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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.P./32/2020

NAYAK INFRASTRUCTURE PVT. LTD.
A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956 AND HAVING ITS REGISTERED OFFICE AT SWARUPNANDA ROAD, LUMDING-782447, P.O. LUMDING, DIST. NAGAON AND ITS PRINCIPAL OFFICE AT 2ND FLOOR, KAMAKHYA COMMERCIAL, C.K. ROAD, PAN BAZAR, GUWAHATI-781001 AND IS REPRESENTED BY ITS LIQUIDATOR, SUDHA SARMA, W/O SHANTANU KUMAR SARMA, RESIDENT OF SUDHA AND ASSOCIATES, 185, MRD ROAD, NEAR SBI BAMUNIMAIDAM, GUWAHATI-781021.

VERSUS

NORTH EAST FRONTIER RAILWAY AND ANR.
(CONSTRUCTION ORGANISATION) REP. BY THE GENERAL MANAGER/CONSTRUCTION, MALIGAON, GUWAHATI-781011, KAMRUP (M), ASSAM.

2:CHIEF ENGINEER/CONSTRUCTION-2

NORTH EAST FRONTIER RAILWAY (CONSTRUCTION ORGANISATION)
REP. BY THE GENERAL MANAGER/CONSTRUCTION
MALIGAON
GUWAHATI-781011
KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR G N SAHEWALLA, MR. U K NAIR,MR. U K NAIR,MR S DAS,MR R SINGHA,MR D SENAPATI,MR. M SAHEWALLA,MR H K SARMA

Advocate for the Respondent : SC, RAILWAY, MR. B K DAS

Linked Case : Arb.P./38/2020

NAYAK INFRASTRUCTURE PVT. LTD.
A COMPANY REGISTERED UNDER THE COMPANIES ACT
1956 AND HAVING ITS REGISTERED OFFICE AT SWARUPNANDA ROAD
LUMDING- 782447
P.O. LUMDING
DIST.- NAGAON AND ITS PRINCIPAL OFFICE AT 2ND FLOOR
KAMAKHYA COMMERCIAL
C.K.ROAD
PAN BAZAR
GUWAHATI-781001 AND IS REPRESENTED BY ITS LIQUIDATOR
SUDHA SARMA
W/O SHANTANU KUMAR SARMA
RESIDENT OF SUDHA AND ASSOCIATES
185
MRD ROAD
NEAR SBI BAMUNIMAIDAM
GUWAHATI-781021.

VERSUS

NORTH EAST FRONTIER RAILWAY AND ANR.
(CONSTRUCTION ORGANISATION) REP. BY THE GENERAL
MANAGER/CONSTRUCTION
MALIGAON
GHY-11
KAMRUP (M)
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2:CHIEF ENGINEER/CONSTRUCTION-2
NORTH EAST FRONTIER RAILWAY (CONSTRUCTION ORGANISATION) REP.
BY THE GENERAL MANAGER/CONSTRUCTION
MALIGAON
GHY-11
KAMRUP (M)
ASSAM

Advocate for : MR G N SAHEWALLA
Advocate for : SC
RAILWAY appearing for NORTH EAST FRONTIER RAILWAY AND ANR.

Linked Case : Arb.P./33/2020

NAYAK INFRASTRUCTURE PVT. LTD.
A COMPANY REGISTERED UNDER THE COMPANIES ACT
1956 AND HAVING ITS REGISTERED OFFICE AT SWARUPNANDA ROAD
LUMDING-782447
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2:CHIEF ENGINEER/CONSTRUCTION-2
NORTH EAST FRONTIER RAILWAY (CONSTRUCTION ORGANISATION) REP.
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MALIGAON
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KAMRUP (M)
ASSAM

Advocate for : MR G N SAHEWALLA
Advocate for : SC
RAILWAY appearing for NORTH EAST FRONTIER RAILWAY AND ANR.

Linked Case : Arb.P./40/2020

NAYAK INFRASTRUCTURE PVT LTD
A COMPANY REGISTERED UNDER THE COMPANIES ACT

1956 AND HAVING ITS REGISTERED OFFICE AT SWARUPNANDA ROAD
LUMDING-782447
P.O. LUMDING
DIST. NAGAON AND ITS PRINCIPAL OFFICE AT 2ND FLOOR
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VERSUS

NORTH EAST FRONTIER RAILWAY (CONS ORGANISATION) AND ANR
REP. BY THE GENERAL MANAGER/CONSTRUCTION
MALIGAON
GUWAHATI-781011
KAMRUP (M)
ASSAM.

2:CHIEF ENGINEER/CONSTRUCTION-2

NORTH EAST FRONTIER RAILWAY (CONSTRUCTION ORGANISATION) REP. BY THE GENERAL MANAGER/CONSTRUCTION
MALIGAON
GUWAHATI-781011
KAMRUP (M)
ASSAM.

