

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

**Company Appeal (AT) (Insolvency) No. 1572 of 2024**

[Arising out of Order dated 02.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court V, New Delhi in IA No. 2545 of 2021 in CP (IB) No.706(PB) 2018]

**IN THE MATTER OF:**

**Era Labourer Union of Sidcul, Pant Nagar, through its secretary  
Vs. ....Appellant**

**Apex Buildsys Ltd. ...Respondent**

<b>For Appellant:</b>	<b>Ms. Bhargavi Kannan, Mr. Ishaan Karki, Ms. Shivani K., Advocates</b>
<b>For Respondent:</b>	<b>Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Ridhima Mehrotra, Ms. Palak Kalra, Advocates.</b>

**J U D G M E N T  
(20<sup>th</sup> September, 2024)**

**Ashok Bhushan, J.**

This Appeal by Era Labourer Union of SIDCUL, Pant Nagar has been filed challenging the order dated 02.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court-V, New Delhi disposing of IA No.2545 of 2021 filed by the Appellant. Appellant aggrieved by this order has come up in this Appeal.

**2.** Brief background facts and sequence of events necessary to be noticed for deciding the Appeal are:-

2.1. Corporate Debtor- M/s. Apex Buildsys Limited had a factory in Pant Nagar in the State of Uttarakhand. Production of factory at Pant Nagar was closed from February 2017. The Corporate Debtor issued a transfer letter dated 20.06.2017 to the workmen, members of Appellant transferring their services to Nagpur Plant w.e.f. 01.07.2017. The Corporate Debtor declared a lockout on 31.07.2017 under the Uttar Pradesh Industrial Disputes Act, 1947 at the Pant Nagar unit of the Corporate Debtor. Notice dated 31.07.2017 was also sent to the Secretary, State of Uttarakhand, Labour Department, Dehradun informing about the permanent closure of the establishment under Section 2(ee) and Section 6V of the Uttar Pradesh Industrial Disputes Act, 1947. The Appellant aggrieved by lockout and closure filed a W.P. (M/S) No. 2020 of 2017 in the High Court of Uttarakhand at Nainital which Writ Petition was disposed of on 05.10.2017 by the High Court observing that let a decision be taken by Secretary, Labour Department. The said direction was issued in wake of the claim of the Appellant that there are more than 300 workers in the preceding 12 months of the closure, hence, no closure could have been down by the Corporate Debtor without obtaining approval of the State Government. Secretary, Labour Department in pursuance of the direction dated 05.10.2017 issued a letter dated 02.02.2018 taking the view that it has not been proved that 300 workers have been working during the last 12 months. On an application filed by M/s. ICICI Bank Limited against the Corporate Debtor under Section 7, CIRP against the Corporate Debtor commenced vide order dated 20.08.2018 passed by the Adjudicating Authority. The Appellant has filed a Writ Petition being W.P. No.462 of 2018 challenging the order

dated 02.02.2018 issued by the Secretary, Labour Department. Another Writ Petition had been filed by the Appellant being Writ Petition No.2020 of 2017 challenging the action of lockout/closure of the company as per notice dated 31.07.2017. Both the Writ Petitions were disposed of by the Hon'ble High Court vide its judgment and order dated 27.04.2019. High Court took the view that Section 7 proceedings being pending before the NCLT where Appellant are participating, hence, Appellant to raise all its contentions including the settlement of its charge in relation to salary and wages before the NCLT. Appellant on 06.05.2019 filed a claim in Form E for an amount of Rs.2,89,79,287/- regarding its dues till the Insolvency Commencement Date including the period of lock-out. Appellant also filed an IA before the Adjudicating Authority in which one of the prayers was to declare the lock-out notice as illegal. The Adjudicating Authority on 08.08.2019 disposed of the application observing that the matter shall be placed before CoC for the consideration. CoC in its meeting dated 02.09.2019 took the view that illegality of the lockout be considered by Resolution Applicant to whom the matter was left out and upon receipt of the consideration of the Resolution Plan, CoC thereafter was to take appropriate call. On 22.10.2019, CoC decided to liquidate the Corporate Debtor. The Appellant filed a claim of Rs.11,42,92,579/- out of which liquidator admitted an amount of Rs.1,09,70,698/-. The order dated 09.01.2020 directing for liquidation was also unsuccessfully challenged before this Tribunal where the Appeal was dismissed by this Tribunal on 12.01.2021. On 03.06.2021, in e-auction, the Corporate Debtor was sold as a going concern to an entity called 'Potens Transmission and Power Pvt. Ltd.' which sale was however, cancelled by the

NCLT. Appellant on 04.06.2021 has filed IA No. 2545 of 2021 praying for setting aside of the purported closure dated 31.07.2017 and consequent admission of claim for wages and bonus. In auction held on 23.05.2022, M/s. Jasamrit Designers Pvt. Ltd. was held as successful bidder and has procured the corporate debtor as a going concern. The application IA No.2545 of 2021 was heard by the Adjudicating Authority and by impugned order dated 02.04.2024 dismissed the IA which order is under challenge in this Appeal.

