

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

**Company Appeal (AT) (Insolvency) No. 799 of 2024**

[Arising out of order dated 21.02.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench- I), in IAs No.2187/2020, No.320/2021, No.340/2021 and No.1534/2021 in the Company Petition bearing C.P.(IB) No.839(MB)/2017]

**IN THE MATTER OF:**

**Uttarakhand Power Corporation Ltd.**

Through its Executive Engineer  
Electricity Distribution Division,  
Rudrapur-I, Udham Singh Nagar,  
Uttarakhand-263153.  
Email: eerudrapur@rediffmail.com

**...Appellant**

**Versus**

**1. M/s Shirdi Industries Ltd.**

Now known as M/s Shirdi Industries Panel Ltd.) 'A'  
Wing, 2nd Floor, Mhatre Pen Building, Senapati  
Bapat Marg, Dadar (W), Mumbai – 400028

**ALSO AT:**

Plot No. I, Sector – 9, IIE, Sidcul, Pant Nagar, Distt.  
– U.S. Nagar, Uttarakhand  
Email:corporate@asisindia.com  
bknath@asisindia.com

**...Respondent No. 1**

**2. RAKESH KUMAR AGARWAL** (SUCCESSFUL  
RESOLUTION APPLICANT) 'A' Wing, 2nd Floor,  
Mhatre Pen Building, Senapati Bapat Marg, Dadar  
(W),  
Mumbai – 400028.  
Email: rakesh@asisindia.com

**...Respondent No. 2**

**Present:**

**For Appellant : Mr. Yakesh Anand, Ms. Sonam Anand, Mr. Akshay Thakur, Advocates.**

**For Respondents : Mr. Pranjit Bhattacharya, Ms. Raj Sarit Khare, Advocates.**

**WITH**  
**Company Appeal (AT) (Insolvency) No. 803 of 2024**

[Arising out of order dated 21.02.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench- I), in IAs No.2187/2020, No.320/2021, No.340/2021 and No.1534/2021 in the Company Petition bearing C.P.(IB) No.839(MB)/2017]

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Mumbai – 400028.

Email: rakesh@asisindia.com

**...Respondent No. 2**

**Present:**

**For Appellant : Mr. Yakesh Anand, Ms. Sonam Anand, Mr. Akshay Thakur, Advocates.**

**For Respondents : Mr. Pranjit Bhattacharya, Ms. Raj Sarit Khare, Advocates.**

**WITH**

**Company Appeal (AT) (Insolvency) No. 832 of 2024**

[Arising out of order dated 21.02.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench- I), in IAs No.2187/2020, No.320/2021, No.340/2021 and No.1534/2021 in the Company Petition bearing C.P.(IB) No.839(MB)/2017]

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Through Its Executive Engineer  
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**...Appellant**

**Versus**

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**ALSO AT:**

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(SUCCESSFUL RESOLUTION APPLICANT)

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Senapati Bapat Marg, Dadar (W),  
Mumbai – 400028.  
Email: rakesh@asisindia.com

**...Respondent No. 2**

**Present:**

**For Appellant : Mr. Yakesh Anand, Ms. Sonam Anand, Mr. Akshay Thakur, Advocates.**

**For Respondents : Mr. Pranjit Bhattacharya, Ms. Raj Sarit Khare, Advocates.**

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

**(Hybrid Mode)**

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

The present set of three appeals filed under Section 61 of Insolvency and Bankruptcy Code 2016 (**‘IBC’** in short) by the Appellant arises out of the Order dated 21.02.2024 (hereinafter referred to as **‘Impugned Order’**) passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-I) in C.P.(IB) No.839 of 2017. By the impugned order, the Adjudicating Authority has allowed the IA No. 2187 of 2020 filed by Respondent No. 1 and disposed of IA No. 320 of 2021, IA No. 340 of 2021 and IA No. 1534 of 2021 filed by the Appellant by holding them to be infructuous. Aggrieved by the impugned order, the present appeals have been preferred by the Appellant.