Advocate for : MR G N SAHEWALLA
Advocate for : SC
RAILWAY appearing for NORTH EAST FRONTIER RAILWAY (CONS ORGANISATION) AND ANR

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

12/06/2026

Heard Mr. A. Lal, learned counsel for the petitioner. Also heard Mr. H.P Guwala, learned counsel for the respondents.

2. This is an application under Section 11(6) of the Arbitration and Consolidation Act referred by the petitioner, Nayak Infrastructure Private Limited. The Petitioner is a company incorporated under the Companies Act, 1956 and has its registered office at Sorupananda Road, Lumding, post office Lumding in the district of Nagaon, in the State of Assam. It has branch offices at, in Panbazar Guwahati, in the district of Kamrup (Metro). At the time when the Arbitration Petition was filed before this Court, the company was represented by its Managing Director.

3. The Petitioner company is engaged in the business of execution of various construction works on contractual basis. The Petitioner has developed adequate infrastructure, resources, equipments, material, etc. and has trained personnel capable of efficiently undertaking and executing the construction works on contractual basis.

4. In Arb. Pet No. 32/2020, the NF Railway floated a Notice Inviting Tender (NIT) for the work "Earthwork in formation and cutting to form embankment and construction of minor bridges including ROBs and RUBs from Km. 93.00 to Km. 103.00 (Km. 0 at Agartala) in connection with Agartala-Sabroom New BG Line Project". The Petitioner company, being eligible to participate in the NIT, submitted its bids. The respondent authorities, upon due scrutiny of the bids received by the bidders, found the Petitioner's bid to be the lowest responsive bid. The Petitioner was accordingly awarded the work in question by Letter of Acceptance No. W/362/CON/AGTL-Sabroom/EMB/2013/11 dated 06-06-2014 for a contract value of Rs. 47,11,98,331.50. In terms of the NIT, the Petitioner submitted performance guarantee for an amount of Rs. 2,35,59,917/-. A contract agreement was also executed by and between the Petitioner and the respondents on 01-01-2015. As per the agreement, the work was scheduled to be completed by 05-12-2015. Because of various reasons, which according to the Petitioner, were partly attributable to the respondents, and also because of various difficulties faced by the Petitioner company, including precarious financial position, the Petitioner was unable to achieve the desired progress in the work. Although the Petitioner suffered from acute financial hardship, the Petitioner attempted to progress with the work with a limited working capital. However, for non-release of the running bills by the respondents, the Petitioner could not execute the works entrusted with. There was abnormal delay caused by the respondents in releasing running bills raised by the Petitioner, and as a consequence thereof, the Petitioner failed to achieve the desired progress. It is also stated by the Petitioner that the work was required to be executed in Agartala, in the state of Tripura, and because of extreme weather conditions leading to heavy rainfall in Agartala, the progress of the work was adversely hampered. The extension of work sought for by the Petitioner, by communication dated 29-12-2015, was duly considered and the contract period was extended up to 31-12-2016 without levy of liquidated damages, and, which, according to the Petitioner, clearly reveals that the inability of the Petitioner to undertake the work as per the time schedule was for reasons which are beyond the control of the Petitioner. Because of the delay that had occurred in execution of the work, the respondent authorities ultimately terminated the work contract on 09-08-2019. According to the Petitioner, in spite of representations submitted by the Petitioner before the Railway Authorities, the respondent authorities did not consider the same in the proper perspective. The Petitioner thereafter, by communication dated 03-12-2019, invoked Clause 63 of the GCC, raising all disputes and differences before the railways. So, in terms of clause 63 of the GCC, if the disputes could not be resolved by the Railway authorities as prescribed within 120 days, then the matter is to be resolved through arbitration. It is submitted that since the disputes could not be resolved in terms of Clause 63 within the stipulated period of 120 days, the Petitioner submitted its notice dated 26-05-2020 under Section 21 of the Arbitration and Consolation Act, 1996, read with Clause 64.1.(i) of the GCC for appointment of an Arbitrator. The claims raised by the Petitioner were described in detail. However, no response was forthcoming from the respondents and as a consequence thereof, the present application under Section 11(6) of the Arbitration and Consolation Act has been filed by the Petitioner.