**3.** We have heard Ms. Bhargavi Kannan, Learned Counsel for the Appellant and Shri Abhishek Anand, Learned Counsel for the Liquidator.

**4.** Counsel for the Appellant challenging the order submits that the Appellant has promptly challenged the closure of factory dated 31.07.2017 before the High Court of Uttarakhand and High Court of Uttarakhand has disposed of the Writ Petition observing that the Appellant to approach the NCLT and raised all its contentions. The Hon'ble Supreme Court in its order dated 13.11.2019 has also observed that the petitioner can raise all contentions before the NCLT or in Appellate proceedings. It is submitted that the NCLT thus was obliged to consider the validity of closure notice dated 31.07.2017. It is submitted that the Adjudicating Authority under Section 60(5) has ample jurisdiction to decide any question of fact or law. It is submitted that the reason given by the liquidator that claim cannot be verified due to closure of factory after 31.07.2017 is not correct. In e-mail dated 23.03.2020 sent by the liquidator, it was recorded that the claims post the purported closure were being admitted on contingent basis subject to a

decision by a Competent Authority on the validity of the purported closure dated 31.07.2017. Liquidator cannot subsequently provide for any new reason. The reason cited by the liquidator that due to lack of operation in Pant Nagar Plant claim cannot be verified has wrongly been accepted by the Adjudicating Authority. The Liquidator had jurisdiction and obligation to verify the claim submitted by the Appellant. The liquidator having given specific reason for rejection of the claim for the period post 31.07.2017, no new reason could be ascribed for such rejection in the impugned order. Appellant was bound by the direction of the Hon'ble Supreme Court to raise all issues before the Adjudicating Authority. On the earlier occasion when Appellant has filed CA 1497 of 2019 challenging the closure, the Adjudicating Authority assumed jurisdiction and disposed of CA vide order dated 08.08.2019 directing that issue of closure should be placed before the CoC for consideration. Hence, while considering same prayer in IA No.2545 of 2021, Adjudicating Authority cannot take the plea that it has no jurisdiction to pronounce on the closure. Appellant has availed all remedy available to the Appellant questioning the closure before the High Court and the Hon'ble Supreme Court. It is clearly entitled to raise all issues before the Adjudicating Authority. The view taken by the Adjudicating Authority that it has no jurisdiction to adjudicate upon the closure dated 31.07.2017 is incorrect. Section 60(5)(c) should be purposely constitute to enable the Adjudicating Authority to protect the interest of Appellant/ workmen. Purported closure dated 31.07.2017 is non-est and contrary to the law. Counsel in alternate submitted that in event the impugned order is not set aside, liberty may be given to the Appellant to approach the labour forum

with regard to dispute raised in the present proceedings. Counsel for the Appellant in support of her submissions has relied on various precedents which we shall notice hereinafter.

**5.** Counsel for the liquidator refuting the submissions of the Counsel for the Appellant submits that the closure/lockout dated 31.07.2017 happened much before the commencement of the CIRP dated 20.09.2018. The closure/lockout which is unrelated to the insolvency process cannot be adjudicated by the Adjudicating Authority. The Appellant having filed its claim before the liquidator, the same was admitted partly by the liquidator. Claim of an amount of Rs.1,09,70,698.27/- has been admitted. The Adjudicating Authority has rightly held that it shall no jurisdiction to deal with the application filed by the Appellant questioning the closure/lockout dated 31.07.2017. It is submitted that the dispute with respect to closure of the Pant Nagar Plant of the Corporate Debtor could only be raised before appropriate Court/Tribunal in terms of the Uttar Pradesh Industrial Disputes Act, 1947 and not under the purview of the IBC. Counsel for the Respondent has also placed reliance on various precedents which shall be noticed while considering the submissions in detail.

