

Gujrat Urja Vikas Nigam Ltd vs Yes Bank Ltd & Anr on 20 October, 2020

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 601 of 2020

(Arising out of Impugned Order dated 6th May, 2020 passed by the Adjudicating Authority/National Company Law Tribunal, Hyderabad Bench, in Company Petition No (IB) No. 111/07/HBD/2017)

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Ltd.
Having its registered office at:
Sardar Patel Vidyut Bhavan, Race Course,
Vadodara-390007.

... Appellant

Versus

Yes Bank Limited
Having its registered office at:
YES BANK Tower, IFC-2
15th Floor, Senapati Bapat Marg,
Elphinstone (W)
Mumbai-400013

... Respondent No.1

Mr. Savan Godiawala,
In his capacity as Liquidator
of Lanco Infratech Limited,
Having its registered office at:
Plot No.4, Software Units Layout,
Hitech City, Madhapur,
Hyderabadd-500081.

... Respondent No. 2

Present:

For Appellant: Ms. Ranjitha Ramchandran, Ms. Anushree Bardhan and Ms. Amruta, Advocates

For Respondents: Mr. S. Niranjana Reddy, Sr. Advocate with
Mr. Ashish, Mr. Anirudh Reddy for Yes Bank
Mr. Anush Raajan and Mr. Aviral Dhirendra, Advocates for R-1.
Mr. Ameya Gokhale, Mr. Vijayant Paliwal and
Ms. Radhika Indapurkar, Advocates for R-2.

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JUDGMENT

(Through Virtual Mode) (Dated 20.10.2020) {Per: Dr. Alok Srivastava, Member(T)} This appeal arises from the order passed by the Adjudicating Authority (NCLT, Hyderabad Bench) in Interim Application No. 809/2019 in CP(IB) No. 111/07/HBD/2017 in the matter under Section 60(5) read with Section 52(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called IBC).

2. The brief facts of the case is as follows:-

2.1 The Adjudicating Authority admitted the application u/s 9 of the IBC, filed by IDBI Bank Limited against Lanco Infratech Ltd., the corporate debtor, vide order dated 07.08.2017 and appointed Shri Savan Godiawala (Respondent No.2 in the present appeal) as Liquidator of the corporate debtor vide order dated 27.08.2018. Consequently, the liquidation process of the corporate debtor Lanco Infratech Ltd. commenced.

2.2 As per averments in the Interim Application No. 809 of 2019 before the Adjudicating Authority, the corporate debtor availed a loan of Rs.63,50,00,000/- from Yes Bank Limited (Respondent No. 1 in the present appeal) vide Facility Letter dated 24.05.2010 read with loan agreement dated 04.08.2010 executed between the Yes Bank Limited and the corporate debtor.

Company Appeal (AT) (Insolvency) No. 601 of 2020 In order to avail the said facility advanced by Yes Bank Limited, the corporate debtor, under the terms and conditions of the loan agreement, has an exclusive charge by way of (i) hypothecation of movable fixed assets and current assets, including receivables (present and future) pertaining to a 5 MW grid connected solar photovoltaic power generating plant situated at Bhadrada Village, Sami Tehsil, Patan District, Gujarat and (ii) mortgage of land and immovable assets (present and future) pertaining to Bhadrada project.

2.3 Pursuant to the liquidation order dated 27.08.2018, the Respondent No.1 vide e-mail dated 26.9.2018, apprised the Liquidator for realisation of its secured asset under Section 52(1)(b) and Section 52(2) of the IBC. Yes Bank Ltd. initiated the proceedings and took possession of the secured asset under SARFAESI Act. It was stated that the solar power plant, which is an asset in the liquidation proceedings, is functioning and supplying power to Gujarat Urja Vikas Nigam Ltd. in accordance with the Power Purchase Agreement (hereinafter called PPA) dated 29.04.2010 entered into between the corporate debtor and Gujarat Urja Vikas Nigam Ltd. (hereinafter called GUVNL).