**2.** Coming to the factual matrix, the salient events/developments being common, the same are as outlined below:

- The Corporate Debtor-M/s Shirdi Industries Ltd. was admitted into Corporate Insolvency Resolution Process (**'CIRP'** in short) on 18.05.2017 following which moratorium under Section 14 of the IBC was declared against the Corporate Debtor.
- As on the insolvency commencement date i.e. 18.05.2017, an amount of Rs 1.76 cr. was due and payable by the Corporate Debtor to the Appellant-Uttarakhand Power Corporation Ltd. (**'UPCL'** in short) towards electricity bills for the months of April and May, 2017 which fell during the pre-CIRP period.
- The dues pertaining to April and May, 2017 amounting Rs 1.76 cr. was paid by the Respondent on 19.05.2017 and 19.06.2017 i.e. after the commencement of CIRP.
- The Resolution Plan of the SRA-Managing Director of the Corporate Debtor, was approved by the Committee of Creditors (**'CoC'** in short) on 25.10.2017 which was subsequently approved by the Adjudicating Authority on 12.12.2017.
- The Appellant-UPCL had not filed its claim before the Resolution Professional (**'RP'** in short) during the CIRP proceedings for any outstanding electricity dues which arose prior to the date of commencement of CIRP on 18.05.2017. The resolution plan, however, provided that the pre-CIRP dues of electricity of UPCL was to be paid in 8 instalments beginning from June 2022 to March 2024.

- The Corporate Debtor had filed an application bearing MA No. 428 of 2020 before the Adjudicating Authority seeking directions to all stakeholders to follow the resolution plan. An urgent application bearing No. 1766 of 2020 was also filed for early adjudication of MA No. 428 of 2020. On 26.10.2020, the Adjudicating Authority dismissed MA No. 428 of 2020 as withdrawn and IA No. 1766 of 2020 was dismissed as infructuous.
- On 31.10.2020, the Corporate Debtor issued a letter to the Appellant giving details of the CIRP proceedings of the Corporate Debtor also stating therein that the amount of Rs 1.89 cr. already paid to the Appellant towards pre-CIRP dues, which was otherwise required to be paid in 8 quarterly instalments, is required to be adjusted against current bills for September and October 2020.
- On 05.11.2020, the Appellant proceeded to disconnect the electricity supply of the Respondent for not having paid the bill of September 2020.
- On 24.11.2020, the Respondent filed IA No. 2187 of 2020 before the Adjudicating Authority claiming that in terms of the resolution plan, the payment of pre-CIRP electricity dues made by them was liable to be adjusted with the bills which arose during the CIRP period and that such adjustment would absolve them from making payments of current electric dues of the corresponding sum.
- The Adjudicating Authority while hearing IA No. 2187 of 2020 vide interim orders dated 03.12.2020 and 04.02.2021 directed the Appellant not to disconnect the electricity connection of the Corporate Debtor till the next date of hearing and also directed the Corporate Debtor to pay

future electricity dues by the due date. The two parties were also directed to furnish consolidated abstract of demand and payments made with effect from the date of approval of the resolution plan.

- The Appellant thereafter filed IA No. 340 of 2021 and IA No. 1534 of 2021 praying for recall of interim orders dated 03.12.2020 and 04.02.2021. IA No. 320 of 2021 was also filed seeking permission to file an additional affidavit in response to I.A. No. 2187 of 2020.
- On 21.02.2024, the Adjudicating Authority passed the final order by which the pre-CIRP dues were to be paid by the Corporate Debtor in accordance with the approved resolution plan and amount, if any, paid by the Corporate Debtor after insolvency commencement date be appropriated towards the dues which became payable on account of availing of services during CIRP period. Both parties were directed to reconcile their dues and the Corporate Debtor was directed to make payment within 30 days from the date of their order. This order also disposed of IA No. 340 of 2021 and IA No. 1534 of 2021 as infructuous.
- Aggrieved by the impugned order, the Appellant has preferred the present set of three appeals for setting aside the impugned order and seeking direction to the Respondents to make payment of the total outstanding electricity dues of Rs 7.29 Cr. as on 05.03.2024 and seeking permission to disconnect the electricity supply of the Corporate Debtor in view of their wilful default for non-payment of arrears.