**6.** Before we enter into the rival submissions of the parties, it is necessary to notice the prayers made in the IA No.2545 of 2021. In the IA, Appellant prayed for declaring the purported closure notice dated 31.07.2017 as illegal and non-est. It was further prayed that the purported transfer notice dated 20.06.2017 be declared as illegal and non-est. There

were certain other prayers in the application regarding admission/rejection of the claim of the Appellant.

**7.** Adjudicating Authority in its order after considering various judgments cited by both the parties recorded its conclusion in paragraph 18 that closure notice dated 31.07.2017 issued by the corporate debtor under the Uttar Pradesh Industrial Disputes Act, 1947 much prior to the initiation of the CIRP is not a subject matter which the Adjudicating Authority has jurisdiction to adjudicate upon. In paragraph 18 of the judgment, following has been held:-

*“18. Therefore, with respect to the contention of the Applicant with regards to the claims of the workmen, has been adjudicated upon, as discussed in Para 10. Further, the dispute with respect to the legality of the Closure Notice dated 31.07.2017 issued by the Corporate Debtor under Section 2 (ee) and 6 (V) of the Uttar Pradesh Industrial Disputes Act, 1947, much prior to the initiation of Corporate Insolvency Resolution Process, is not a subject matter which this Adjudicating Authority has jurisdiction to adjudicate upon. Therefore, the contention of the Applicant with this regard does not hold ground. Also, this Adjudicating Authority have not made any observation regarding legality of closure notice and transfer order.”*

**8.** Before we proceed further, we need to notice the genesis of the dispute raised by the Appellant. Appellant itself has brought on record the transfer letter dated 20.06.2017 issued by the corporate debtor transferring the

workmen to Nagpur factory and to report by 01.07.2017. The transfer letter is filed as Annexure A-3. Translated copy of which is as follows:-

*"Dated: 20.06.2017*

*Name: Jagdish Singh  
S/o Shri Chanchal Singh  
Post: Electrician  
Employee No.E-242  
Appointment date: 01.07.2011  
Address: Village post Dhapola Sera  
District Vageshwar*

*Subject: Transfer Letter*

*Sir,*

*As you know that there is no order for production in our Pantnagar factory and from the end of the January month there is no power supply because of which the production of our factory is closed from February 2017 the company and the factory are continuously going in loss. Hence continuing your service the company is transferring you from pant nagar factory to Nagpur factory, which is under Para No.12 of the employment letter issued to you by the company.*

*Hence you are directed that you report in the Nagpur factory by 10 AM morning on 01.07.2017, if you fail to report in the Nagpur factory by 01.07.2017 then it will be deemed that you yourself is not interested in working with the company.*

*Your sincerely*

*SD/-*

*(Ravi Saxena)*

*(Assistant Manager- Human Resource)*

*Address of the Nagpur factory:  
Shri Bhushan Chauhan (Senior Manager- Human resource)*



*Apex Buildsys Limited  
D-3 MIDC Industrial Area,  
Mohapa Road, Umred, District Nagpur  
Maharashtra-441203  
Mobile No.942205608”*

9. From the facts brought on the record, it is clear that none of the workmen had reported at Nagpur factory where they were transferred. Notice was given for permanent closure on 31.07.2017 by the corporate debtor which notice has been brought on record as Annexure A-5. Annexure A-5 is as follows:-

**“ANNEXURE A-5**

**APEX BUILDSYS**  
*Turnkey Solution*

**Form no. XXIV**

*Dated: 31-07-2017*

To  
The Sachive  
State of Uttarakhand Labour  
**Department Dehradun**

**Sub: Permanent Closer-establishment**

*Dear Sir,*

*1. U/s 2 (ee) and 6-V of the UP industrial disputes act 1947 we herby inform you that we purpose to close down the undertaking specified below. M/s Apex Buildsys Ltd. Plot no. 11 Sector no.09 11E Sidecul Pantnagar with office from*

*08.01.2017 for the reason explained in the annexure a copy of this notice has been served upon the representatives of Ern Shramik Sanghthan on dated 31.07.2017 by the human resource Manager as well as displayed on the notice board.*

*2. The number of workers whose services will be terminated on account of the permanent closer of the undertaking is nil because of the workers have already been transferred to our another unit situated at Nagpur MAHARASTRA*

*3. Permission for closure is not required because the average strength of the workers preceding twelve calendars months is 106 only.*