2.4 It is also averred by Yes Bank Limited in its application before the Adjudicating Authority that GUVNL issued default notice dated 23.07.2019 in accordance with Clause 9.3 of the PPA which constituted default under clause 9.2.1(e) of the PPA due to initiation of liquidation proceedings against the corporate debtor. In reply Yes Bank Limited sent a letter dated 07.08.2019 to Company Appeal (AT) (Insolvency) No. 601 of 2020 the GUVNL not to terminate the PPA on the grounds enumerated in clause 9.2.1(e) of the PPA. However, GUVNL sent a notice dated 30.8.2019 for termination of the PPA under clause 9.3.1 of the PPA and thereafter terminated the PPA.

2.5 It is acknowledged by the corporate debtor and the Yes Bank Ltd. that a loan was taken by the corporate debtor in accordance with the Facility Letter and loan agreement which stands in the name of the corporate debtor, and whose repayment is due to the Financial Creditor Yes Bank Limited. 2.6 Yes Bank Limited has claimed in the Interim Application before the Adjudicating Authority that the PPA was terminated by GUVNL without considering the fact that the secured asset is an independent, viable power generating asset and if PPA is allowed to be terminated, it will be an obstacle for the secured creditors in exercising their rights under section 52(1)(b) of the IBC. It is also claimed by Yes Bank Ltd. that GUVNL is posing a hindrance in the sale of the secured asset by the act of termination of the PPA with malafide intention as the corporate debtor has not defaulted on the supply of solar power as required under PPA despite initiation of Corporate Insolvency Resolution Process (CIRP). It is generating power and will be a viable asset, if the existence of PPA is ensured, which will help in maximizing the value of the asset which is a basic requirement in insolvency proceedings. Company Appeal (AT) (Insolvency) No. 601 of 2020 2.7 Yes Bank Limited has also averred that GUVNL cannot be allowed to take undue advantage of the standard contractual provision of clause 9 of the PPA, thereby posing hindrance in the realisation of maximization of value of the asset.

2.8 Yes Bank Limited has stated in its application that the fundamental aim of Insolvency & Bankruptcy Code is to resolve the insolvency of the corporate debtor while securing the financial interest of all the stakeholders and simultaneously taking all necessary steps for maximizing the value of the assets of the corporate debtor.

3.1 GUVNL has raised the question of jurisdiction of the Adjudicating Authority in adjudicating the issues raised by either of the parties of the PPA and contended that under clauses 6.6 and 10.4 of the PPA, the Gujarat Electricity Regulatory Commission is the appropriate forum to adjudicate all issues under the PPA and the jurisdiction under IBC is limited to matters specified and covered under Section 14 of the IBC.

3.2 GUVNL has maintained that an event as enumerated under Clause 9.2.1

(e) has occurred in the present case and the Yes Bank Ltd. has admitted to breach of PPA. Clause 9.2.1(e) read with Clause 9.3 of the PPA provides for termination of PPA on account of the corporate debtor's (power producer in this case) default and empowers the GUVNL to terminate the PPA. Company Appeal (AT) (Insolvency) No. 601 of 2020 3.3 GUVNL has also contended that it is within its right to issue termination notice for the PPA, which was done after first issuing the notice for default on 23.7.2019 and after a passage of 30 days, issuing the termination notice on 30.8.2019. GUVNL has also stated that the liquidation of assets of the corporate debtor is taking place under Section 52(1)(b) of the IBC rather than under clause 12.9 of the PPA (which relates to financial default). It has also taken the stand that the liquidator is only liquidating the assets of the corporate debtor and is not taking action to continue the business of the corporate debtor and that the objective of maximisation of value of the assets of the corporate debtor does not imply that contracts entered into by the corporate debtor be necessarily continued. It is, therefore, argued by GUVNL that it cannot be forced to continue the contract for the benefit of Yes Bank Limited and a party in a contract with the corporate debtor cannot be forced to continue with the contract when the

corporate debtor itself is being liquidated.

4. The Adjudicating Authority, after considering the averments and arguments of all the parties after giving them an opportunity to be heard, passed an order on 6.5.2020 stating that GUVNL cannot terminate the PPA during the process of liquidation. It consequently set aside the termination notice dated 13.8.2019 issued by GUVNL and allowed Yes Bank Limited to dispose off the security assets. GUVNL was also directed not to act against Yes Bank Limited in pursuance of the said termination notice pending disposal of the secured assets by Yes Bank Limited.