**3.** We have heard Shri Yakesh Anand, Ld. Counsel for the Appellant and Mr. Pranjit Bhattacharya, Ld. Counsel representing Respondents. Since the pleading and facts in CA(AT)(Ins) No. 799 of 2024, CA(AT)(Ins) No. 803 of 2024 *Comp. App. (AT) (Ins.) Nos. 799, 803 & 832 of 2024*

and CA(AT)(Ins) No. 832 of 2024 are common and overlapping, it would suffice to confine to the pleadings and facts in CA(AT)(Ins) No. 799 of 2024 for deciding these appeals.

**4.** Making his submissions, the Ld. Counsel for the Appellant stated that the Appellant had charged Corporate Debtor for their electricity dues in the same manner as applicable to other consumers as the Corporate Debtor was not given any waiver from payment/exemption of such charges in the resolution plan. Submission has also been pressed that since the Corporate Debtor had voluntarily paid the entire pre-CIRP dues in May-June 2017, prior to the approval of the resolution plan, it was not entitled to claim adjustment of current electricity dues of CIRP period against such payment. The Appellant had already been allowed adjustment of amounts to which they were legally entitled to like the interest amount against security deposit of Rs 2.16 cr. deposited by the Respondent. It was further contended that the Respondents had no authority to unilaterally execute adjustments of accounts and basis such unauthorized adjustments make part-payments. In any case, even if pre-CIRP dues was factored in alongwith the cumulative part-payments made, the Respondents still remained in default in terms of the electricity bill dated 05.03.2024.

**5.** It was further stated that in terms of Regulations 31 & 32 of the CIRP Regulation, 2016, electricity dues constitute part of CIRP costs which are to be paid as and when bills are raised. As per electricity bill dated 05.03.2024, the total outstanding dues from the Respondents was Rs 7.29 cr. which included Late Payment Surcharges (**‘LPS’** in short). It has also been submitted



that the electricity charges levied are in consonance with the concerned electricity tariff regulation and it was denied that they had improperly charged LPS and TCS amounts in electricity bills. However, the Respondents have violated the orders passed by the Adjudicating Authority to pay the current power charges as on 05.03.2024. The Appellant therefore vociferously contended for permission to disconnect the electricity supply of the Corporate Debtor in view of the continuous and wilful default on their part and non-payment of arrears.

**6.** Rebutting the arguments raised by the Appellant, the Ld. Counsel for the Respondents pressed hard their contention that the Adjudicating Authority while approving the resolution plan vide its order dated 12.12.2017 had held that the Corporate Debtor was liable to pay pre-CIRP dues of the Appellant in 8 quarterly instalments from June 2022 to March 2024. Hence pre-CIRP dues was therefore payable to the Appellant only in terms of the approved Resolution Plan. Since the pre-CIRP dues of the Appellant had been paid in May-June 2017, which was otherwise payable between June 2022 to March 2024 as per the resolution plan, the Respondents were entitled to adjust this amount against the current/future electricity bills which arose during CIRP period.

**7.** It was also contended that in terms of Section 238 of IBC, the statutory provisions of IBC over-ride any commercial and contractual covenants which are in conflict with the IBC. Further, in view of Section 14(b) of the IBC, the payment of electricity dues in respect of any Corporate Debtor under insolvency process, either for pre-CIRP and CIRP period, would be subject to

the provisions of moratorium. Hence in view of the fact that CIRP proceedings had commenced in the case of the Corporate Debtor and moratorium had come into play, even if the amount of Rs 1.76 cr. had been paid voluntarily by the Corporate Debtor, the same amount could not have been appropriated or adjusted against the payment of pre-CIRP dues by the Appellant as that would violate the provisions of moratorium.

