

**Gujarat Urja Vikas Nigam Limited (Appellant) Vs Mr. Amit Gupta & Ors. Respondents/RP**

The NCLT by its order had stayed the termination of PPA ( Power Purchase Agreement), on application by the RP and FC u/s 60(5) of IBC, further NCLAT dismissed the appeal. The same was before SC.

The SC held that the dispute in the present case has arisen solely on the ground of the insolvency of the CD and AA is empowered to adjudicate the dispute u/s 60(5)(c) of the IBC and further the apex court agreed with the view taken by the AA u/s 238 is prefaced by a non obstante clause. The SC held that Sec. 238 does not state that the instrument must be entered into by operation of law; rather it states that the instrument has effect by virtue of any such law. NCLT's jurisdiction could be invoked in the present case because the termination of the PPA was sought solely on the ground that the CD was subject to an resolution process under the IBC.

The residuary jurisdiction of the NCLT u/s 60(5)(c) provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the CIRP. If the jurisdiction of the NCLT were to be confined to actions prohibited U/s 14 of the Code, there would have been no requirement for the legislature to enact Section 60(5)(c). It would be rendered otiose if Sec. 14 is held to be the exhaustive of the grounds of judicial intervention contemplated under the Code in matters of preserving the value of the CD and its status as a 'going concern'.

The Hon'ble Supreme Court held that:

NCLT/NCLAT correctly stayed the termination of PPA, since allowing it to terminate the PPA would certainly result in the corporate death of the CD due to the PPA being its sole contract.

The primary focus of the IBC is to ensure the revival and continuation of the CD. The interests of the CD have been bifurcated and separated from the interests of persons in management. The timelines which are prescribed in the Code are intended to ensure the resuscitation of the CD. The SC dismissed the appeal stating no merit was found in appeal. It further ordered appellant to pay for the electricity procured, since the termination of PPA was set aside.