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5. Yes Bank Limited and the liquidator Shri Savan Godiawala filed affidavits in reply to the Appeal Memo and rejoinder was submitted by the Appellant on the reply filed by Respondent No.1 Yes Bank Limited. The parties were given full opportunity for hearing and they advanced oral arguments in support of their respective cases.

6. As its main argument, the Appellant has referred to clause 9.2.1(e) of the PPA wherein, it is stated as follows, "If the Power Producer becomes voluntarily or involuntarily the subject of proceeding under any bankruptcy or insolvency laws or goes into liquidation or dissolution or has a receiver appointed over it or liquidator is appointed, pursuant to law, except where such dissolution of the Power producer is for the purpose of a merger, consolidated or reorganization and where the resulting entity has the financial standing to perform its obligations under the Agreement and credit worthiness similar to the Power producer and expressly assumes of obligations under the agreement and is in a position to perform them."

7. The Appellant has argued that the default notice was served on the corporate debtor through liquidator in accordance with clause 9 of the PPA and after expiry of 30 days from the date of delivery of the default notice, the termination notice was sent to the corporate debtor and thereafter termination of the PPA was effected.

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8. The Appellant has also contended that Yes Bank Limited is not exercising its right under clause 12.9, but under section 52 of the IBC. In support, it has pointed to the letter dated 07.08.2019 issued by Yes Bank Limited addressed to GUVNL that there is no default in servicing the debt obligation by Lanco Infratech Ltd. towards Yes Bank Limited. The default in repayment by Lanco Infratech Ltd. in debt obligations towards other lenders has resulted in initiation of CIRP of the corporate debtor Lanco Infratech Ltd. It has argued that since the solar power project is not a going concern it is not necessary to look at the power plant in conjunction with the PPA as one integrated asset. The Appellant has claimed that there is no parallel between Astonfield case and this case as Lanco Infratech Ltd. is not a going concern.

9. The Appellant has also claimed in its arguments that if the Respondent No.1 Yes Bank Limited is unable to realize its outstanding debt by resorting the action under Section 52(1)(b) of the IBC, it

can take recourse to action under Section 52(9) of the IBC. It has finally stated that once the Solar Power Plant is sold, Yes Bank Limited or any future purchaser is free to sell power to anyone.

10. The Respondent No. 1 Yes Bank Limited has argued that the Applicant has claimed right to termination under clause 9 of PPA. Clause 12.9 of the PPA has two parts and the second part of the clause mentions that in the event of any default by the power producer under financing document, the financing Company Appeal (AT) (Insolvency) No. 601 of 2020 party can cause the power producer to assign to a third party the interests, rights and obligations of the power producer thereafter arising under this agreement. The Respondent No.1 has, therefore, claimed that interest rights and obligations of the power producers arising under the agreement shall, therefore, be tied with the Solar Power project, which is the plant generating solar power. It has claimed that if the default is only under Section 9 of the PPA, then GUVNL has complete liberty to terminate the PPA, but in the present case the default being a financial default, clause 9.2.1(e) has to be read harmoniously with clause 12.9 of the PPA. Thus, the PPA cannot be seen as divorced and separately from the physical entity of the solar power plant.

11. The Respondent No.1 has stated in its arguments that it derived comfort from clause 9.2.1(e) of the PPA and hence proceeded to provide loan to the credit debtor on the basis of steady and assured accrual of revenue from sale of solar power during the term of the PPA as specified therein.

12. The issues that are pertinent in this case are two-fold :-

(i) Whether the moratorium declared under Section 14 of IBC applies to the PPA along with other immovable and moveable properties of the corporate debtor?

(ii) Whether the contractual provisions of the PPA permit either of the contracting parties to terminate the PPA in view of the liquidation process of the corporate debtor which is underway under IBC?

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13. It is a fact that PPA was executed on 24.9.2010 between the corporate debtor Lanco Infratech Limited, which is engaged in the business of generation and supply of solar power, and the Appellant GUVNL under which the corporate debtor agreed to generate and supply 15 MW of solar power to the Appellant. An application filed in CP No.111/07/HBD/2017 by the financial creditor IDBI Bank for initiation of CIRP in respect of corporate debtor, the Adjudicating Authority admitted the application and initiated CIRP on 7.2.2017. During the CIRP, since no successful resolution could be effected, the Adjudicating Authority passed the order of liquidation of the corporate debtor on 27.8.2018. Subsequently, on 23.7.2019, the Appellant GUVNL issued a default notice to the corporate debtor taking recourse to clause 9.2.1(e) of the PPA. Thereafter, after a passage of 30 days, GUVNL issued a notice of termination on 30.8.2019 for termination of the PPA.