**8.** It is also contended that the Respondent had submitted before the Adjudicating Authority that they had already made a payment of Rs 47.75 cr. since 18.05.2017 against bills of Rs 46.66 cr. The Appellant had also recovered excess payment of Rs 1.41 cr. by forcing the Respondent to pay under the threat of power disconnection. Further, by disallowing the adjustment of pre-CIRP dues against the current dues, the Respondent has been improperly subjected to LPS amounting to Rs 55.85 lakhs which the Appellant could not have recovered from them and hence this amount was liable to be refunded or adjusted against future bills of the Appellant.

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

**10.** The moot issue which falls for our consideration is whether the Appellant was entitled to the payment of its pre-CIRP dues from the Respondent in a manner different from the manner of payment provided for in the resolution plan, as approved by the Adjudicating Authority, on 12.12.2017.

**11.** It is contended by the Appellant that the Adjudicating Authority had erred in directing the Appellant to appropriate all payments made after CIRP commencement only towards current CIRP costs. It is the case of the Appellant that payment of pre-CIRP electricity dues which had already been made voluntarily by the Corporate Debtor immediately after insolvency commencement could not have been adjusted against current CIRP dues by the Respondent on the specious ground that the resolution plan provided that pre-CIRP was to be recovered in 8 instalments beginning June 2022. It is also their contention that the Adjudicating Authority had also erred in observing that no LPS shall be due and payable up to the date of the approval of the resolution plan in respect of pre-CIRP dues and that LPS shall be levied to the extent that such dues are not paid in accordance with the resolution plan.

**12.** Coming to the findings of the Adjudicating Authority in this regard, the relevant excerpts are as extracted hereunder:

*“45. It is not in dispute that the dues pertaining to April and May 2017 (17 days) were paid by the Applicant on 19.05.2017 and 19.06.2017. This payment was made after the commencement of CIRP, i.e. 18.05.2017 by the Corporate Debtor. It is trite law that the outstanding dues of the Creditors as on commencement of Corporate Insolvency Date are to be settled in terms of the approved Resolution Plan. Accordingly, the payment of any dues pertaining to that period subsequent to the Insolvency Commencement date prior to approval of Resolution Plan is not permissible. We note that the Approved Resolution Plan contemplate payment of all operational debts due as on Insolvency Commencement date in the books of Corporate Debtor, irrespective of fact whether any claim was filed by such creditor. The approved Resolution Plan contemplate payment of operational creditors dues, as appearing in books of account of Corporate Debtor, in 8 instalments Accordingly, we are of considered view that the payments made after insolvency commencement date by the Corporate debtor cannot be appropriated towards the amount due as on such commencement date and the same has to be appropriated*

*towards the dues becoming payable during the CIRP period on account of availment of services during CIRP period only. Hence, the amount, if any, paid by the Corporate debtor after Insolvency commencement date shall only be adjusted against the CIRP dues and the Pre-CIRP dues shall be paid in accordance with the approved Resolution Plan. Accordingly, the Respondents are directed to appropriate the payments made after CIRP commencement towards CIRP dues. The late payment surcharge levied by the Respondents in relation to outstanding payments arising during CIRP period shall be adjusted accordingly. No late payment surcharge shall be due and payable upto the date of approval of Resolution Plan in respect of Pre-CIRP dues, if levied any, and late payment surcharge shall be computed in relation to Pre-CIRP dues to the extent such dues are not paid accordance with approved Resolution Plan.*

*46. In the light of the above, the Applicant is directed to pay the pre-CIRP dues to the Respondent, UPCL, in accordance with the manner laid down in the approved Resolution Plan. Since the amount was to be paid in 8 quarterly instalments commencing from June 2022 and ending till March 2024, the late payment surcharge, if any, shall be levied in accordance with the payment structure and timeline as envisaged under the approved Resolution Plan. The Applicant and Respondent are directed to reconcile the dues in accordance with this Order and the Applicant is directed to make the payment within 30 days from the communication of this Order.”*