*Your faithfully*

*Sd/-*

*Asstt Manager  
Apex Buildsys Ltd., Plot no.11  
Sector 9, IIE SIDCUL  
Pantnagar  
Uttarakhand*

### **VERIFICATION**

*Verified that the information furnished herewith is correct to my knowledge and belief.*

*Manager HR”*

**10.** The notice for closure of the Pant Nagar Unit was challenged by Appellant before High Court of Uttarakhand being W.P. No.2020 of 2017 in which an order was passed by the High Court on 05.10.2017 that decision be taken by Secretary, Labour Department. In pursuance of the direction

dated 05.10.2017, Secretary Labour Department issued an order on 02.02.2018 taking the view that number of workers in the Pant Nagar factory are not an average 300 workers on each working days during the last 12 months. The consequence of the said decision of the Secretary was that no prior approval was required from the State Government for permanent closure of the factory. The order dated 02.02.2018 came to be challenged before the High Court in subsequent W.P. No.462 of 2018. W.P. No.462 of 2018 was disposed of by the High Court noticing that proceedings under Section 7 of the IBC are pending before the NCLT where Appellant may raise all their contentions including the settlements of their charge in relation to the salary and wages before the NCLT. In paragraphs 9, 10 and 11, High Court in its judgment dated 27.04.2019 issued following directions:-

*“9. After having heard the learned counsel for the parties, the fact pertaining of the inception of the proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 and its pendency before the National Company Law Tribunal is not disputed by the parties to the writ petition. In such an eventuality, when the question of liquidation and the settlement of liabilities due to be paid by the respondent company under any head of liability, they are to be settled as a consequence of the proceedings, which are pending before the National Company Law Tribunal, thus District magistrate opined that it would be inappropriate for the writ Courts to pass any order so far an action, which has been put to challenge by the petitioner in the present writ petition, as a consequence of the Notice issued on 31.07.2017 expressing thereof their*

*management's and those intention of the closure of the Company and the transfer of the services of the employees/workmen to other places.*

*10. The proceedings under Section 7 of the Act before the National Company Law Tribunal has got a precedence over the proceedings likely to be held or going on before any other Forum and that is why the National Company Law Tribunal has already passed an interim order that none of the decree passed by any Court of law would be made effective during the pendency of the proceedings before the National Company Law Tribunal.*

*11. In these circumstances, these two writ petitions are closed with a direction that the petitioners, who are already participating in proceedings under Section 7 of the Act before the National Company Law Tribunal, may raise all their contentions including the settlements of their charge in relation to the salary and wages before the National Company Law Tribunal, before whom the proceeding is pending consideration.”*

**11.** Subsequent to the High Court order dated 27.04.2019, an IA was filed by the Appellant being CA No.1497 of 2019 praying that the closure notice be set aside. Adjudicating Authority in the said application issued an order on 08.08.2019 for placing the matter before the CoC for consideration. The order dated 08.08.2019 passed by the Adjudicating Authority is as follows:-

*“CA-1497(PB)/2019:-*

*Mr. Anand, learned counsel for the RP states that the claim made by the applicant-workers have been*

*admitted. However, with regard to the other prayer for declaring the Lockout notice dated 31.07.2017 as illegal, the matter shall be placed before CoC for their consideration as the order of Lockout has been passed by the Deputy Labour Commissioner. According to the counsel for the RP if the CoC decides and permit the RP to take further steps for filing appeal or availing any other remedy then he will act accordingly. It is also appropriate to mention that CoC is meeting tomorrow i.e. 09.08.2019 and the matter shall be placed before the CoC in tomorrow's meeting.*

*The application stands disposed of.”*

**12.** After the order dated 08.08.2019, matter was placed before the CoC in the meeting held on 02.09.2019 in which meeting the issue was left for the Resolution Applicant to take a call and thereafter the CoC to look into. However, no Resolution Plan having been approved, the liquidation was subsequently directed on 09.01.2020. There was no determination with regard to notice dated 31.07.2017. At this stage, we may notice one submission of the Appellant that the Adjudicating Authority earlier in its order dated 08.08.2019 has assumed jurisdiction to decide correctness of notice dated 31.07.2017, it cannot subsequently take the view that it has no jurisdiction to adjudicate on notice dated 31.07.2017. The order dated 08.08.2019 has already been extracted above from which it is clear that the Adjudicating Authority has not taken any decision and has not expressed any view that the Adjudicating Authority has jurisdiction to adjudicate the notice dated 31.07.2017. What is recorded in the order is the statement made by the Resolution Professional. Hence, the order dated 08.08.2019

cannot be read to be determination by the Adjudicating Authority of its jurisdiction to pronounce on the closure notice.

