

CA Ramchandra Dallaram Choudhary

M. Com, FCA, FAFD (ICAI)

Insolvency Professional

IP Reg. No.: IBBI/IPA-001/IP-P-00157/2017-2028/10326

(भारतीय दिवाला और शोधन अक्षमता बोर्ड के अधीन)

Date: 13th September, 2022

Dear Madam / Sirs,

Sub: Intimation of receipt of the order of Hon'ble NCLAT, New Delhi Bench as filed u/s 61 of the Insolvency and Bankruptcy Code, 2016.

Ref: Company Appeal (AT) (INS) No. 811 of 2020, NCLAT/9000 and No. 815 of 2020, NCLAT/8993.

Pursuant to Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) and in accordance with the requirements of sub- clause 16(c) of Clause A of Part A of Schedule III of Listing Regulations, I would like to inform you that the Hon'ble NCLAT, New Delhi Bench vide its order dated 01.09.2022 (received copy through speed post on 13.09.2022) dismissed an application regarding Debt Recovery.

Kindly acknowledge the receipt

Thanking you,

Yours faithfully,

Encl: A copy of NCLAT order dated 01-09-2022

IPE: Sun Resolution Professionals Private Limited (Reg. No. IBBI/IPE/0064)

9/B, Vardan Complex, Near Vimal House, Lakhudi Circle, Navrangpura, Ahmedabad-380014

Ph: 079-26566577 | Mobile: 9909903614 | E-mail: rdc_rca@yahoo.com

Ahmedabad | Bangalore | Chandigarh | Chhattisgarh | Delhi-NCR | Hyderabad | Indore | Jaipur | Mumbai | Surat | Vadodara

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

8993

2nd & 3rd Floor,
Mahanagar Doorsanchar Sadan
(M.T.N.L Building), 9 CGO Complex,
Lodhi Road, New Delhi -110003.
Dated : 06.09.2022

To

1	The Registrar National Company Law Tribunal 6 th Floor, Block-3, CGO Complex, Lodhi Road, New Delhi-110003.	2.	The Registrar National Company Law Tribunal Ahmedabad Bench 1st and 2 nd Floor, Corporate Bhawan Beside Zydus Hospital, Off. S.G. Highway Thaltej Ahmedabad- 380059.
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Subject: In the matter of – Company Appeal (AT) (INS) No. 815 of 2020 [Shri Ramchandra D. Choudhary Versus Shreenathji Enterprise & Ors.] – Company Appeal filed U/s 61 of the Insolvency and Bankruptcy Code, 2016.

Sir,

A copy of the order of the Appellate Tribunal dated 01.09.2022 on the above subject matter is forwarded herewith under Section 61 of the Insolvency and Bankruptcy Code, 2016. The Registrar, NCLT, New Delhi is requested to place the aforesaid order before the Hon'ble President, National Company Law Tribunal, New Delhi.

Yours faithfully

(Sujata Kumari)
Assistant Registrar (I/c)

Encl. As above.

Copy to :

A-1	Shri Ramachandra D. Choudhary Resolution Professional of M/s. Oasis Tradelink Ltd. office address at: 9-B, Vardan Tower, Lakudi Circle, Navrangpura, Ahmedabad, Gujarat – 380014.	R-1	Shreenathji Enterprise address at: Plot No. 438/2, at Kunal, Nr. Cera Factory, Kadi Kalol Road, Kadi – 382715, Mahesana, Gujarat.
R-2	Shri Snehal Patel Suspended Director of M/s. Oasis Tradelink Ltd. address at: "Sanskriti", 14/A, Hindu Colony, Sardar Patel Stadium, Navrangpura, Ahmedabad, Gujarat – 380009.	R-3	Olga Vinchentpaul Menezes Suspended Director of M/s. Oasis Tradelink Ltd. address at: 12, Mamta Apartments, B/h Jawahar Nagar Society, Sarkhej Road, Paldi, Ahmedabad – 380007.
R-4	Rajasekharan Krishnan Nair Suspended Director of M/s. Oasis Tradelink Ltd. address at: K – 204, Ghanshyam Complex, Nr. Chanlodiya Overbridge, Chanlodiya Daskroi, Ahmedabad, Gujarat – 382481.		



National Company Law Appellate Tribunal

Principal Bench, New Delhi

COMPANY APPEAL (AT) (INSOLVENCY) No. 810 of 2020

(Arising out of Order dated 26th June, 2020 passed by National Company Law Tribunal, Ahmedabad Bench, Court – I, in I.A. 319 of 2020 in C.P. (IB) No.- 433 of 2018).

IN THE MATTER OF:

Shri Ramachandra D. Choudhary
Resolution Professional of
M/s. Oasis Tradelink Ltd.

Having office address at:
9-B, Vardan Tower, Lakudi Circle, Navrangpura,
Ahmedabad,
Gujarat – 380014.

...Appellant

Versus

1. Bansal Trading Company
Shop No. 02, K Block – H,
Saroop Nagar, Delhi – 110042.

...Respondent No. 1

2. Shri Snehal Patel
Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:
"Sanskriti", 14/A, Hindu Colony,
Sardar Patel Stadium,
Navrangpura, Ahmedabad,
Gujarat – 380009.

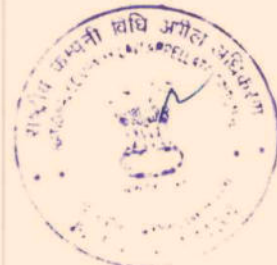
...Respondent No. 2

3. Olga Vinchentpaul Menezes
Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:
12, Mamta Apartments,
B/11 Javahar Nagar Society,
Sarkhej Road, Paldi,
Ahmedabad – 380007.

...Respondent No. 3

4. Rajasekharan Krishnan Nair
Suspended Director of



M/s. Oasis Tradelink Ltd.

Having address at:
K - 204, Ghanshyam Complex,
Nr. Chanlodiya Overbridge,
Chanlodiya Daskroi,
Ahmedabad, Gujarat - 382481.

...Respondent No. 4

For Appellant: Mr. Prithu Primal, Mr. Jaitegan Singh Khurana
and Ms. Manpreet Kaur, Advocates.
For Respondent: Mr. Pradhuman Gohil, Ms. Ranu Purohit,
Mr. Vishnu Kumar and Sahithya A. Krishna,
Advocates for R-2 & R-3.