*(Emphasis supplied)*

**13.** Coming to our analysis and findings, in the present facts of the case, we notice that the insolvency commencement date was 18.05.2017. On completion of the CIRP proceedings, the resolution plan of the Corporate Debtor was approved by the Adjudicating Authority on 12.12.2017. It is also an undisputed fact that the resolution plan provided for payment of pre-CIRP dues of the Appellant and also prescribed the manner and modalities of how the payment of these pre-CIRP dues were to be provisioned. In terms of the resolution plan, the pre-CIRP dues were to be made good in 8 quarterly instalments commencing from June 2022 to March 2024. It is pertinent to

note that though the Appellant had admittedly not filed their claims during CIRP, the payment of pre-CIRP dues of the Appellant had been provided for in the resolution plan. As the law stands today, no exception can be taken to such a plan as long as it provided for payment to the Appellant in accordance with Section 30(2)(b) of the IBC. In any case, the present is not a case where the Appellant is contending that payment of their dues is not as per provisions of Section 30(2)(b) of the IBC. It is neither a case where the Appellant is claiming entitlement to receive any higher amount in respect of pre-CIRP dues. Furthermore, the resolution plan not having been challenged, the terms of the resolution plan had attained finality and become binding on all stakeholders including the Appellant.

**14.** This brings us to the conduct of the Respondent with respect to handling of the pre-CIRP dues of the Appellant vis a vis the terms set out in the resolution plan. We do not find the Appellant to have raised any dispute that the Respondent by their conduct had displayed any signs of disapproving or breaching or side-stepping or disturbing the schedule of payment as delineated in the plan in respect of meeting the pre-CIRP dues of the Appellant. There is nothing which has been placed by the Appellant on record, basis which, the intent of the Respondent to pay pre-CIRP dues in accordance with the resolution plan can be doubted. Given this backdrop, when the Respondent has chosen to adhere to the terms of resolution plan in respect of clearing pre-CIRP dues by way of 8 quarterly instalments, the Respondent cannot be held to have acted in contravention of the resolution plan or acted in a manner which was detrimental or prejudicial to the interests of the Appellant. On the one hand, when the Appellant had not staked any claim in *Comp. App. (AT) (Ins.) Nos. 799, 803 & 832 of 2024*

respect of pre-CIRP dues and yet the resolution plan has taken care of their entire pre-CIRP dues, and the Respondent has chosen to abide by the said terms of the plan, there is no cogent ground for the Appellant to object to the endeavours of the Respondents of satisfying the pre-CIRP dues of the Appellant in 8 quarterly instalments commencing from June 2022 until March 2024 in accordance with the resolution plan. Merely because the Corporate Debtor had paid the pre-CIRP dues of Rs 1.76 Cr. in May-June 2017, the Appellant cannot insist that this payment has to be accounted only towards payment of pre-CIRP dues and that this amount cannot be subjected to adjustment against current CIRP electricity dues. The schedule and calendar of payment of pre-CIRP dues of the Appellant as given in the resolution plan is sacrosanct and cannot be allowed to be superseded simply because payment thereto had been voluntarily done earlier by the Corporate Debtor. If the payment of pre-CIRP dues is insisted upon being made in any manner which is not specified and factored in the resolution plan, that would amount to be an infraction of the resolution plan and cannot be countenanced.

**15.** Now coming to the statutory framework of IBC, upon admission of an application for commencement of CIRP, any action towards transferring, encumbering, alienating or disposing off of any assets of the Corporate Debtor or any legal right or beneficial interest therein is prohibited. It may be useful to note the relevant provisions of Section 14 of the IBC relating to the provisions of moratorium which come into force on the commencement of insolvency which reads as under:

**“14. Moratorium-** (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).....

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) .....