5. In Arb. Pet No. 40/2020, the NF Railway floated a Notice Inviting Tender (NIT) for the work "Earthwork in cutting to form formation and in filing to form embankment including mechanical compaction for making proposed Tupul Terminal yard (KM 96.700 to 97.800) and from Km 97.800 to KM 98.000 in between Noney and Tupul including construction of minor bridges and other ancillary works in connection with construction of New Railway Line from Jiribam-Tupul (Two Packet System)". The Petitioner company, being eligible to participate in the NIT, submitted its bids. The respondent authorities, upon due scrutiny of the bids received by the bidders, found the Petitioner's bid to be the lowest responsive bid. The Petitioner was accordingly awarded the work in question by Letter of Acceptance No. W/362/CON/J-T/EMB/2014/25 dated 08.07.2015 for a contract value of Rs. 44,68,97,432.35. In terms of the NIT, the Petitioner submitted performance guarantee for an amount of Rs. 2,23,44,872/-. A contract agreement was also executed by and between the Petitioner and the respondents on 07.12.2015. As per the agreement, the work was scheduled to be completed by 07.04.2016. Because of various reasons, which according to the Petitioner, were partly attributable to the respondents, and also because of various difficulties faced by the Petitioner company, including precarious financial position, the Petitioner was unable to achieve the desired progress in the work. Although the Petitioner suffered from acute financial hardship, the Petitioner attempted to progress with the work with a limited working capital. However, for non-release of the running bills by the respondents, the Petitioner could not execute the works entrusted with. There was abnormal delay caused by the respondents in releasing running bills raised by the Petitioner, and as a consequence thereof, the Petitioner failed to achieve the desired progress. It is also stated by the Petitioner that the work was required to be executed in Manipur and because of extreme weather conditions leading to heavy rainfall in Manipur, the progress of the work was adversely hampered. The extension of work sought for by the Petitioner, by communication dated 27.05.2016, was duly considered and the contract period was extended up to 31.03.2017 without levy of liquidated damages, and, which, according to the Petitioner, clearly reveals that the inability of the Petitioner to undertake the work as per the time schedule was for reasons which are beyond the control of the Petitioner. The petitioner again sought for extension of time for completion of the works vide communication dated 23.05.2017 was duly considered and the contract period of extended upto 31.03.2018 without any levy of Liquidated Damages for which the petitioner company was restrained from completing the work within the stipulated period of time was beyond the control of the petitioner. Because of the delay that had occurred in execution of the work, the respondent authorities ultimately terminated the work contract on 01.11.2019. According to the Petitioner, in spite of representations submitted by the Petitioner before the Railway Authorities, the respondent authorities did not consider the same in the proper perspective. The Petitioner thereafter, by communication dated 26.12.2019 invoked Clause 63 of the GCC, raising all disputes and differences before the railways. In terms of clause 63 of the GCC, if the disputes could not be resolved by the Railway authorities as prescribed within 120 days, then the matter is to be resolved through arbitration. It is submitted that since the disputes could not be resolved in terms of Clause 63 within the stipulated period of 120 days, the Petitioner submitted its notice dated 26.05.2020 under Section 21 of the Arbitration and Consolation Act, 1996, read with Clause 64.1.(i) of the GCC for appointment of an Arbitrator. The claims raised by the Petitioner were described in detail. However, no response was forthcoming from the respondents and as a consequence thereof, the present application under Section 11(6) of the Arbitration and Consolation Act has been filed by the

Petitioner.

6. In Arb. Pet No. 38/2020, the NF Railway floated a Notice Inviting Tender (NIT) for the work "Construction of foundation and sub-structure of major bridges between KM. 0.00 to Km. 60.00 including earthwork in formation to make profile as per BG standard and other miscellaneous works at approaches in connection with NBQ-KYQ Doubling works in N.F Railways". The Petitioner company, being eligible to participate in the NIT, submitted its bids. The respondent authorities, upon due scrutiny of the bids received by the bidders, found the Petitioner's bid to be the lowest responsive bid. The Petitioner was accordingly awarded the work in question by Letter of Acceptance No. W/362/CON/N-K/MB/2016/07 dated 14.12.2016 for a contract value of Rs. 64,56,02,562.46. In terms of the NIT, the Petitioner submitted performance guarantee for an amount of Rs. 3,22,80,128/-. A contract agreement was also executed by and between the Petitioner and the respondents on 14.03.2017. As per the agreement, the work was scheduled to be completed by 13.12.2018. Because of various reasons, which according to the Petitioner, were partly attributable to the respondents, and also because of various difficulties faced by the Petitioner company, including precarious financial position, the Petitioner was unable to achieve the desired progress in the work. Although the Petitioner suffered from acute financial hardship, the Petitioner attempted to progress with the work with a limited working capital. However, for non-release of the running bills by the respondents, the Petitioner could not execute the works entrusted with. There was abnormal delay caused by the respondents in releasing running bills raised by the Petitioner, and as a consequence thereof, the Petitioner failed to achieve the desired progress. The extension of work sought for by the Petitioner, by communication dated 13.02.2018, was duly considered and the contract period was extended up to 16.11.2019 without levy of liquidated damages, and, which, according to the Petitioner, clearly reveals that the inability of the Petitioner to undertake the work as per the time schedule was for reasons which are beyond the control of the Petitioner. Because of the delay that had occurred in execution of the work, the respondent authorities ultimately terminated the work contract on 08.11.2019. According to the Petitioner, in spite of representations submitted by the Petitioner before the Railway Authorities, the respondent authorities did not consider the same in the proper perspective. The Petitioner thereafter, by communication dated 26.12.2019 invoked Clause 63 of the GCC, raising all disputes and differences before the railways. In terms of clause 63 of the GCC, if the disputes could not be resolved by the Railway authorities as prescribed within 120 days, then the matter is to be resolved through arbitration. It is submitted that since the disputes could not be resolved in terms of Clause 63 within the stipulated period of 120 days, the Petitioner submitted its notice dated 26.05.2020 under Section 21 of the Arbitration and Consolation Act, 1996, read with Clause 64.1.(i) of the GCC for appointment of an Arbitrator. The claims raised by the Petitioner were described in detail. However, no response was forthcoming from the respondents and as a consequence thereof, the present application under Section 11(6) of the Arbitration and Consolation Act has been filed by the Petitioner.