14. It is useful to peruse Section 14 of the IBC, which reads as hereunder :-

"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 the following, namely :-

(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any Company Appeal (AT) (Insolvency) No. 601 of 2020 judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

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

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."

Clause 12.9 of the PPA which relates to an event of financial default is reproduced below:-

Clause 12.9 "Neither Party shall assign this Agreement or any portion hereof without the prior written consent of the other Party, provided further that any assignee shall expressly assume the assignor's obligations thereafter arising under this Agreement pursuant to documentation satisfactory to such other Party.

In furtherance of the foregoing, GUVNL acknowledges that the Financing Documents may provide that upon an event of default by the Power Producer under the Financing Documents, the Financing Parties may cause Company Appeal (AT) (Insolvency) No. 601 of 2020 the Power Producer to assign to a third party the interests, rights and obligations of the Power Producer thereafter arising under the Agreement. GUVNL further acknowledges that the Financing Parties, may, in addition to the exercise of their rights as set forth in this Section, cause the power Producer to sell or lease the Project and cause any new lessee or purchaser of the Project to assume all of the interests, rights and obligations of the Power Producer thereafter arising under the Agreement."

15. Section 14.1(b) of the IBC prohibits transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right and beneficial interest therein. In this case, the second contracting party to the PPA i.e. GUVNL is admitting to terminate the PPA, which is in the nature of beneficial interest of the corporate debtor in the Solar Power Project. Such an action will have a direct bearing on the assets and their value of the corporate debtor Lanco Infratech Ltd.

16. The GUVNL has taken recourse to the event of default as enumerated and included in clause 9.2.1(e) to terminate the PPA in the event of liquidation of the corporate debtor. It is important to note that the same sub-clause 9.2.1(e) provides an exception to the event of default if such dissolution of the power producer is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under the Agreement and creditworthiness similar to the power Company Appeal (AT) (Insolvency) No. 601 of 2020 producer and which expressly assumes of obligations under the agreement and is in a position to perform them. Therefore this exception provides saving of the PPA when some other entity is able to take over the responsibility of the defaulting power producer.

17. In the instant case, it is to be noted that GUVNL initiated the action for termination under clause 9.2.1(e) on 23.7.2019 by issuing of default notice to the corporate debtor, only after the CIRP was initiated on 7.8.2017 by an order of the Adjudicating Authority and also after order of liquidation was passed by the Adjudicating Authority on 27.8.2018. It is not the case of Appellant GUVNL that the corporate debtor had at the time of issue of default notice stopped the supply of solar power to the Appellant. It is clear that GUVNL initiated action on default under clause 9.2.1(e) and termination thereafter of the PPA only after the order of liquidation of the Corporate Debtor was passed by the Appellate Authority on 27.8.2018. Nowhere in the default notice has GUVNL mentioned the existence of a situation where corporate debtor was not fulfilling its obligation of generating and supplying solar power to GUVNL. Thus, there is no breach of contract on the part of corporate debtor in supply of solar power.

18. The basic objective under the PPA is to generate and supply the power through the said solar power project to GUVNL. Clause 4.1(iii) of the PPA stipulates that "the power producer shall sell all available capacity from Company Appeal (AT) (Insolvency) No. 601 of 2020 identified Solar Photovoltaic Grid interactive power plants to the extent of contracted capacity on first priority basis to GUVNL and not to sell to any third party. In this case, the power producer i.e. corporate debtor (represented by the liquidator during liquidation proceedings) is in a position to sell solar power to GUVNL and therefore, it is undertaking to fulfill its obligations as enumerated in clause 4.1(iii) of the PPA.

19. At this juncture, it is useful to recapitulate the objectives of IBC, which are stated in the Preamble of the IBC, 2016 and is reproduced hereunder:-

" An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto."