**13.** Counsel for the Appellant has also placed reliance on the judgment of the High Court of Uttarakhand and the Hon'ble Supreme Court which we shall notice hereinafter to support her submissions that in view of the above orders, it was obligatory for the Adjudicating Authority to consider the challenge raised by the Appellant to the closure notice dated 31.07.2017. We have already extracted the relevant paragraphs of the order dated 27.04.2019 of the High Court of Uttarakhand where High Court noticing the initiation of the CIRP by admitting Section 7 application and noticing the fact that moratorium has been declared under Section 14 of the IBC took the view that Writ Petitions need to be closed with direction that petitioner who are already participating in Section 7 proceedings raises all their contentions including the settlement of the charges in relation to salary and wages before the NCLT. What was intended by the High Court was direction for consideration of the claim of Appellant in Section 7 proceedings. It is well settled that after initiation of the CIRP all claims against the corporate debtor has to be filed and examined in the CIRP/ Liquidation Process. It has also come on the record that after liquidation proceedings, the claims were also filed by the Appellant before the liquidator and the liquidator has admitted their claims to the extent of Rs.1,09,70,698.27/-. The direction of the High Court dated 27.04.2019 cannot be read to mean that High Court adjudicated the issue as to whether NCLT can examine the challenge to the closure notice dated 31.07.2017. The order of the High Court, thus, has to be read to

mean that Appellants were given liberty to raise their claims in the proceedings before the NCLT and raise all contentions. The mere fact that liberty was granted by the High Court to file claim and raised all contentions cannot be read to mean that High Court has adjudicated and directed that the closure notice dated 31.07.2017 be also adjudicated by the NCLT.

**14.** Now coming to the judgment of the Hon'ble Supreme Court dated 13.11.2019 passed in WP No.1270 of 2019 where Appellant has sought quashing of the purported closure dated 31.07.2017. The Hon'ble Supreme Court did not issue notice and dismissed the Writ Petition by order dated 13.11.2019. The order dated 13.11.2019 of the Hon'ble Supreme Court is to the following effect:-

*“As insolvency proceedings against the third respondent pending before the National Company Law Tribunal, the are petitioner can raise all contentions and issues before the Tribunal or in appellate proceedings. Accordingly, we are not inclined to issue notice in the writ petition, but we leave it open to the petitioner to raise the grievance, if any, in accordance with law, after the decision of the appellate tribunal.*

*Recording the aforesaid observations, the writ petition is dismissed.*

*We clarify having not expressed any opinion on merits.”*

**15.** The above order indicate that the Hon'ble Supreme Court did not issue any notice in the Writ Petition but left it open to the petitioner to raise all contentions and issues before the NCLT or an Appellate proceedings. From liberty to raise all contentions and issues are not akin to any direction or

adjudication that issue pertaining to challenge to the closure notice has to be undertaken by the NCLT. The above order of the Hon'ble Supreme Court does not in any manner support the submission of the Appellant that NCLT has to adjudicate on the closure notice dated 31.07.2017. We, thus, are of the view that neither of the judgment of the High Court of Uttarakhand or the Judgment of the Hon'ble Supreme Court can be read to mean that after an adjudication, the High Court or the Supreme Court has held that question of closure of notice dated 31.07.2017 has to be examined and adjudicated by the NCLT.

**16.** The Hon'ble Supreme Court had occasion to examine the jurisdiction of the NCLAT under Section 60(5) (c) of the IBC in **“Gujarat Urja Vikas Nigam Limited vs. Mr. Amkit Gupta & Ors.- Civil Appeal No.9241 of 2019”**. In paragraph 87 of the judgment, the Hon'ble Supreme Court laid down following:-

*“87. 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. If the jurisdiction of the NCLT were to be confined to actions prohibited by Section 14 of the IBC, there would have been no requirement for the legislature to enact Section 60(5) (c) of the IBC. Section 60(5)(c) would be rendered otiose if Section 14 is held to be the exhaustive of the grounds of judicial intervention contemplated under the IBC in matters of preserving the value of the corporate debtor and its status as a 'going concern' We hasten to add that our finding on the validity of the exercise of*