7. In Arb. Pet No. 33/2020, the NF Railway floated a Notice Inviting Tender (NIT) for the work "Construction of Single line BG Tunnel No. T-1 (approx length 220.00 Rm) at KM 227/443 to 227/663, T-2 (approx length 260 Rm) at Km 227/903 to Km 228/123, T-3 (approx length 60 Rm) at Km 228/503 to Km 228/543 & T-4 (approx length 460 Rm) at Km 237/083 to Km 237/523 between Chapar and Bhayapuri in connection with construction of new line between NMX-JPZ". The Petitioner company, being eligible to participate in the NIT, submitted its bids. The respondent authorities, upon due scrutiny of the bids received by the bidders, found the Petitioner's bid to be the lowest responsive bid. The Petitioner was accordingly awarded the work in question by Letter of Acceptance No. W/362/CON/NMX-JPZ/Tunnel/2016/12 dated 12.12.2016 for a contract value of Rs. 73,54,82,645.20. In terms of the NIT, the Petitioner submitted performance guarantee for an amount of Rs. 3,67,74,132.00/-. A contract agreement was also executed by and between the Petitioner and the respondents on 17.07.2017. As per the agreement, the work was scheduled to be completed by 11.06.2018. Because of various reasons, which according to the Petitioner, were partly attributable to the respondents, and also because of various difficulties faced by the Petitioner company, including precarious financial position, the Petitioner was unable to achieve the desired progress in the work. Although the Petitioner suffered from acute financial hardship, the Petitioner attempted to progress with the work with a limited working capital. However, for non-release of the running bills by the respondents, the Petitioner could not execute the works entrusted with. There was abnormal delay caused by the respondents in releasing running bills raised by the Petitioner, and as a consequence thereof, the Petitioner failed to achieve the desired progress. The extension of work sought for by the Petitioner and the same was duly considered and the contract period was extended up to 15.11.2019 without levy of liquidated damages, and, which, according to the Petitioner, clearly reveals that the inability of the Petitioner to undertake the work as per the time schedule was for reasons which are beyond the control of the Petitioner. Because of the delay that had occurred in execution of the work, the respondent authorities ultimately terminated the work contract on 14.12.2019. According to the Petitioner, in spite of representations submitted by the Petitioner before the

Railway Authorities, the respondent authorities did not consider the same in the proper perspective. The Petitioner thereafter, by communication dated 26.12.2019 invoked Clause 63 of the GCC, raising all disputes and differences before the railways. In terms of clause 63 of the GCC, if the disputes could not be resolved by the Railway authorities as prescribed within 120 days, then the matter is to be resolved through arbitration. It is submitted that since the disputes could not be resolved in terms of Clause 63 within the stipulated period of 120 days, the Petitioner submitted its notice dated 26.05.2020 under Section 21 of the Arbitration and Consolation Act, 1996, read with Clause 64.1.(i) of the GCC for appointment of an Arbitrator. The claims raised by the Petitioner were described in detail. However, no response was forthcoming from the respondents and as a consequence thereof, the present application under Section 11(6) of the Arbitration and Consolation Act has been filed by the Petitioner.

8. Notice in the matter was issued on 21-01-2021. Pleadings were exchanged between the parties. Meanwhile, during the pendency of this application, the creditors of the company approached the NCLT, Guwahati for restructuring the company under the IBC Code.

9. From the pleadings, it is seen that on the proposal which was placed before the NCLT, an Interim Resolution Professional (IRP), was appointed and which is seen from the order of the Court vide dated 27-04-2022. While the matter was thus situated, in view of the pendency of the matter before the Apex Court being Central Organization for Railway Electrification vs. ECI-SPIC-SMO-MCML-JV reported in (2020) 14 SCC 714 before the Larger Bench of the Apex Court, this matter was deferred to be listed after the decision of the Larger Bench of the Apex Court. Pursuant to the Judgment rendered by the Apex Court in the aforesaid matter namely, Central Organization for Railway Electrification (supra), this matter was listed before the Court. An Interlocutory Application being IA (Civil) No. 2358 of 2025 was filed by the Official Liquidator appointed by the NCLT for liquidation of the present petitioner seeking impleadment in place of the petitioner company. By order dated 04-08-2025, the application was allowed, and in place of the Managing Director of the petitioner, the Official Liquidator, namely, Ms. Sudha Sharma, Company Secretary, was arrayed as the representative of the petitioner company, which is presently under liquidation.