20. The report of the Insolvency Law Committee, March, 2018 (para 1.1) reiterates the objective stated in the Preamble of IBC 2016, which is as hereunder:-

"1.1 The preamble of the Insolvency and Bankruptcy Code, 2016 (the 'Code') gives a clear indication of the objective that the Code seeks to Company Appeal (AT) (Insolvency) No. 601 of 2020 achieve" to maximize the value of assets, to promote entrepreneurship, to promote availability of credit and to balance the interests of all the stakeholders..."

In addition, the Parliamentary Joint Committee also recommended in its Report dated 28.4.2016 that an effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development. It is clear that the law relates to reorganization and insolvency resolution of corporate persons among other entities for maximization of value of their assets and to take care of the interest of all the stakeholders in the resolution process.

21. It is, therefore, amply clear that the IBC, 2016 is in the nature of beneficial legislation which strives to protect the national wealth that is included in the corporate business, partnership firms and individuals by providing economically sound and legally robust mechanism for reorganization and insolvency resolution. Hence, action under various provisions of IBC must be driven by such a spirit in legally sound manner.

22. It is also to be noted that the PPA entered into between the power producer and the purchaser of power provides a long-term and steady stream of revenue accrual from the power project which forms the basis for repayment of any Company Appeal (AT) (Insolvency) No. 601 of 2020 credit sourced by the power producer and provides necessary comfort to the financial creditor to give such credit. This is the economics behind such projects and this economic value of the project of the corporate debtor the IBC seeks to maximize during the resolution process. The PPA provides such a long-term arrangement for revenue generation which is evidenced from the term of the agreement as provided in Clause 9.1 of the PPA reproduced below:-

"Term of the Agreement: This Agreement shall become effective upon the execution and delivery thereof by the parties hereto and unless terminated pursuant to other provisions of the Agreement, shall continue to be in force for such time until the completion of a period of 25 years from the Commercial Operation Date."

23. It is, therefore, succinctly clear that the solar power project, which generates and supplies solar power turns into an economic entity with the help of an instrument such as PPA, thereby converting the physical entity i.e. solar power plant into an economically useful entity for production of solar power. As explained above, the physical entity of the power plant when it becomes an economic project when a financial creditor provides capital after deriving comfort and assurance from the steady flow revenue by sale of solar power.

24. In view of the discussion above, the proposition that the solar power plant and the PPA related to the plant form one integrated economic asset appears to be a rational one. Therefore this asset needs to be kept intact and Company Appeal (AT) (Insolvency) No. 601 of 2020 preserved during

the process of corporate resolution and liquidation so that the liabilities of creditors and other stakeholders can be taken care of.

25. On the basis of such a proposition, this Appellate Tribunal in Company Appeal (AT) (Insolvency) Nos. 224 and 286 of 2018 (Y. Shivram Prasad Vs. S. Dhanapal) has held as follows:-

"In view of the provision of Section 230 and the decision of the Hon'ble Supreme Court in 'Meghal Homes (P) Ltd' and 'Swiss Ribbons (P) Ltd.', we direct the 'Liquidator' to proceed in accordance with law. He will verify claims of all the creditors; take into custody and control of all the assets, property, effects and actionable claims of the 'corporate debtor', carry on the business of the 'corporate debtor' for its beneficial liquidation etc. as prescribed under section 35 of the I&B Code. The Liquidator will access information under Section 33 and will consolidate the claim under Section 38 and after verification of claim in terms of Section 39 will either admit or reject the claim, as required under Section 40. Before taking steps to sell the assets of the 'corporate debtor(s)' (companies herein), the Liquidator will take steps in terms of Section 230 of the Companies Act, 2013. The Adjudicating Authority, if so required, will pass appropriate order. Only on failure of revival, the Adjudicating Authority and the Liquidator will first proceed with the sale of company's assets wholly and thereafter, if not possible to sell the company in part and in accordance with law.' Company Appeal (AT) (Insolvency) No. 601 of 2020 Therefore, it is clear that during the liquidation process, step(s) required to be taken for its revival and continuance of the 'Corporate Debtor' by protecting the 'Corporate Debtor' from its management and from a death by liquidation. Thus, the steps which are required to be taken are as follows:

- i. By compromise or arrangement with the creditors, or class of creditors or members or class of members in terms of Section 230 of the Companies Act, 2013.
- ii. On failure, the liquidator is required to take steps to sell the business of the 'Corporate Debtor' as going concern in its totality along with the employees.