(d) ....

*Explanation.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;*

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2-A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified;

(3).....

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:”

**16.** From a reading of the above provision, it becomes clear that a Corporate Debtor is prohibited from alienating in any manner any of its assets upon declaration of moratorium as the assets of the Corporate Debtor cannot be

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allowed to be diluted and disintegrated during the CIRP process. That being the case, once moratorium had been declared, it was not open to the Corporate Debtor to appropriate any amount from its account not even to clear pre-CIRP dues as it did not fall within the definition of the “insolvency resolution process costs” as defined under Section 5(13) of the IBC. Therefore, in the present facts of the case even if the electricity dues of the pre-CIRP period had been paid voluntarily by the Corporate Debtor, since the amount was paid after the commencement of the CIRP, Section 14 which provides for moratorium would have come into play and no pre-CIRP payments could have been made out of the assets of the Corporate Debtor during CIRP. Pre-CIRP dues was therefore required to be dealt in the manner provided in the resolution plan i.e. to be recovered in 8 instalments beginning from June 2022 to March 2024. Hence, treatment of the pre-CIRP dues as an asset of the Corporate Debtor, having been paid by the Respondent during May-June 2017 by which time insolvency proceedings had already commenced, and appropriation of the same by adjustment against current CIRP dues was a reasonable course of action. If the sum which had been paid voluntarily not been reappropriated towards assets of the Corporate Debtor, it would have amounted to preferential treatment to the Appellant and attracted Section 43 of the IBC vitiating the resolution process.

**17.** When we look at the impugned order, we find that the Adjudicating Authority has rightly observed that any payment made by the Corporate Debtor to the Appellant after the insolvency commencement date cannot be appropriated towards electricity charges which have arisen prior to or became



due as on the insolvency commencement date and that such payment, if already made, must be appropriated only towards the dues which become payable during CIRP period on account of availing of services during CIRP period only. Hence, any amount, if paid, by the Corporate Debtor after insolvency commencement date shall only be adjusted against CIRP dues while pre-CIRP dues shall be paid in accordance with the approved resolution plan. By the same logic, the Adjudicating Authority has also rightly held that LPS shall be levied in accordance with the payment structure and timeline as envisaged under the approved Resolution Plan and shall be computed in relation to pre-CIRP dues to the extent such dues are not paid in accordance with approved Resolution Plan and adjustments are to be made accordingly.

**18.** Thus to answer the central question posed before us as outlined at para 10 above, we are of the considered view that the Appellant was entitled to the payment of its pre-CIRP dues from the Respondent only in the manner as provided in the resolution plan of 12.12.2017 and hence payment of the pre-CIRP dues from the assets of the Corporate Debtor after insolvency commencement has been correctly appropriated by the Respondents towards current CIRP dues. The view taken by the Adjudicating Authority is therefore reasonable and sound and does not call for any interference.

**19.** Having answered the moot question as above, we also affirm the directions of the Adjudicating Authority for the Appellant and Respondent to reconcile their dues. We are of the considered view that for the Respondent to enjoy the benefit of electricity feed from the Appellant, it must pay the legitimate electricity dues of the Appellant. No exception can be taken to the

directions of the Adjudicating Authority to the Respondent to make the payment of outstanding dues to the Appellant after due reconciliation. The issue of account reconciliation and consequential determination of quantum of electricity dues payable till date shall be completed within a period of two weeks from the date of this order. Dues, if any, will be paid by the Respondent within 30 days from the date of determination of dues. In the event of non-payment of the dues by the Respondent, Appellant shall have the liberty to take recourse to avail such legal remedies as may be available to them in accordance with applicable law and rules.

**20.** We do not find any merit in the Appeals. The Appeals fail and are dismissed. All I.As also stand closed and disposed of on the above terms. No order as to costs.

**[Justice Ashok Bhushan]  
Chairperson**

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

**Place: New Delhi**

**Date: 19.09.2024**

Harleen/Abdul