WITH

COMPANY APPEAL (AT) (INSOLVENCY) No. 811 of 2020

(Arising out of Order dated 26th June, 2020 passed by National Company Law
Tribunal, Ahmedabad Bench, Court - I, in I.A. 318 of 2020 in C.P. (IB) No.- 433 of
2018).

IN THE MATTER OF:

Shri Ramachandra D. Choudhary
Resolution Professional of
M/s. Oasis Tradelink Ltd.

Having office address at:
9-B, Vardan Tower, Lakudi Circle, Navrangpura,
Ahmedabad,
Gujarat - 380014.

...Appellant

Versus

1. Shree Umiya Traders
K-3, Madhupura Market,
Nr. Police Commissioner Office,
Shahibaug, Ahmedabad - 380004.

...Respondent No. 1

2. Shri Snehal Patel
Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:
"Sanskriti", 14/A, Hindu Colony,
Sardar Patel Stadium,
Navrangpura, Ahmedabad,
Gujarat - 380009.

...Respondent No. 2



3. Olga Vinchentpaul Menezes
Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:
12, Mamta Apartments,
B/h Javahar Nagar Society,
Sarkhej Road, Paldi,
Ahmedabad – 380007.

...Respondent No. 3

4. Rajasekharan Krishnan Nair
Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:
K – 204, Ghanshyam Complex,
Nr. Chanlodiya Overbridge,
Chanlodiya Daskroi,
Ahmedabad, Gujarat – 382481.

...Respondent No. 4

For Appellant: Mr. Prithu Primal, Mr. Jaitegan Singh Khurana
and Ms. Manpreet Kaur, Advocates.

For Respondent: Ms. Bhavana Duhoon, Advocate for R-1.
Mr. Pradhuman Gohil, Ms. Ranu Purohit,
Mr. Vishnu Kumar and Sahitya A. Krishna,
Advocates for R-2 & R-3.

WITH

COMPANY APPEAL (AT) (INSOLVENCY) No. 812 of 2020

(Arising out of Order dated 26th June, 2020 passed by National Company Law
Tribunal, Ahmedabad Bench, Court – I, in I.A. 316 of 2020 in C.P. (IB) No.- 433 of
2018).

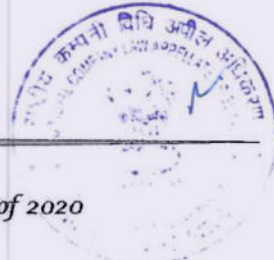
IN THE MATTER OF:

Shri Ramachandra D. Choudhary
Resolution Professional of
M/s. Oasis Tradelink Ltd.

Having office address at:
9-B, Vardan Tower, Lakudi Circle, Navrangpura,
Ahmedabad,
Gujarat – 380014.

...Appellant

Versus



1. Marshall Multiventures (I) Pvt. Ltd.

Having its registered office at:

Office No. A/406, 4th Floor,

Owners CHS Prem Soc. Ltd.

Saki Vihar Rd., Saki Naka, Andheri East,

Mumbai City 400072.

...Respondent No. 1

2. Shri Snehal Patel

Suspended Director of

M/s. Oasis Tradelink Ltd.

Having address at:

"Sanskriti", 14/A, Hindu Colony,

Sardar Patel Stadium,

Navrangpura, Ahmedabad,

Gujarat – 380009.

...Respondent No. 2

3. Olga Vinchentpaul Menezes

Suspended Director of

M/s. Oasis Tradelink Ltd.

Having address at:

12, Mamta Apartments,

B/h Javahar Nagar Society,

Sarkhej Road, Paldi,

Ahmedabad – 380007.

...Respondent No. 3

4. Rajasekharan Krishnan Nair

Suspended Director of

M/s. Oasis Tradelink Ltd.

Having address at:

K – 204, Ghanshyam Complex,

Nr. Chanlodiya Overbridge,

Chanlodiya Daskroi,

Ahmedabad, Gujarat – 382481.

...Respondent No. 4

For Appellant:

**Mr. Prithu Primal, Mr. Jaitegan Singh Khurana
and Ms. Manpreet Kaur, Advocates.**

For Respondent:

Ms. Bhavana Duhoon, Advocates for R-1.

**Mr. Pradhuman Gohil, Ms. Ranu Purohit,
Mr. Vishnu Kumar and Sahithya A. Krishna,
Advocates for R-2 & R-3.**



WITH

COMPANY APPEAL (AT) (INSOLVENCY) No. 815 of 2020

(Arising out of Order dated 26th June, 2020 passed by National Company Law Tribunal, Ahmedabad Bench, Court – I, in I.A. 317 of 2020 in C.P. (R), No. 433 of 2018).

IN THE MATTER OF:

Shri Ramachandra D. Choudhary
Resolution Professional of
M/s. Oasis Tradelink Ltd.

Having office address at:
9-B, Vardan Tower, Lakudi Circle, Navrangpura,
Ahmedabad,
Gujarat – 380014.

...Appellant

Versus

1. Shreenathji Enterprise

Having address at:
Plot No. 438/2, At Kunal,
Nr. Cera Factory, Kadi Kalol Road,
Kadi – 382715, Mahesana,
Gujarat.

...Respondent No. 1

2. Shri Snehal Patel
Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:
“Sanskriti”, 14/A, Hindu Colony,
Sardar Patel Stadium...,
Navrangpura, Ahmedabad,
Gujarat – 380009.

...Respondent No. 2

3. Olga Vinchentpaul Menezes
Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:
12, Mamta Apartments,
B/h Javahar Nagar Society,
Sarkhej Road, Paldi,
Ahmedabad – 380007.

...Respondent No. 3



4. Rajasekharan Krishnan Nair
Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:
K - 204, Ghanshyam Complex,
Nr. Chanlodiya Overbridge,
Chanlodiya Daskroi,
Ahmedabad, Gujarat - 382481.

...Respondent No. 4

For Appellant: Mr. Prithu Primal, Mr. Jaitegan Singh Khurana
and Ms. Manpreet Kaur, Advocates.