The last stage will be death of the 'Corporate Debtor' by liquidation, which should be avoided."

26. We may also examine the reference made to the order of NCLT, Delhi in the Astonfield Solar (Gujarat) Private Ltd v Gujarat Urja Vikas Nigam Limited (MANU/NC/5731/2019) case by respondent no. 1 wherein the Adjudicating Authority has concluded that a PPA is an "instrument" for the purpose of Section 238 of IBC and consequently, any terms of the PPA in direct contravention of the IBC could not be enforced. It has been argued by the Appellant that the law interpreted in this case does not apply to the present Company Appeal (AT) (Insolvency) No. 601 of 2020 case as the power project in the Astonfield case was a going concern while the solar power project in the instant case is not one.

27. In the Astonfield case, the PPA was terminated on the sole ground of the initiation of the Corporate Insolvency Resolution Process (CIRP) against the corporate debtor (which was an event of default under the PPA) and the failure of the power producer to rectify such default within 30 days from having received a notice of such default. The NCLT was of the view that giving effect to such termination of the PPA would reduce the statutory period that was available for completion of the CIRP from 330 days to 30 days. The NCLT therefore set aside the termination of the PPA by holding as follows:

"....that since, the rights and liabilities of parties have been created in the PPA and such an agreement is enforceable by law and the word 'instrument' inter alia, includes an 'agreement', we are of the view, that the PPA is an 'Instrument' for the purpose of Section 238 of IBC 2016. That termination of PPA at this stage may have adverse consequences on the status of the Corporate Debtor as "going concern" and eventually, may jeopardize the entire CIRP. Thus, the clauses of the PPA cannot be kept at a higher pedestal in comparison to the statutory provisions of IBC 2016, in context of drawing a timeline for completion of the CIRP."

Further in the appeal made against this order of NCLT which is Gujarat Urja Vikas Nigam Ltd. Vs. Mr. Amit Gupta (Company Appeal (AT) (Insolvency) No. 1045 of 2019) it was observed by this Appellate Tribunal that the Appellant cannot terminate Company Appeal (AT) (Insolvency) No. 601 of 2020 the 'Power Purchase Agreement', if the 'Corporate Debtor' goes into liquidation, as during the liquidation process also, the liquidator is to ensure that the 'Corporate Debtor' remains a going concern. It was hence acknowledged in the judgment that subsistence of PPA is imperative to ensure that corporate debtor remains going concern.

28. The law requires the liquidator to take custody and control of all the assets, property, effects and actionable claims of the corporate debtor, carry on the business of the corporate debtor for its beneficial liquidation as prescribed under Section 35 of the IBC.

29. Quite clearly the process of liquidation in the present case is going on and therefore, the liquidator should have full access to all assets of the corporate debtor to take meaningful steps for revival of the corporate debtor as going concern. In the present case, since the power producer has not suspended the supply of solar power and is willing to do the same, it stands to reason that the solar power project should be allowed to function as a going concern, so that revival of the power project as suggested under Section 230 of the Companies Act becomes possible.

30. In view of the foregoing discussion and keeping in view the objective of the Insolvency and Bankruptcy Code, 2016 which relates to maximization of the value of assets for resolution of the corporate person, it stands to reason that the Solar Power Plant i.e. physical assets realizes its full economic value only if it functions in conjunction with the PPA. The steady and assured revenue stream resulting from the existence of the PPA is the sine qua non for Company Appeal (AT) (Insolvency) No. 601 of 2020 the long-term economic and financial viability of the solar power project since it provides comfort and security to the financial creditors who feel encouraged to provide credit for the project.

31. Therefore, the physical entity of the Solar Power Project working in conjunction with the PPA becomes necessary for maximization of the value of assets. This is especially true since the power producer is willing to generate and supply power and also in a position to do so to the GUVNL. Hence, the termination of PPA does not appear to be justified. The impugned order, therefore, suffers from no infirmity and we don't find cogent reasons for accepting the appeal. The appeal is dismissed. There is no order as to costs.

(Justice Jarat Kumar Jain) Member (Judicial) (Dr. Alok Srivastava) Member (Technical) New Delhi
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