*residuary power by the NCLT is premised on the facts of this case. We are not laying down a general principle on the contours of the exercise of residuary power by the NCLT. However, it is pertinent to mention that the NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters would fall outside the realm of IBC. Any other interpretation of Section 60(5)(c) would be in contradiction of the holding of this Court in Satish Kumar Gupta (supra)."*

**17.** The judgment of the Hon'ble Supreme Court in ***“Embassy Property Developments Pvt. Ltd. vs. State of Karnataka- Civil Appeal No. 9170 of 2019”*** also throws considerable light on the jurisdiction which can be exercised by the NCLAT under Section 60(5). In the aforesaid case, with regard to mining lease which was granted to the corporate debtor notice of premature termination was issued by Government of Karnataka. Government of Karnataka subsequently rejected the proposal for extension of the lease. The Resolution Professional filed an application before the NCLT, Chennai Bench praying for setting aside the order of the Government and seeking declaration that lease should be deemed to be valid after 31.03.2020. NCLT, Chennai had allowed the application setting aside the order of the Government of Karnataka. A Writ Petition moved before the High Court. High Court relegated the matter to the Tribunal for decision on merit after giving opportunity to the State. NCLT subsequently allowed the application setting aside the order rejecting and directed the Government to execute supplementary lease deed which was again challenged before the High Court. High Court stayed the operation of the order of the Tribunal against which order the Resolution Professional and the CoC has filed the

Appeals before the Hon'ble Supreme Court. In the above context, the issue of jurisdiction of the NCLT came for consideration. The Hon'ble Supreme Court held that the NCLT would have no jurisdiction to question the decision taken by the Government under MMDR Act 1957. In paragraphs 36 and 45, following has been laid down:-

*“36. From a combined reading of Sub-section (4) and Sub-section (2) of Section 60 with Section 179, it is clear that none of them hold the key to the question as to whether NCLT would have jurisdiction over a decision taken by the government under the provisions of MMDR Act, 1957 and the Rules issued there-under. The only provision which can probably throw light on this question would be Sub-section (5) of Section 60, as it speaks about the jurisdiction of the NCLT. Clause (c) of Sub-section (5) of Section 60 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the government or a statutory authority in relation to a matter which is in the realm of public law. cannot, by any stretch of imagination, be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution" appearing in Clause (c) of Sub-section (5). Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of IBC is interpreted to include all questions of law or facts under the sky. an Interim Resolution Professional/Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under Section 260A of the Income Tax Act, 1961.*

*Therefore the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results. (It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression "operational debt" under Section 5(21), making the Government an "operational creditor" in terms of Section 5(20). The moment the dues to the Government are crystalised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the Adjudicating Authority, namely the NCLT.)*

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*45. Therefore, in fine, our answer to the first question would be that NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute Supplemental Lease Deeds for the extension of the mining lease. Since NCLT chose to exercise a jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was coram non judice."*

**18.** The next judgment which needs to be noticed is the judgment of the Hon'ble Supreme Court in **"Tata Consultancy Services Limited vs. Vishal Ghisulal Jain, Resolution Professional, SK Wheels Pvt. Ltd.- Civil Appeal No. 3045 OF 2020"**. The Hon'ble Supreme Court had again occasion to consider the residuary jurisdiction of the Adjudicating Authority. It was held that it cannot be invoked on the grounds not related to the

insolvency of the corporate debtor. In paragraphs 25 and 26, the Hon'ble Supreme Court has laid down following:-

*“25. Before the initiation of the CIRP, the appellant had on multiple instances communicated to the Corporate Debtor that there were deficiencies in its services. The Corporate Debtor was put on notice that the penalty and termination clauses of the Facilities Agreement may be invoked. This is evident from the appellant's communications dated 1 August 2018, 17 September 2018, 1 October 2018 and 11 October 2018. In its email dated 13 October 2018 the appellant specifically noted that the housekeeping staff being provided by the Corporate Debtor was inadequate. The appellant was apparently constrained to deploy its own staff for housekeeping, evinced from its email dated 19 November 2018. The Corporate Debtor has admitted that the appellant was using its own housekeeping staff and deducting the costs from the invoice. The appellant again intimated the Corporate Debtor to change faulty batteries of the UPS and provide cleaning products in its email dated 3 February 2019. The termination notice dated 10 June 2019 also clearly lays down the deficiencies in the services of the Corporate Debtor. The termination notice enumerated the following deficiencies:*

*“1. Not maintaining the minimum level of skillset of personal on exam and non-exam days which is non-compliance as per Annexure B, Table C, and also a process violation.*

*2. Furnishing and Designing guidelines (Annexure B. Table D) not being adhered*

- a) Furniture broken condition
  - b) Temperature and ventilation in labs, server room and UPS rooms not being maintained
  - c) Deploying housing staff
  - d) Cleanliness and up keeping of the center
3. Branding and Navigation not in synchronization with Annexure F of facility agreement."