For Respondent: Ms. Bhavana Duhoon, Advocate for R-1.
Mr. Pradhuman Gohil, Ms. Ranu Purohit, Mr.
Vishnu Kumar and Sahithya A. Krishna,
Advocates for R-2 & R-3.

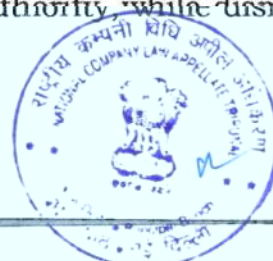
J U D G E M E N T

[Per: Shreesha Merla, Member (T)]

1. These Appeals have been preferred by the Liquidator of M/s. Oasis Tradelink Ltd./the 'Corporate Debtor, aggrieved by the Orders dated 26.06.2019 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Court -I), whereby I.A. Nos. 319, 318, 316 & 317 of 2020 in C.P. (IB) No.- 433 of 2018 were dismissed by the Adjudicating Authority on the ground that the Applications were not maintainable as they have been filed by the Liquidator for recovery of outstanding amounts from 'Sundry Debtors' under Section 60(5)(b) of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'The Code').

2. For the sake of convenience *Comp. App. (AT) (Ins.) No. 810 of 2020* being taken as a lead case and since all these Appeals deal with common facts and point of law, they are being disposed of by this common Order.

3. By the Impugned Order, the Adjudicating Authority, while dismissing the Applications observed as follows:

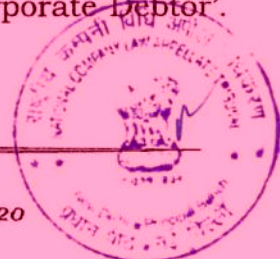


"We have gone through applications. This application has been filed by Liquidator for recovery of outstanding amount of Rs.4,25,90,475.00 from Respondent No. 1, namely, M/s Bansal Trading Company & Ors. It is noted that direction/order is sought from this Authority under Section 60(5)(b) of Insolvency and Bankruptcy Code, 2016. On our considered view, the said Application is not at all maintainable. The liquidator is required to recover their sum by way of filing application under Section 7 or 9 of Insolvency & Bankruptcy Code, 2016 or in alternative he can approach Civil Forum for the recovery of the same, which he is obliged to do as per provisions of the section 31(1)(k) of Insolvency and Bankruptcy Code, 2016.

We also held that there is no bar under Section (11) of Insolvency and Bankruptcy Code, 2016 to proceed under Section 7 or 9 as Insolvency & Bankruptcy Code, 2016 as per explanation II, thereto which has been incorporated w.e.f. 28.12.2019. Further, we also consider it pertinent to mention that term "claim" used in Section 60(5)(b) has been defined under Section 3(6) of Insolvency and Bankruptcy Code, 2016 and that has to be read for the purpose of Section 7/9 with other relevant Sections and Regulations made under Insolvency and Bankruptcy Code, 2016.

We are further of the view that if respondent is already under CIRP under Insolvency and Bankruptcy Code, 2016 then claim by the liquidator has to be filed in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 read with relevant Regulation against such Corporate Debtor in prescribed form before IRP/RP/Liquidator in that case for consideration of its claim."

4. Learned Counsel for the Appellant submitted that CIRP commenced against the 'Corporate Debtor' vide Order dated 26.02.2019 and subsequently vide Order dated 04.12.2019, the 'Corporate Debtor' went into Liquidation and a Liquidator was appointed. The first Respondent/Sundry Debtor of the 'Corporate Debtor' owes the 'Corporate Debtor Company' a sum of Rs.4,25,90,475/- against goods supplied to them by the 'Corporate Debtor'.



It is submitted that the recovery of the said amount would immensely aid the Creditors of the 'Corporate Debtor' and realizing the maximum value during Liquidation. It is the responsibility of the Appellant herein to realize and recover dues on behalf of the 'Corporate Debtor' as laid down under Regulation 39 of the Insolvency and Bankruptcy Board of India (Regulation Process) Regulations, 2016.

5. It is further submitted that the Statutory Audit of the accounts of the 'Corporate Debtor' reflects that an amount of Rs.4,25,90,475/- is due and pending to the 'Corporate Debtor'. Learned Counsel placed reliance on Section 60(5)(b) in support of his case that the only remedy available to the Appellant was to approach the Adjudicating Authority by way of an Interim Application seeking a direction for recovery of the debt from the Sundry Debtors. Learned Counsel place reliance on the Judgements of this Tribunal in '*Devmata Exim Pvt. Ltd.*' Vs. '*Ms. Kavitha Surana, RP of Shri Veerganapathi Steels Pvt. Ltd.*', which Order was upheld by the Hon'ble Supreme Court in *Civil Appeal No. 8855 of 2019* dated 26.11.2019, whereby the Hon'ble Apex Court has dismissed the Civil Appeal confirming the Order of this Tribunal. The Learned Counsel for the Appellant concluded his arguments referring to Section 63 of the Code which reads as follows:

"63. No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil Court not to have jurisdiction."



6. It is submitted that a conjoint reading of Section 60(5)(b) with Section 63 of the Code reveals that the only remedy available to the Appellant was to approach the Adjudicating Authority for recovery of the said amounts.

7. The first Respondent/Sundry Debtor in this Appeal was set Ex-Parte, but however since it is a common Order and the Sundry Debtors have filed their Replies in the other Appeals their submissions are being taken into consideration. It is the case of the Sundry Debtors that the 'Corporate Debtor' had failed to supply the requisite goods despite entering into a transaction for supply of Crude Edible Oil and Palm Oil, thereby causing huge losses to the Sundry Debtor. Eventually these amounts were squared off and adjusted against the dues of the 'Corporate Debtor'. Whether any amounts are due or not by the Sundry Debtor would require Adjudication after calling for evidence and therefore can be proceeded only in a Civil Suit. Reliance was placed on the Judgements of the Hon'ble Supreme Court in '*Embassy Property Development Private Limited* Vs. '*State of Karnataka*', (2020) 15 SCC 308 and also on '*Mobilox Innovations Private Limited* Vs. '*Kirusa Software Private Limited*', (2018) 1 SCC 353.