10. In the said Interlocutory Application, it was stated that since the resolution proposal for restructuring the petitioner company had failed, the NCLT, Guwahati by order dated 11-12-2023 had ordered for liquidation of the present company, and the liquidator was accordingly appointed.

11. Pursuant to the order dated 04-08-2025, whereby the liquidator was arrayed as the representative of the company in liquidation, the learned counsel representing the Official Liquidator submits before the Court that since the company had already been ordered to be liquidated by the NCLT Guwahati, and the liquidator appointed, the claims made by the petitioner having not been resolved by the respondent authorities, these claims are required to be considered, and the matter be referred for arbitration by appointing an arbitrator, since the respondents have not concurred on the request made by the petitioner towards appointment of arbitrator in response to the notice dated 26-05-2020 under section 21 of the Arbitration and Consolation Act, 1996, read with Clause 64 (1) (i) of the GCC for appointment of an Arbitrator.

12. The respondents on the other hand contested the claims of the petitioner. It is submitted that since the company has already been ordered to be liquidated, and the liquidation process is underway, a moratorium exists which bars all kinds of suits and legal proceedings against the company in liquidation. Alternatively, it was also submitted before this Court that even assuming, though not accepting, that there is no absolute bar for initiating legal proceedings by way of the present proceedings by a company or in respect of a company under liquidation, such proceedings cannot proceed without the permission of the NCLT as it is the NCLT Guwahati which by order dated

11.12.2023 ordered for liquidation of the Company.

13. In rejoinder learned counsel for the petitioner submits that the IBC is a complete code itself and it overrides all other acts if found to be inconsistent with the IBC. Referring to the Section 33 (5) of the IBC, 2016, learned counsel for the petitioner submits that the present proceedings will not be affected by the bar as it is not a fresh suit or a legal proceedings instituted by or against the Corporate Debtor, namely, the Company in Liquidation after the order dated 11.12.2023 passed by the NCLT for Liquidation of the company. It is submitted that this bar is only in respect of fresh suits or proceedings and it is not a fresh proceedings but a pending proceedings and therefore, this bar will not be applicable and no permission from the NCLT is required to proceed in a pending proceeding.

14. Upon considering the rival contentions raised by the parties and upon perusal of the pleadings available on the Court, three issues arise for a decision of this Court:-

(i) Whether the bar under Section 33(5) of the IBC is applicable in all proceedings including a pending proceeding.

(ii) Notwithstanding provisions of Section 33(5) of the IBC, proceedings may be instituted against a company in liquidation or a corporate debtor with the prior approval of the adjudicating authority, namely, the NCLT, Guwahati, the petitioner being ordered to be liquidated by the NCLT in view of the failure of the interim resolution professional to revive the Corporate Debtor, namely, the present petitioner and in that context, the NCLT having invoked the provisions of IBC by appointing an IRB for revival of the company as per the procedure prescribed under IRB 2016, Whether the IRB being a complete code in itself and whether the prior approval as mentioned under Section 33(5) of the IBC would at all be required in view of the specific provisions under Section 238 of the IRB that the provisions of the code will override other laws.

(iii) Whether the IBC and the Companies Act 2013 being two different statutes operating in different fields will the bar under Section 33(5) of the IBC would be applicable when the provisions of IBC have already been invoked by the NCLT, Guwahati and more particularly, when the winding up proceedings are not initiated under the Companies Act of 2013.

15. Before proceeding further, it is necessary to refer to the relevant Sections.

Sections 14, 33 and 238 of the IBC reads under:

"Section 14: Moratorium.

14. *(1) Subject to provisions of [1][sub-sections (2), (2A) and (3)], on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—*

(a) the institution[J2] of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of[J3] the corporate debtor.

(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.

[(2A) 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) The provisions of sub-section (1) shall not apply to —

[(a) such transactions, agreements or other arrangements as may be notified[5] by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.]

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

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

"***Section 33: Initiation of liquidation.***

33. *(1) Where the Adjudicating Authority]1, —*

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 [1][***], as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,

it shall—

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; [2][***]

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

[3][(iv) subject to the provisions of section 52, declare a moratorium for the purposes referred to in clauses (a) and (c) of sub-section (1) read with sub-section (3) of section 14, which shall, mutatis mutandis, apply to the proceedings under this Chapter:

Provided that provisions of this sub-clause shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator or any other authority; and

(v) pass an order appointing a liquidator for the liquidation process in accordance

with section 34.]

[(1A) Notwithstanding anything contained in sub-section (1), where the Adjudicating Authority is satisfied that the grounds mentioned in clause (a) or clause (b) of sub-section (1) of this section exist, it shall, before passing the liquidation order, consider an application made by the committee of creditors, in such manner and subject to such conditions as may be specified, by not less than sixty-six per cent. of the voting share, for restoring the corporate insolvency resolution process, and after considering such application, it may, by an order—

(a) if the ground mentioned in clause (a) of sub-section (1) exists, restore the corporate insolvency resolution process to be completed within such duration as it deems fit, but not exceeding one hundred and twenty days; or

(b) if the ground mentioned in clause (b) of sub-section (1) exists,—

(i) restore the corporate insolvency resolution process to the stage of invitation for submission of a resolution plan, which shall be completed in such manner and subject to such conditions as may be specified; and

(ii) provide the duration for completion of such restored corporate insolvency resolution process as it deems fit, but not exceeding one hundred and twenty days.