26. In *Gujarat Urja (supra)*, the contract in question was terminated by a third party based on an *ipso facto* clause, i.e., the fact of insolvency itself constituted an event of default. It was in that context, this Court held that the contractual dispute between the parties arose in relation to the insolvency of the corporate debtor and it was amenable to the jurisdiction of the NCLT under Section 60(5)(c). This Court observed that "...NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor... The nexus with the insolvency of the corporate debtor must exist' (para 69). Thus, the residuary jurisdiction of the NCLT cannot be invoked if the termination of a contract is based on grounds unrelated to the insolvency of the Corporate Debtor."

**19.** From the facts of the above case, it is clear that the closure/lockout notice which was issued on 31.07.2017 much prior to initiation of the CIRP and the closure and lockout notice was nothing to do with the CIRP process. Challenge to the closure and lockout notice cannot be raised before the Adjudicating Authority who is not competent to adjudicate the said issue which arises out of the provision of the Uttar Pradesh Industrial Disputes Act, 1947. Hence, we are of the view that the Adjudicating Authority did not

commit any error in not entertaining the challenge to the closure notice dated 31.07.2017.

**20.** Counsel for the Appellant has placed reliance on various judgments of the Hon'ble Supreme Court, High Court and this Tribunal. It is contended that the liquidator vide e-mail dated 23.03.2020 intimated that claim of Rs.1,09,70,698/- has been admitted. Details of the claim, accepted and reason for rejection were communicated in tabular form. The submission is that the Adjudicating Authority in the impugned order has observed that the claim for period post closure notice dated 31.07.2017 could not be verified by the liquidator as the business operations were suspended which reason was not communicated by the Liquidator and the earlier Resolution Professional informed that the claims post closure are admitted on contingent basis subject to a decision by a Competent Authority. Appellant relying on the judgment of the Hon'ble Supreme Court in **"Mohinder Singh Gill and Anr. V. The Chief Election Commissioner, New Delhi and Anr.- (1978) 1 SCC 405"** submits that no new reasons can be given by the Statutory Authority to support his decision. There can be no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in **"Mohinder Singh Gill"**. In the present case, the above judgment of the Hon'ble Supreme Court does not render any help to the Appellant. The non-acceptance of the claim by the liquidator was challenged before the Adjudicating Authority and the Adjudicating Authority while deciding the application of the Appellant was fully entitled to give its reason to not accept the claim of the Appellant. There is no dispute that after the closure dated 31.07.2017, Pant Nagar unit was

closed. Hence, no illegality has been committed by the Adjudicating Authority in not accepting any claim of salary and bonus subsequent to 31.07.2017.

**21.** Counsel for the Appellant has also relied on the judgment of the Hon'ble Supreme Court in ***"Kunhayammed and Others vs. State of Kerala and Another- (2000) 6 SCC 359"*** where Hon'ble Supreme Court has held that reasons given by the Hon'ble Supreme Court in its order shall take away the jurisdiction of any other court or tribunal to express any opinion in conflict with or in departure of the view taken by the Hon'ble Supreme Court. The law declared by the Hon'ble Supreme Court under Article 141 is binding on all to which there can be no dispute but as noted above, the order of the Hon'ble Supreme Court dated 13.11.2019 neither declared any law nor adjudicated any issue and declined to issue notice in the writ petition. Judgment relied by the Counsel for the Appellant in ***"Kunhayammed and Others"*** (*supra*) has no application in the facts of the present case.