8. Learned Counsel for the Respondents 2 & 3 submitted that the Adjudicating Authority has rightly dismissed the Application on merits as not maintainable and the Liquidator is required to recover the said amounts by way of filing an Application under Section 7 or 9 of the Code. Respondents 2 & 3 in their capacity of erstwhile Directors of the 'Corporate Debtor' have provided all the information available relating to the Sundry Debtors and have also given detailed reasons for the default of payment by them. Upon further



enquiry of the Appellant/Liquidator, Respondents 2 & 3 vide email dated 21.03.2020 have stated the reasons for delay in providing documents relating to the Sundry Debtors as several documents were ceased/impounded by the VAT Department during the raids and also because of the Liquidation Process.

9. It is further submitted that vide email dated 17.12.2019, the Ledger Account of the Sundry Debtor together with the copies of invoices of the goods copy of Form No. 402 and acknowledgement of goods sent outside Gujarat were also sent. It is argued that there is no Debtor or Creditor relationship between the Appellant and the first Respondent and that the Appellant has initiated the present proceedings in the capacity of the Liquidator of the 'Corporate Debtor' against first Respondent for recovery of outstanding amounts.

Assessment:

10. The brief point which falls for consideration in these Appeals is whether the Adjudicating Authority has the powers to pass Orders under Section 60(5)(b) of the Code for recovery of amounts by the 'Corporate Debtor' against its Sundry Debtors. It is the main case of the Learned Counsel appearing for the Liquidator that the Liquidator is duty bound to prefer Application for recovery of money due to the 'Corporate Debtor' under Regulation 39 of the IBBI (Regulation Process), Regulations, 2016. It was strenuously argued by the Learned Counsel that if Liquidators are directed to approach the Civil Court instead of preferring suitable Application under Section 60(5)(b) of the Code, it would frustrate the time bound manner in which the Liquidation is



to be conducted. At this juncture, it is relevant to reproduce Section 60(5) of the Code:

“60. Adjudicating authority for corporate persons.—

(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.”

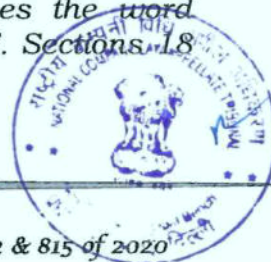
11. Counsel for Respondents No. 2 & 3, the erstwhile Directors of the ‘Corporate Debtor’, stated in their email dated 21.03.2020 that there was some delay in providing information to the Liquidator regarding the Sundry Debtors as the documents were seized by the VAT Department during the raids, but they did submit the Ledger Accounts of the Sundry Debtor, copies of the invoices together with details regarding supply of goods. It is pertinent to mention that Respondents No. 2 & 3 in this Appeal have themselves admitted in their Written Submissions that the Sundry Debtor has held back payment to the ‘Corporate Debtor’ due to supply of inferior quality of goods and non-fulfillment of their Order.

12. In the case of ‘Devmata Exim Pvt. Ltd.’, (Supra) relied upon by the Appellant, this Tribunal found that the goods supplied by the ‘Corporate Debtor’ were accepted by the Sundry Debtor and were sold. There was a direction by this Tribunal to the Sundry Debtor to deposit the amount in a



separate Escrow Account, as the Debtor has received and accepted the goods and not returned the same to the 'Corporate Debtor'. However, in the instant case, the second and third, erstwhile Directors of the 'Corporate Debtor Company' themselves said that there were substantial reasons for the Sundry Debtors not to have paid their dues. As the factual matrix of the present case is different from the facts of '*Devmata Exim Pvt. Ltd.*', (*Supra*) the ratio of the said Judgement is not applicable to the facts of the attendant case. Further, it is the case of the Sundry Debtor in the other Appeals that the amounts were squared off and settled. At this juncture, we find it relevant to reproduce paras 40 and 41 of the Judgement of the Hon'ble Supreme Court in '*Embassy Property Development Private Limited*', (*Supra*) wherein the Hon'ble Apex Court has discussed the scope of Section 60(5) of the Code and observed that a Resolution Professional cannot short-circuit any Judicial Proceedings by taking advantage of Section 60(5). For ready reference, the paras are detailed as hereunder:

"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 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 "vale". 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."

13. A brief perusal of the Replies filed by the Sundry Debtors in these Appeals showed that there were disputes raised with respect to the dues payable. It is relevant to note that the question of whether the disputes were genuine or not or the merits or the details of the existing disputes or otherwise are not being addressed to in these Appeals.

14. The only point which is to be examined is whether the Adjudicating Authority was justified in dismissing the Applications preferred by the Liquidator as not maintainable. The Resolution Professional is required under Section 18 of the Code to take control and custody of the assets of the 'Corporate Debtor'. The amounts stated to be 'due and payable' to the 'Corporate Debtor' by other Sundry Debtors are required to be included in the Information Memorandum and when included, the person/entity purchasing



the assets of the 'Corporate Debtor' would have knowledge of the value of the assets/Liquidation Value as stated in the Information Memorandum. The Hon'ble Supreme Court in '**Gujarat Urja Vikas Nigam Limited**' Vs. '**Mr. Amit Gupta & Ors.**', **Civil Appeal No. 9241 of 2019**, in paras 67 & 68 noted as follows:

"67. The institutional framework 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 debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful 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 in **Innoventive** (supra) 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". The principle was reiterated in **Arcelor Mittal** (supra) where this court held that "the non-obstante Clause in Section 60(5) is designed for a different purpose: to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings". Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing so, we issue a note of caution to the 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.

68. It is appropriate to refer to the observations in the Report of the BLRC, wherein it noted the role of the NCLT, as the Adjudicating Authority for the CIRP, in the following terms:

“An adjudicating authority ensures adherence to the process. At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives powers to the insolvency professional to take appropriate action against the directors and management the entity, recommendations from the creditors committee. All material actions and events during the process are recorded at the adjudicating authority. The adjudicating authority can assess and penalize frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on. The adjudicating authority will adjudicate on fraud, particularly during the process resolving bankruptcy. Appeals/actions against the behavior of the insolvency professional are directed to the Regulator/Adjudicator.”

As such, it is important to remember that the NCLT's jurisdiction shall always be circumscribed by the supervisory role envisaged for it under the IBC, which sought to make the process driven by trained resolution professionals.”