(1B) The corporate insolvency resolution process of a corporate debtor may be restored in accordance with sub-section (1A) only once.
(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [4][approved by not less than sixty-six per cent. of the voting share] to liquidate [3][or dissolve] the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), [(ii), (iii), (iv) and (v)] of clause (b) [6][of sub-section (1) or a dissolution order under sub-section (2A) of section 54, as the case may be:]

[Provided that the committee of creditors shall, before taking the decision to dissolve the corporate debtor, comply with such conditions, as may be specified.]

[(2A) The Adjudicating Authority shall pass a liquidation order under this section within a period of thirty days from the date of receipt of an intimation or application, as the case may be, to initiate the liquidation process under this section:

Provided that if the Adjudicating Authority has not passed an order within such period, it shall record the reasons for such delay in writing.]

(3) Where the resolution plan approved by the Adjudicating Authority [8][under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), [5][(ii), (iii), (iv) and (v)] of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order[12] as referred to in [9][sub-clauses (i), (ii), (iii), (iv) and (v) of clause (b) of sub-section (1) and pass any other order as it deems fit].

[3][Provided that where an application under sub-section (3) is made, the Adjudicating Authority may, if it deems fit, reinstate the corporate insolvency resolution process and pass appropriate orders.]

(5) [10][***]

[(6) Where a liquidation order has been passed, no suit or other legal proceeding shall be commenced, or if pending at the date of the liquidation order, shall be proceeded with by the liquidator, on behalf of the corporate debtor, except with the leave of the Adjudicating Authority and subject to such terms as the Adjudicating Authority may impose.]

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

Section 238: Provisions of this Code to override other laws.

*[*]**238.** The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.*

16. Under Section 14(1)(a) on insolvency commencement date, the adjudicating authority by order shall declare a moratorium prohibiting institution or continuation of any suits or proceedings against the corporate debtor, including execution of any judgment, decree in any court of law, Tribunal or arbitration.

17. Again under Section 33 of the IBC, where any liquidation order is passed, no suit or other legal proceedings shall be instituted by or against the corporate debtor subject to Section 52. The proviso to Section 33(5) permits institution of suit or legal proceeding against the corporate debtor with the approval of the adjudicating authority.

18. Adjudicating Authority has been defined under Section 5(1) of the code to mean the National Company Law Tribunal, constituted under Section 408 of the Companies Act 2013.

19. Again under the Companies Act of 2013, Section 279 provides as under:

> "***Stay of Suits, etc., on Winding up Order.***
>
> ***279.*** *(1) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose:*
>
> *Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.*
>
> *(2) Nothing in sub-section (1)shall apply to any proceeding pending in appeal before the Supreme Court or a High Court."*

20. The Judgments relied upon at the Bar may be referred to at this stage.

21. In Innovative Industries Limited Vs. ICICI Bank and Anr, reported in (2018) 1 SCC 407, the question of conflict between the State Legislation and the

Central Legislation in respect of IBC was the issue. The Apex Court upon examining held that repugnancy must exist in fact and not depend upon a mere possibility and inconsistency between the competing Acts must be clear and direct of such nature as to bring the two Acts or parts thereof into direct collision with each other. From where it is difficult to obey one without disobeying the other. It was held that even in the absence of direct conflict where the parliamentary law is intended to be complete, exhaustive or exclusive Court, a State law so long as it is referable to the same subject matter as the parliamentary law to any extent must give away. However, where the parliamentary legislation does not purport to be exhaustive or unqualified but itself limits or re-organizes other laws restricting or qualifying the general provisions made in it. There can be said to be no repugnancy. There is no quarrel with the principle laid down by the Apex Court. However, the facts of the present proceedings while deciding this issue, this Court has extensively discussed a scheme of the IBC, 2016. The relevant paragraphs are extracted below:

> ***13.*** *One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process. As per the data available with the World Bank in 2016, insolvency resolution in India took 4.3 years on an average, which was much higher when compared with the United Kingdom (1 year), USA (1.5 years) and South Africa (2 years). The World Bank's Ease of Doing Business Index, 2015, ranked India as country number 135 out of 190 countries on the ease of resolving insolvency based on various indicia.*
> ***27.*** *The scheme of the Code is to ensure that when a default takes place, in the*

sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

28. *When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.*

29. *The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a* *demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.*

30. *On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.*

31. *The rest of the insolvency resolution process is also very important. The entire process is to be completed within a period of 180 days from the date of admission of the application under Section 12 and can only be extended beyond 180 days for a further period of not exceeding 90 days if the committee of creditors by a voting of 75% of voting shares so decides. It can be seen that time is of essence in seeing whether the corporate body can be put back on its feet, so as to stave off liquidation.*

