluding. It is in this context that the Court observed the mere availability of a certain sum for the satisfaction of a decree cannot be equated with the actual satisfaction of a decree and that the amounts deposited were as security and do not ipso facto become the property of the decree holder. The said factual scenario is completely different and therefore, reliance on the said judgment is misplaced.

(b) Even this judgment nowhere states that the monies deposited in court continue to be the asset of the judgment debtor. Even though the decree holder may not become the owner of the money deposited in court till the time that the appeal is dismissed, this does not in any manner imply that the money deposited by the judgment debtor continues to vest in the judgment-debtor and forms a part of the assets of the judgment debtor. As held above, the money deposited in court is put beyond the reach of the judgment-debtor and it cannot form a part of the assets/estate of the judgment debtor upon insolvency.

CONCLUSION

31 Therefore, from an overview of the judgments, what is apparent

is that the Hon'ble Calcutta High Court in the case of ***Chowthmull*** (Supra) which was approved by the Hon'ble Supreme Court in ***Roshanlal Kuthalia*** (Supra) and the Hon'ble Bombay High Court in ***Nahar Builders*** (Supra) have considered the same fact situation that where the judgment debtor had deposited monies in court as a condition for stay of execution of a decree and subsequently gone into insolvency/ CIRP, the courts have consistently held the money so deposited did not remain the asset of the insolvent/corporate debtor and there was no impediment in the judgment creditor seeking withdrawal of the same. These judgments are squarely applicable to the facts of the present case.

32 The decision of the Hon'ble Supreme Court in ***P.S.L. Ramanathan Chettiar*** (Supra) as also the decision of the Hon'ble Andhra Pradesh High Court in ***K.V. Subbayya*** (Supra) also do not further the case of appellant-judgment debtor. None of the judgments lay down that the monies deposited continue to remain the asset of the judgment debtor. The finding that the title in the money deposited does not pass to the judgment creditor was made in the context that any surplus amount/accretions on the amount deposited in excess of the decretal sum would be paid back to the judgment debtor and it is only in that context that the Hon'ble Courts have held on deposit of monies the title did not pass to the judgment creditor. However, the judgments have in categoric terms stipulated that once the monies are

deposited in court, they are out of the reach of either party. That being so, clearly the monies that were deposited by appellant herein do not constitute the asset/property of the judgment debtor.

33 Therefore, what is clear from all the judgments that have been cited for consideration is that once the monies have been deposited, they cease to remain the asset of the judgment debtor. The monies are *custodia legis*. They are placed beyond the reach of the parties. They are held in trust by the Court. The monies are secured for the benefit of the judgment creditor and "*there is only a postpone of the right of the plaintiff to receive the said amount which is necessitated because of the pendency*" of the First Appeal [***Kamakshi Ammal*** (Supra)].

34 Considering what is set herein above, once appellant had deposited the sum of Rs.32,16,909/- in the Trial Court pursuant to this Court's order dated 10th December 2012 as a condition for stay of execution of the Impugned Judgment, the said amount ceased to belong to/be in the control of appellant. Appellant was not entitled to/the 'owner' of the said amount as on the date of commencement of CIRP (i.e., 15th May 2018). Once appellant ceased to be the entitled to/owner of the said amount, the said amount is unaffected by the moratorium which comes into effect under Section 14 of the IBC upon the commencement of CIRP. Resultantly, there is no bar on this Court from

allowing the withdrawal of the amount by respondent if this Court so deems fit.

(KAMAL KHATA, J.) (K. R. SHRIRAM, J.)