15. Keeping in view the aforementioned ratio in ‘Gujarat Urja Vikas Nigam Limited’ (Supra), we hold that the remedy for recovery of debts, disputed or not, cannot be determined in summary proceedings and the Code does not contemplate adjudication of any such nature. Any such steps taken under Section 60(5) of the Code before the Adjudicating Authority, would tantamount to bypassing/short-circuiting the Judicial Proceedings. Keeping in view the submissions of the Respondents, to adjudicate whether the



amount is due and payable by the 'sundry debtors' who have raised disputes, would require calling for evidence and cannot be proceeded under the Code. The Appellant is well within its powers to take appropriate steps to file legal proceedings, if the circumstances so warrant. The Code expressly provides for the Liquidator to institute or defend any Suit, Prosecution or other Legal Proceedings, Civil or Criminal, in the name or on behalf of the 'Corporate Debtor'.

16. For all the aforementioned reasons, we are of the considered view that the ratio of the Hon'ble Apex Court in '*Embassy Property Development Private Limited*' (*Supra*) is applicable to the facts of these Appeals and therefore we are of the earnest view that there is no illegality or infirmity in the direction given by the Adjudicating Authority and hence these Appeals fail and are accordingly dismissed. No order as to costs.



NEW DELHI
01st September, 2022
Himanshu

FREE OF COST COPY
CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

Sd/- 06/9/22
Assistant Registrar /lc
National Company Law Appellate Tribunal
(Principal Bench)
New Delhi

Sd/-
[Justice Anant Bijay Singh]
Member (Judicial)

Sd/-
[Ms. Shreesha Merla]
Member (Technical)

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

/9000

2nd & 3rd Floor,
Mahanagar Doorsanchar Sadan
(M.T.N.L Building), 9 CGO Complex,
Lodhi Road, New Delhi -110003.
Dated : 06.09.2022

To

1	The Registrar National Company Law Tribunal 6 th Floor, Block-3, CGO Complex, Lodhi Road, New Delhi-110003.	2.	The Registrar National Company Law Tribunal Ahmedabad Bench 1st and 2 nd Floor, Corporate Bhawan Beside Zydus Hospital, Off. S.G. Highway Thaltej Ahmedabad- 380059.
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Subject: In the matter of – Company Appeal (AT) (INS) No. 811 of 2020 [Shri Ramchandra D. Choudhary Versus Shree Umiya Traders & Ors.] – Company Appeal filed U/s 61 of the Insolvency and Bankruptcy Code, 2016.

Sir,

A copy of the order of the Appellate Tribunal dated 01.09.2022 on the above subject matter is forwarded herewith under Section 61 of the Insolvency and Bankruptcy Code, 2016. The Registrar, NCLT, New Delhi is requested to place the aforesaid order before the Hon'ble President, National Company Law Tribunal, New Delhi.

Yours faithfully

Sujata Kumari
(Sujata Kumari)
Assistant Registrar (I/c)

Encl. As above.

Copy to :

A-1	Shri Ramachandra D. Choudhary Resolution Professional of M/s. Oasis Tradelink Ltd. office address at: 9-B, Vardan Tower, Lakudi Circle, Navrangpura, Ahmedabad, Gujarat – 380014.	R-1	Shree Umiya Traders K – 3, Madhupura Market, Nr. Police Commissioner Office, Shahibaug, Ahmedabad – 380004.
R-2	Shri Snehal Patel Suspended Director of M/s. Oasis Tradelink Ltd. address at: “Sanskriti”, 14/A, Hindu Colony, Sardar Patel Stadium, Navrangpura, Ahmedabad, Gujarat – 380009.	R-3	Olga Vinchentpaul Menezes Suspended Director of M/s. Oasis Tradelink Ltd. Having address at: 12, Mamta Apartments, B/h Javahar Nagar Society, Sarkhej Road, Paldi, Ahmedabad – 380007.
R-4	Rajasekharan Krishnan Nair Suspended Director of M/s. Oasis Tradelink Ltd. address at: K – 204, Ghanshyam Complex, Nr. Chanlodiya Overbridge, Chanlodiya Daskroi, Ahmedabad, Gujarat – 382481.		



National Company Law Appellate Tribunal
Principal Bench, New Delhi

COMPANY APPEAL (AT) (INSOLVENCY) No. 810 of 2020

(Arising out of Order dated 26th June, 2020 passed by National Company Law Tribunal, Ahmedabad Bench, Court – I, in I.A. 319 of 2020 in C.P. (IB) No.- 433 of 2018).

IN THE MATTER OF:

Shri Ramachandra D. Choudhary
Resolution Professional of
M/s. Oasis Tradelink Ltd.

Having office address at:
9-B, Vardan Tower, Lakudi Circle, Navrangpura,
Ahmedabad,
Gujarat – 380014.

...Appellant

Versus

1. Bansal Trading Company
Shop No. 02, K Block – H,
Saroop Nagar, Delhi – 110042.

...Respondent No. 1

2. Shri Snehal Patel
Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:
“Sanskriti”, 14/A, Hindu Colony,
Sardar Patel Stadium,
Navrangpura, Ahmedabad,
Gujarat – 380009.

...Respondent No. 2

3. Olga Vinchentpaul Menezes
Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:
12, Mamta Apartments,
B/h Javahar Nagar Society,
Sarkhej Road, Paldi,
Ahmedabad – 380007.

...Respondent No. 3

4. Rajasekharan Krishnan Nair
Suspended Director of



M/s. Oasis Tradelink Ltd.

Having address at:
K - 204, Ghanshyam Complex,
Nr. Chanlodiya Overbridge,
Chanlodiya Daskroi,
Ahmedabad, Gujarat - 382481.

...Respondent No. 4

For Appellant: ~~Mr. Prithu Primal, Mr. Jaitegan Singh Khurana~~
and Ms. Manpreet Kaur, Advocates.
For Respondent: Mr. Pradhuman Gohil, Ms. Ranu Purohit,
Mr. Vishnu Kumar and Sahithya A. Krishna,
Advocates for R-2 & R-3.