**22.** Counsel for the Appellant has relied on another judgment of the Hon'ble Supreme Court in ***"Somesh Tiwari vs. Union of India and Ors.- (2009) 2 SCC 592"*** in which case the transfer of employee was held illegal and the employee was treated to be on paid leave. In ***"Somesh Tiwari"*** (*supra*) the question arose as to whether the High Court while quashing an order of transfer passed against the Appellant was correct in directing that he would not be entitled to salary for the period commencing 15 days after

the modified order of transfer was passed. In the above context, the Hon'ble Supreme Court laid down following in paragraphs 22 and 24:-

*“22. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India must consider the facts of each case. Mechanical application of the normal rule “no work no pay” may in a case of this nature be found to be wholly unjust. No absolute proposition of law in this behalf can be laid down.*

*24. We, keeping in view the fact, that on the one hand the appellant did not join his posting at Ahmedabad, although no order of stay was passed and on the other wholly unwarranted and reprehensible conduct on the part of the authorities of the respondents, are of the opinion that interest of justice would be subserved if during the period from 28.12.2005 till his joining his post at Bhopal, the appellant is treated to be on leave and the respondents are directed to pass an appropriate order invoking the leave rules applicable in this behalf. It is ordered accordingly.”*

**23.** The above case has no application in the present case since transfer order dated 20.06.2017 has never been held to be illegal by any Competent Authority. The case of **“Somesh Tiwari”** (supra) has no application.

**24.** Counsel for the Appellant in support of her submission that Section 60(5)(c) of the IBC need to be broadly construed, has also relied on various judgments including judgments of this Tribunal and High Court of Gujarat to support that this Tribunal in several cases had decided the issue under Section 60(5)(c). Reliance has been placed on **“Mr. Hemant Mehta vs. Asst.**



**Commissioner of State Tax & Ors.- Company Appeal (AT) (Ins.) No.328 of 2022”** where the bank accounts of the corporate debtor were frozen and application was filed by the liquidator on which application Adjudicating Authority refused to exercise its residuary jurisdiction. This Tribunal took the view that the Adjudicating Authority ought to have exercised its residuary jurisdiction. The above case is clearly distinguishable since the accounts relate to the corporate debtor and liquidator had every right to ask for defreezing the account. Similar case relied by the Appellant is **“Pinakin Shah-Liquidator of M/s. Brew Berry Hospitalities Pvt. Ltd. vs. Assistant Commissioner of State Tax and Anr.- 2021 SCC OnLine NCLAT 487”** was on different facts and has no application.

**25.** Another judgment relied by the Appellant is **‘Biotor Industries Ltd. vs. Gujarat Industrial Development Corporation- R/Special Civil Application No. 3688 of 2022”** decided on 13.02.2023. The above case related to the termination of the lease. The said judgment has its own facts and has no application in the present case.

**26.** Counsel for the Appellant has also relied on the judgment of the Hon’ble Supreme Court in **“Bharat Singh vs. Management of New Delhi Tuberculosis Centre, New Delhi & Ors.- (1986) 2 SCC614”** to support his proposition that beneficial legislation should be given a liberal construction to promote its objects and that literal construction should be avoided. There can be no dispute to the proposition laid down by the Hon’ble Supreme Court on the statutory interpretation in the above case but the said statutory interpretation cannot be applied on Section 60(5)(c) to clothe the

Adjudicating Authority' a jurisdiction which it does not possess as held by the Hon'ble Supreme Court in judgments which we have noticed in preceding paragraphs of this judgment.

**27.** Counsel for the Appellant in support of the submission that purported closure was non-est and contrary to law has relied on judgment of the Bombay High Court in ***"Biddle Sawyer Limited Mumbai vs. Chemical Employees Union and Ors- (2007) 5 Mah LJ 618"*** and ***"Fertilizer Corporation of India vs. Hindustan Fertilizer Corporation- (1993) MP LJ 244"***. The issue pertaining to closure dated 31.07.2017 and the transfer order dated 20.06.2017 not subject to adjudication before the Adjudicating Authority, in this Appeal, we cannot enter into the merits of challenge as sought by the Appellant.

**28.** The judgments which have been relied by the Counsel for the Appellant as noticed above does in no manner support the submission of the Appellant to clothe the jurisdiction with the Adjudicating Authority to pronounce upon the closure/ lockout dated 31.07.2017 and the transfer order dated 20.06.2017.

**29.** In view of the foregoing discussions, we are of the view that no error has been committed by the Adjudicating Authority in rejecting the IA No. 2545 of 2021 filed by the Appellant where Appellant has sought to challenge the closure dated 31.07.2017 and transfer order dated 20.06.2017. Insofar as the claims of the Appellant, the liquidator has accepted the claim. Non-verification of the claim subsequent to 31.07.2017 when the Pant Nagar

factory remain closed cannot be interfered with by this Tribunal in the present Appeal. We, thus, do not find any merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]**  
**Chairperson**

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

**[Arun Baroka]**  
**Member (Technical)**

**New Delhi**  
Anjali