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## **SUPREME COURT OF INDIA IN**

**Gujarat Urja Vikas Nigam Limited .... Appellant**

**Versus**

**Mr. Amit Gupta & Ors. .... Respondents**



The Supreme Court observed that the National Company Law Tribunal has jurisdiction to adjudicate contractual disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor.

However, for adjudication of disputes that arise de hors the insolvency of the Corporate Debtor, the RP must approach the relevant competent authority, the bench comprising Justices DY Chandrachud and Justice MR Shah observed while upholding the order of the National Company Law Tribunal which stayed the termination by the Gujarat Urja Vikas Nigam Limited of its Power Purchase Agreement with Astoneld Solar (Gujarat) Private Limited.

In this case, PPA was signed on 30 April 2010, in accordance with which the Nigam had to purchase all the power generated by the Corporate Debtor. On 20 November 2018, the NCLT admitted a petition led by the Corporate Debtor under Section 10 of the IBC and commenced the Corporate Insolvency Resolution Process. In May 2019, the Nigam issued termination notices in which it stated thus : Under Article 9.2.1(e) of the PPA, the Corporate Debtor undergoing CIRP

under the IBC amounts to an 'event of default' (b) under Article 9.2.1(a) of the PPA, there was a default in the operation and maintenance of the Plant. Rejecting the reply issued by the Corporate Debtor, the Nigam stated that they will terminate the PPA under Articles 9.2.1(e) and 9.3.1 since the Corporate Debtor is under CIRP. Thereafter, the Corporate Debtor filed applications under Section 60(5) of the IBC before the NCLT in regard to the Notices issued by the appellant to the Corporate Debtor, and sought an injunction restraining the Nigam from terminating the PPA. On 29 August 2019, the NCLT issued its final order restraining Nigam from terminating the PPA and setting aside the First Notice.

In appeal before the Apex Court, Whether the NCLT/NCLAT can exercise jurisdiction under the IBC over disputes arising from contracts such as the PPA?

According to Nigam, the NCLT does not have any inherent powers, and its exercise of jurisdiction is circumscribed by the provisions of the IBC and thus it does not have the jurisdiction to entertain all disputes or all issues related to the Corporate Debtor. On the other hand, the contention of the corporate debtor was that, while the NCLT may not have jurisdiction to adjudicate upon contractual disputes that arise independent of the insolvency of the Corporate Debtor, it has the sole jurisdiction to decide a dispute that arises from or relates to the insolvency of the Corporate Debtor or where the property of the Corporate Debtor (in this case its rights under the PPA) is sought to be taken away on the ground of insolvency.

The court noted that in the present case, the PPA was terminated solely on the ground of insolvency, since the event of default contemplated under Article 9.2.1(e) was the commencement of insolvency proceedings against the Corporate Debtor. "In the absence of the insolvency of the Corporate Debtor, there would be no ground to terminate the PPA. The termination is not on a ground independent of the insolvency. The present dispute solely arises out of and relates to the insolvency of the Corporate Debtor", the court observed. Referring to various provisions and precedents, the bench observed thus:

"The institutional frame work under the IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. In the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debt or would have to defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal.

A delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful reorganization or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner . Pursuing this theme this court observed that 'one of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process.

"Therefore, we hold that the RP can approach the NCLT for adjudication of disputes that are r elated 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 ha v e been entitled to invoke the jurisdiction of the NCLT under the IBC. However, since the dispute in the present case has a risen solely on the ground of the insolvency of the Corporate Debtor, NCLT is empower ed to adjudicate this dispute under Section 60(5)(c) of the IBC."

The court also added that the residuary jurisdiction of the NCLT under Section 60(5)(c) of the IBC provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings.

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- Inviting claims, maintaining records thereof and verification.
- Constitution of the Committee of Creditors
- Taking over control and custody of the Assets of CD.
- Maintaining Accounts – Communicate with all the Stake Holders
- Appointment of the professionals
- Prepare Information Memorandum
- Invitation of EOI
- finalization of evaluation matrix
- Ensuring compliance with Sec.29A
- Evaluation of Resolution Plan
- Invocation of Corporate /Personal Guarantee
- Identification of buyers and sale of the assets

### **By Synergy Associates**

- Appearance before NCLT and NCLAT
- Exploring prospects of getting out of IBC.
- One Time Settlement of the dues
- Restructuring of the debt - including lowering of interest rate.
- SARFAESI matters
- Transaction Audit
- Merger and Acquisition under CIRP.
- Preparation of Resolution Plan
- Arranging funds for acquisition of stressed asset

## Our Partners

<b>Noida – Head office</b>	
<b>CA. Praveen Agrawal</b>	<a href="https://www.linkedin.com/in/praveen-agrawal-80072517/">https://www.linkedin.com/in/praveen-agrawal-80072517/</a>
<b>New Delhi</b>	
<b>Adv.Anup Kimar</b>	<a href="https://www.linkedin.com/in/anup-sachan-94470234/">https://www.linkedin.com/in/anup-sachan-94470234/</a>
<b>CA Deepak Gupta</b>	<a href="https://www.linkedin.com/in/deepak-gupta-0b529114/">https://www.linkedin.com/in/deepak-gupta-0b529114/</a>
<b>CA Shaleen Jain</b>	<a href="https://www.linkedin.com/in/shaleen-jain-945b3116/">https://www.linkedin.com/in/shaleen-jain-945b3116/</a>
<b>CS.Sanjiv Rathi</b>	<a href="https://www.linkedin.com/in/sanjivrathi/">https://www.linkedin.com/in/sanjivrathi/</a>
<b>Ghaziabad</b>	
<b>CA Piyush Moona</b>	<a href="https://www.linkedin.com/in/ca-piyush-moona-23576810/">https://www.linkedin.com/in/ca-piyush-moona-23576810/</a>
<b>Gurgaon</b>	
<b>CA Vanit Mittal</b>	<a href="https://www.linkedin.com/in/vanit-mittal-2011a917/">https://www.linkedin.com/in/vanit-mittal-2011a917/</a>
<b>Chandigarh</b>	
<b>CA.Karun Nagpal</b>	<a href="https://www.linkedin.com/in/ca-karun-nagpal-25a57256/">https://www.linkedin.com/in/ca-karun-nagpal-25a57256/</a>
<b>Ludhiana</b>	
<b>CA Vivek Bansal</b>	
<b>Chennai</b>	
<b>CA SR Krishnan</b>	<a href="https://www.linkedin.com/in/krishnansrk/">https://www.linkedin.com/in/krishnansrk/</a>
<b>Pune</b>	
<b>EX-Banker Uday Bhat</b>	<a href="https://www.linkedin.com/in/uday-bhat-831b3832/">https://www.linkedin.com/in/uday-bhat-831b3832/</a>
<b>Nagpur</b>	
<b>CA Megha Agrawal</b>	<a href="https://www.linkedin.com/in/megha-agrawal-215480156/">https://www.linkedin.com/in/megha-agrawal-215480156/</a>

**Author**

CA. Praveen Agrawal