WITH

COMPANY APPEAL (AT) (INSOLVENCY) No. 811 of 2020

(Arising out of Order dated 26th June, 2020 passed by National Company Law
Tribunal, Ahmedabad Bench, Court - I, in I.A. 318 of 2020 in C.P. (IB) No.- 433 of
2018).

IN THE MATTER OF:

Shri Ramachandra D. Choudhary

Resolution Professional of
M/s. Oasis Tradelink Ltd.

Having office address at:
9-B, Vardan Tower, Lakudi Circle, Navrangpura,
Ahmedabad,
Gujarat - 380014.

...Appellant

Versus

1. Shree Umiya Traders

K - 3, Madhupura Market,
Nr. Police Commissioner Office,
Shahibaug, Ahmedabad - 380004.

...Respondent No. 1

2. Shri Snehal Patel

Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:
"Sanskriti", 14/A, Hindu Colony,
Sardar Patel Stadium,
Navrangpura, Ahmedabad,
Gujarat - 380009.

Respondent No. 2



3. Olga Vinchentpaul Menezes

Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:

12, Mamta Apartments,
B/h Javahar Nagar Society,
Sarkhej Road, Paldi,
Ahmedabad – 380007.

...Respondent No. 3

4. Rajasekharan Krishnan Nair

Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:

K – 204, Ghanshyam Complex,
Nr. Chanlodiya Overbridge,
Chanlodiya Daskroi,
Ahmedabad, Gujarat – 382481.

...Respondent No. 4

For Appellant:

**Mr. Prithu Primal, Mr. Jaitegan Singh Khurana
and Ms. Manpreet Kaur, Advocates.**

For Respondent:

**Ms. Bhavana Duhoon, Advocate for R-1.
Mr. Pradhuman Gohil, Ms. Ranu Purohit,
Mr. Vishnu Kumar and Sahithya A. Krishna,
Advocates for R-2 & R-3.**

WITH

COMPANY APPEAL (AT) (INSOLVENCY) No. 812 of 2020

(Arising out of Order dated 26th June, 2020 passed by National Company Law
Tribunal, Ahmedabad Bench, Court – I, in I.A. 316 of 2020 in C.P. (IB) No.- 433 of
2018).

IN THE MATTER OF:

Shri Ramachandra D. Choudhary

Resolution Professional of
M/s. Oasis Tradelink Ltd.

Having office address at:

9-B, Vardan Tower, Lakudi Circle, Navrangpura,
Ahmedabad,
Gujarat – 380014.

...Appellant

Versus



1. Marshall Multiventures (I) Pvt. Ltd.

Having its registered office at:
Office No. A/406, 4th Floor,
Owners CHS Prem Soc. Ltd.
Saki Vihar Rd, Saki Naka Anheri East,
Mumbai City 400072.

...Respondent No. 1

2. Shri Snehal Patel

Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:
"Sanskriti", 14/A, Hindu Colony,
Sardar Patel Stadium,
Navrangpura, Ahmedabad,
Gujarat – 380009.

...Respondent No. 2

3. Olga Vinchentpaul Menezes

Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:
12, Mamta Apartments,
B/h Javahar Nagar Society,
Sarkhej Road, Paldi,
Ahmedabad – 380007.

...Respondent No. 3

4. Rajasekharan Krishnan Nair

Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:
K – 204, Ghanshyam Complex,
Nr. Chanlodiya Overbridge,
Chanlodiya Daskroi,
Ahmedabad, Gujarat – 382481.

...Respondent No. 4

For Appellant:

**Mr. Prithu Primal, Mr. Jaitegan Singh Khurana
and Ms. Manpreet Kaur, Advocates.**

For Respondent:

**Ms. Bhavana Duhoon, Advocates for R-1.
Mr. Pradhuman Gohil, Ms. Ranu Purohit,
Mr. Vishnu Kumar and Sahithya A. Krishna,
Advocates for R-2 & R-3.**



WITH

COMPANY APPEAL (AT) (INSOLVENCY) No. 815 of 2020

(Arising out of Order dated 26th June, 2020 passed by National Company Law Tribunal, Ahmedabad Bench, Court – I, in I.A. 317 of 2020 in C.P. (IB) No.- 433 of 2018).

IN THE MATTER OF:

Shri Ramachandra D. Choudhary
Resolution Professional of
M/s. Oasis Tradelink Ltd.

Having office address at:
9-B, Vardan Tower, Lakudi Circle, Navrangpura,
Ahmedabad,
Gujarat – 380014.

...Appellant

Versus

1. Shreenathji Enterprise

Having address at:
Plot No. 438/2, At Kunal,
Nr. Cera Factory, Kadi Kalol Road,
Kadi – 382715, Mahesana,
Gujarat.

...Respondent No. 1

2. Shri Snehal Patel
Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:
“Sanskriti”, 14/A, Hindu Colony,
Sardar Patel Stadium,
Navrangpura, Ahmedabad,
Gujarat – 380009.

...Respondent No. 2

3. Olga Vinchentpaul Menezes
Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:
12, Mamta Apartments,
B/h Javahar Nagar Society,
Sarkhej Road, Paldi,
Ahmedabad – 380007.

...Respondent No. 3



4. Rajasekharan Krishnan Nair
Suspended Director of
M/s. Oasis Tradelink Ltd.

Having address at:
K – 204, Ghanshyam Complex,
Nr. Chanlodiya Overbridge,
Chanlodiya Daskroi,
Ahmedabad, Gujarat – 382481.

...Respondent No. 4

For Appellant: Mr. Prithu Primal, Mr. Jaitegan Singh Khurana
and Ms. Manpreet Kaur, Advocates.
For Respondent: Ms. Bhavana Duhoon, Advocate for R-1.
Mr. Pradhuman Gohil, Ms. Ranu Purohit, Mr.
Vishnu Kumar and Sahithya A. Krishna,
Advocates for R-2 & R-3.