32. *As soon as the application is admitted, a moratorium in terms of Section 14 of the Code is to be declared by the adjudicating authority and a public announcement is made stating, inter alia, the last date for submission of claims and the details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims. Under Section 17, the erstwhile management of the corporate debtor is vested in an interim resolution professional who is a trained person registered under Chapter IV of the Code. This interim resolution professional is now to manage the operations of the corporate debtor as a going concern under the directions of a committee of creditors appointed under Section 21 of the Act. Decisions by this committee are to be taken by a vote of not less than 75% of the voting share of the financial creditors. Under Section 28, a resolution professional, who is none other than an interim resolution professional who is appointed to carry out the resolution process, is then given wide powers to raise finances, create security interests, etc. subject to prior approval of the committee of creditors.*

33. *Under Section 30, any person who is interested in putting the corporate body back on its feet may submit a resolution plan to the resolution professional, which is prepared on the basis of an information memorandum. This plan must provide for payment of insolvency resolution process costs, management of the affairs of the corporate debtor after approval of the plan, and implementation and supervision of the plan. It is only when such plan is approved by a vote of not less than 75% of the voting share of the financial creditors and the adjudicating authority is satisfied that the plan, as approved, meets the statutory requirements mentioned in Section 30, that it ultimately approves such plan, which is then binding on the corporate debtor* *as well as its employees, members, creditors, guarantors and other stakeholders. Importantly, and this is a major departure from previous legislation on the subject, the moment the adjudicating authority approves the resolution plan, the moratorium order passed by the authority under Section 14 shall cease to have effect. The scheme of the Code, therefore, is to make an attempt, by divesting the erstwhile management of its powers and vesting it in a professional agency, to continue the business of the corporate body as a going concern until a resolution plan is drawn up, in which event the management is handed over under the plan so that the corporate body is able to pay back its debts and get back on its feet. All this is to be done within a period of 6 months with a maximum extension of another 90 days or else the chopper comes down and the liquidation process begins.*

22. In Regenta Hotels Pvt. Ltd. Vs. Hotel Grand Centre Point and Ors, reported in (2026) 4 SCC 142, it was relied upon to content that the date of commencement of the arbitral proceedings must be from the date when the notice of the request invoking arbitration is received by the respondent.

23. In Duncans Industries Limited Vs. A.J. Agrochem, reported in (2019) 9 SCC 725, the Apex Court held that the primary focus of the legislation while enacting IBC is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and form a corporate debt by liquidation and such insolvency resolution process is to be completed in a time bound manner. Therefore, the entire "Corporate Insolvency Resolution process" as such cannot be equated with the winding up process. The Apex Court in this matter examines this issue with regard to the provisions of the IBC Act and the Tea Act.

24. In Avil Menezes Vs. Principal Chief Commissioner of Income Tax, Mumbai reported in 2024 SCC Online NCLAT 856, the National Company Appellate

Tribunal in respect of the moratorium specified under Section 14 and 33 held as under:

> ***17.*** *Thus, while moratorium under Section 14 applies to CIRP, Section 33 applies to moratorium in a liquidation process. A close examination of these two statutory provisions would reveal that both these sections are however entirely distinct in their sweep and application. In terms of the language employed in Sections 14 and 33 of IBC, while Section 14 prohibits both institution and continuation of pending suits or proceedings against the Corporate Debtor, Section 33(5) of IBC is only a bar on the institution of new suits during the liquidation process though the proviso to Section 33(5) further provides that if a fresh suit or legal proceeding is to be instituted, the Liquidator is required to obtain specific permission and prior approval of the Adjudicating Authority. There is however clearly no mention of any bar or embargo on continuation of pending suits or proceedings during the process of liquidation. In terms of Section 33(5) of the IBC, the moment liquidation proceedings commence, there would be a bar only in respect of fresh suits/proceedings while pending suits/proceedings can continue. The Liquidator can therefore continue to pursue or defend any already existing proceeding without having to seek any permission from the Adjudicating Authority in terms of Section 35(1)(k) of IBC. In other words, though Section 33 contains provisions similar to Section 14 contemplating stay on suits/proceedings during liquidation, however, the reach and gamut of stay under Section 33 differs from Section 14 in that there is no moratorium on continuation of suits/proceedings already instituted earlier.*
>
> ***18.*** *To answer the question delineated at para 12 above, we hold that the words 'continuation of pending suits or proceedings' is consciously omitted in Section 33(5) of IBC in contrast to Section 14 of IBC where it is explicitly stated that moratorium applies both to the institution of suits or proceedings or the continuation of pending law suits or proceedings against the Corporate Debtor. Thus, to our minds, there is no bar in a suit or a legal proceeding continuing along with liquidation proceedings as pending suits or legal proceeding have not been included within the scope of*

moratorium under Section 33(5) of IBC. Having come to the above conclusion, we can safely conclude that the Respondent was legally entitled to continue with the Income Tax assessment proceedings during the liquidation process.