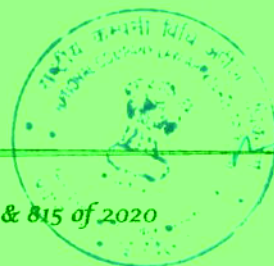
J U D G E M E N T

[Per; Shreesha Merla, Member (T)]

1. These Appeals have been preferred by the Liquidator of M/s. Oasis Tradelink Ltd./the 'Corporate Debtor, aggrieved by the Orders dated 26.06.2019 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Court - II, whereby I.A. Nos. 319, 318, 316 & 317 of 2020 in C.P. (B), No. 433 of 2018 were dismissed by the Adjudicating Authority on the ground that the Applications were not maintainable as they have been filed by the Liquidator for recovery of outstanding amounts from 'Sundry Debtors' under Section 60(5)(b) of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'The Code').

2. For the sake of convenience *Comp. App. (AT) (Ins.) No. 810 of 2020* being taken as a lead case and since all these Appeals deal with common facts and point of law, they are being disposed of by this common Order.

3. By the Impugned Order, the Adjudicating Authority, while dismissing the Applications observed as follows:



"We have gone through applications. This application has been filed by Liquidator for recovery of outstanding amount of Rs.4,25,90,475.00 from Respondent No. 1, namely, M/s Bansal Trading Company & Ors. It is noted that direction/order is sought from this Authority under Section 60(5)(b) of Insolvency and Bankruptcy Code, 2016. On our considered view, the said Application is not at all maintainable. The liquidator is required to recover their sum by way of filing application under Section 7 or 9 of Insolvency & Bankruptcy Code, 2016 or in alternative he can approach Civil Forum for the recovery of the same, which he is obliged to do as per provisions of the section 31(1)(k) of Insolvency and Bankruptcy Code, 2016.

We also held that there is no bar under Section (11) of Insolvency and Bankruptcy Code, 2016 to proceed under Section 7 or 9 as Insolvency & Bankruptcy Code, 2016 as per explanation II, thereto which has been incorporated w.e.f. 28.12.2019. Further, we also consider it pertinent to mention that term "claim" used in Section 60(5)(b) has been defined under Section 3(6) of Insolvency and Bankruptcy Code, 2016 and that has to be read for the purpose of Section 7/9 with other relevant Sections and Regulations made under Insolvency and Bankruptcy Code, 2016.

We are further of the view that if respondent is a day under CIRP under Insolvency and Bankruptcy Code, 2016 then claim by the liquidator has to be filed in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 read with relevant Regulation against such Corporate Debtor in prescribed form before IRP/RP/Liquidator in that case for consideration of its claim."

4. Learned Counsel for the Appellant submitted that CIRP commenced against the 'Corporate Debtor' vide Order dated 26.02.2019 and subsequently vide Order dated 04.12.2019, the 'Corporate Debtor' went into Liquidation and a Liquidator was appointed. The first Respondent/Sundry Debtor of the 'Corporate Debtor' owes the 'Corporate Debtor Company' a sum of Rs.4,25,90,475/- against goods supplied to them by the 'Corporate Debtor'.



It is submitted that the recovery of the said amount would immensely aid the Creditors of the 'Corporate Debtor' and realizing the maximum value during Liquidation. It is the responsibility of the Appellant herein to realize and recover dues on behalf of the 'Corporate Debtor' as laid down under Regulation 39 of the Insolvency and Bankruptcy Board of India (Regulation Process) Regulations, 2016.

5. It is further submitted that the Statutory Audit of the accounts of the 'Corporate Debtor' reflects that an amount of Rs.4,25,90,475/- is due and pending to the 'Corporate Debtor'. Learned Counsel placed reliance on Section 60(5)(b) in support of his case that the only remedy available to the Appellant was to approach the Adjudicating Authority by way of an Interim Application seeking a direction for recovery of the debt from the Sundry Debtors. Learned Counsel place reliance on the Judgements of this Tribunal in '*Devmata Exim Pvt. Ltd.*' Vs. '*Ms. Kavitha Surana, RP of Shri Veerganapathi Steels Pvt. Ltd.*', which Order was upheld by the Hon'ble Supreme Court in *Civil Appeal No. 8855 of 2019* dated 26.11.2019, whereby the Hon'ble Apex Court has dismissed the Civil Appeal confirming the Order of this Tribunal. The Learned Counsel for the Appellant concluded his arguments referring to Section 63 of the Code which reads as follows:

"63. No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil Court not to have jurisdiction."



6. It is submitted that a conjoint reading of Section 60(5)(b) with Section 63 of the Code reveals that the only remedy available to the Appellant was to approach the Adjudicating Authority for recovery of the said amounts.

7. The first Respondent/Sundry Debtor in this Appeal was set Ex-Parte, but however since it is a common Order and the Sundry Debtors have filed their Replies in the other Appeals their submissions are being taken into consideration. It is the case of the Sundry Debtors that the 'Corporate Debtor' had failed to supply the requisite goods despite entering into a transaction for supply of Crude Edible Oil and Palm Oil, thereby causing huge losses to the Sundry Debtor. Eventually these amounts were squared off and adjusted against the dues of the 'Corporate Debtor'. Whether any amounts are due or not by the Sundry Debtor would require Adjudication after calling for evidence and therefore can be proceeded only in a Civil Suit. Reliance was placed on the Judgements of the Hon'ble Supreme Court in '*Embassy Property Development Private Limited*' Vs. '*State of Karnataka*', (2020) 13 SCC 308 and also on '*Adhilax Innovations Private Limited*' Vs. '*Kirusa Software Private Limited*', (2018) 1 SCC 353.

8. Learned Counsel for the Respondents 2 & 3 submitted that the Adjudicating Authority has rightly dismissed the Application on merits as not maintainable and the Liquidator is required to recover the said amounts by way of filing an Application under Section 7 or 9 of the Code. Respondents 2 & 3 in their capacity of erstwhile Directors of the 'Corporate Debtor' have provided all the information available relating to the Sundry Debtors and have also given detailed reasons for the default of payment by them. Upon further



enquiry of the Appellant/Liquidator, Respondents 2 & 3 vide email dated 21.03.2020 have stated the reasons for delay in providing documents relating to the Sundry Debtors as several documents were ceased/impounded by the VAT Department during the raids and also because of the Liquidation Process.

9. It is further submitted that vide email dated 17.12.2019, the Ledger Account of the Sundry Debtor together with the copies of invoices of the goods copy of Form No. 402 and acknowledgement of goods sent outside Gujarat were also sent. It is agreed that there is no Debtor's Credit.

between the Appellant and the first Respondent and that the Appellant has initiated the present proceedings in the capacity of the Liquidator of the 'Corporate Debtor' against first Respondent for recovery of outstanding amounts.

Assessment:

10. The brief point which falls for consideration in these Appeals is whether the Adjudicating Authority has the powers to pass Orders under Section 60(5)(b) of the Code for recovery of amounts by the 'Corporate Debtor' against

to be conducted. At this juncture, it is relevant to reproduce Section 60(5) of the Code:

~~off.~ adjudicating~ authority~ of~ corporate persons.—~~

(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.”

11. Counsel for Respondents No. 2 & 3, the erstwhile Directors of the ‘Corporate Debtor’, stated in their email dated 21.03.2020 that there was some delay in providing information to the Liquidator regarding the Sundry Debtors as the documents were seized by the VAT Department during the raids, but they did submit the Ledger Accounts of the Sundry Debtor, copies of the invoices together with details regarding supply of goods. It is pertinent to mention that Respondents No. 2 & 3 in this Appeal have themselves admitted in their Written Submissions that the Sundry Debtor has held back payment to the ‘Corporate Debtor’ due to supply of inferior quality of goods and non-fulfillment of their Order.

12. In the case of ‘Devmata Exim Pvt. Ltd.’, (*Supra*) relied upon by the Appellant, this Tribunal found that the goods supplied by the ‘Corporate Debtor’ were accepted by the Sundry Debtor and were sold. There was a direction by this Tribunal to the Sundry Debtor to deposit the amount in a



separate Escrow Account, as the Debtor has received and accepted the goods and not returned the same to the 'Corporate Debtor'. However, in the instant case, the second and third, erstwhile Directors of the 'Corporate Debtor Company' themselves said that there were substantial reasons for the Sundry Debtors not to have paid their dues. As the factual matrix of the present case is different from the facts of *'Devmata Exim Pvt. Ltd.'*, (*Supra*) the ratio of the said Judgement is not applicable to the facts of the attendant case. Further, it is the case of the Sundry Debtor in the other Appeals that the amounts were squared off and settled. At this juncture, we find it relevant to reproduce paras 40 and 41 of the Judgement of the Hon'ble Supreme Court in *'Embassy Property Development Private Limited'*, (*Supra*) wherein the Hon'ble Apex Court has discussed the scope of Section 60(5) of the Code and observed that a Resolution Professional cannot short-circuit any Judicial Proceedings by taking advantage of Section 60(5). For ready reference, the paras are detailed as hereunder:

"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 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 "vale". 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."

13. A brief perusal of the Replies filed by the Sundry Debtors in these Appeals showed that there were disputes raised with respect to the dues payable. It is relevant to note that the question of whether the disputes were genuine or not or the merits or the details of the existing disputes or otherwise are not being addressed to in these Appeals.

14. The only point which is to be examined is whether the Adjudicating Authority was justified in dismissing the Applications preferred by the Liquidator as not maintainable. The Resolution Professional is required under Section 18 of the Code to take control and custody of the assets of the 'Corporate Debtor'. The amounts stated to be 'due and payable' to the 'Corporate Debtor' by other Sundry Debtors are required to be included in the Information Memorandum and when included, the person/entity purchasing



the assets of the 'Corporate Debtor' would have knowledge of the value of the assets/Liquidation Value as stated in the Information Memorandum. The Hon'ble Supreme Court in '**Gujarat Urja Vikas Nigam Limited**' Vs. '**Mr. Amit Gupta & Ors.**', Civil Appeal No. 9241 of 2019, in paras 67, 68 & 69 noted as follows:

"67. The institutional framework 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 debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful, 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 in **Innoventive** (supra) 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". The principle was reiterated in **Arcelor Mittal** (supra) where this court held that "the non-obstante Clause in Section 60(5) is designed for a different purpose: to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings". Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction 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 the 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.

68. It is appropriate to refer to the observations in the Report of the BLRC, wherein it noted the role of the NCLT, as the Adjudicating Authority for the CIRP, in the following terms:

“An adjudicating authority ensures adherence to the process. At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives powers to the insolvency professional to take appropriate action against the directors and management the entity, recommendations from the creditors committee. All material actions and events during the process are recorded at the adjudicating authority. The adjudicating authority can assess and penalize frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on. The adjudicating authority will adjudicate on fraud, particularly during the process resolving bankruptcy. Appeals/actions against the behavior of the insolvency professional are directed to the Regulator/Adjudicator.”

As such, it is important to remember that the NCLT's jurisdiction shall always be circumscribed by the supervisory role envisaged for it under the IBC, which sought to make the process driven by trained resolution professionals.”

15. Keeping in view the aforementioned ratio in **‘Gujarat Urja Vikas Nigam Limited’ (Supra)**, we hold that the remedy for recovery of debts, disputed or not, cannot be determined in summary proceedings and the Code does not contemplate adjudication of any such nature. Any such steps taken under Section 60(5) of the Code before the Adjudicating Authority, would tantamount to bypassing/short-circuiting the Judicial Proceedings. Keeping in view the submissions of the Respondents, to adjudicate whether the



amount is due and payable by the 'sundry debtors' who have raised disputes, would require calling for evidence and cannot be proceeded under the Code. The Appellant is well within its powers to take appropriate steps to file legal proceedings, if the circumstances so warrant. The Code expressly provides for the Liquidator to institute or defend any Suit, Prosecution or other Legal Proceedings, Civil or Criminal, in the name or on behalf of the 'Corporate Debtor'.

16. For all the aforementioned reasons, we are of the considered view that the ratio of the Hon'ble Apex Court in '*Embassy Property Development Private Limited*' (*Supra*) is applicable to the facts of these Appeals and therefore we are of the earnest view that there is no illegality or infirmity in the direction given by the Adjudicating Authority and hence these Appeals fail and are accordingly dismissed. No order as to costs.

Sd/-
[Justice Anant Bijay Singh]
Member (Judicial)

Sd/-
[Ms. Shreeta Mehta]
Member (Technical)



NEW DELHI
01st September, 2022
FREE OF COST COPY
Adjudicating Authority
National Company Law Tribunal
New Delhi