25. From the Judgments discussed above, it is clear that the IBC, 2016 is a complete Code in itself. The primary focus of the IBC, 2016 legislation is to ensure revival and continuation of the Corporate debtor by protecting the corporate debtor from his own management and form a corporate debt by liquidation. Such insolvency resolution as may be initiated must be completed within a time bound manner and in terms of the provisions of the IBC, 2016, the "Corporate Insolvency Resolution Process" cannot be equated with the winding up process under the Companies Act, 2013. It is also clear that the moratorium under Section 14 is against both fresh suits and pending proceedings during the initiation of the Corporate Insolvency Resolution Process whereas the bar under Section 33(5) of the IBC, 2016 is only institution of new suits during the liquidation process.

26. A careful examination of the order dated 11.12.2023 passed by the NCLT reveals that in terms of the provisions of the IBC, resolution proposal was approved and a resolution professional was appointed and the committee of creditors was apprised with the proposal and attempts were made to revive the company. However, since the resolution proposal failed to bring about the revival of the company with the approval of the Committee of Creditors, the application was filed before the NCLT for liquidation of the company, namely the corporate debtor.

27. The Insolvency and the Bankruptcy Code has been enacted as the existing framework for insolvency and bankruptcy was found to be inadequate, ineffective and results in undue delays in the resolution and therefore, the IBC was enacted. The object of the IBC is to consolidate and amend the laws relating to reorganization and insolvency resolution of the corporate persons, partnership firms and individuals in a time-bound manner for maximization of the value of the 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. The purpose of the IBC is to improve the ease of doing business and facilitate more investments leading to higher economic growth and development. Under the Code, it is the NCLT, which is the designated adjudicating authority for corporate persons and firms for resolution of insolvency, liquidation and bankruptcy. Under the said Code, the process of liquidation provided under Chapter 3 of the IBC and begins with Section 33. The liquidation is to be resorted to if the corporate insolvency resolution process initiated for reviving the corporate debtor fails to achieve the desired result within the time specified, and/or if the committee of creditors passes a resolution for liquidation of the company, the process for liquidation begins.

28. In the facts of the present case, by orders of the NCLT dated 11.12.2023, the resolution professional was appointed and the resolution proposal was approved. However, subsequently, corporate insolvency resolution process, having failed to revive the corporate debtor, the NCLT was moved and by order dated 11.12.2023, the NCLT ordered for liquidation of the corporate debtor. From the pleadings available, it is clear that the arbitration proceeding was initiated well before the initiation of the corporate insolvency resolution process under the IBC. The matter was kept pending on the submissions made at the Bar that to await for the decision in the *Central Organization for Railway Electrification Vs. ECI-SPIC-SMO-MCML-JV* reported in *(2020) 14 SCC 714* in view of the matter being referred to a Larger Bench of the Apex Court. Subsequent to the delivery of the judgment by the Larger Bench of the Apex Court, the matter was proceeded with and thereafter, in view of the liquidation proceedings initiated, the Liquidator was substituted in place of the corporate debtor. Therefore, it is clear that the present proceeding is not a fresh proceeding rather, it was instituted by the corporate debtor well prior to the corporate insolvency resolution process. The power under Section 33, on a plain reading, does not appear to have any application to any pending proceedings like the present proceedings. The moratorium under Section 33(5) is very clear. Subject to Section 52, when a liquidation order is passed, no suit or legal proceedings shall be instituted by or against the corporate debtor. A plain reading makes it clear that the present proceedings are not proceedings instituted after the liquidation order has been passed. This proceeding, as discussed above, was pending well prior to the corporate insolvency resolution process being initiated.

29. Coming to the provisions of the Companies Act 2013, Section 3 (94) A Defines "winding up" to mean winding up under this Act, namely the Companies Act 2013 or liquidation under the Insolvency and the Bankruptcy Code of 2016 as may be applicable. Therefore, the definition under the Companies Act, 2013 in respect of winding up makes it very clear that winding up also includes the process of liquidation initiated or ordered under the Insolvency and Bankruptcy Act, 2016.

30. Conversely, under Section 279 of the Companies Act of 2013, it is provided that when the winding up order has been passed or a provisional liquidator has been appointed, no suit or legal proceeding shall be commenced or if pending at a date of the winding up order, shall be proceeded with by or against the company except with the leave of the tribunal.

31. On a plain reading of this section, it appears that no suit or proceeding fresh or pending, shall be proceeded with upon winding up order being passed except with the leave of the tribunal, namely the NCLT. Therefore, it appears that in terms of Section 279, without the leave of the tribunal, even a pending proceeding cannot be commenced pursuant to the winding up order being passed by the NCLT, which was done in the present proceedings by the order dated 11.12.2023 of the NCLT.

32. However, the definition of winding up as defined under the Companies Act under Section 394A, as discussed above, includes liquidation proceedings under the IBC. Therefore, in the present proceedings, the liquidation proceedings were not strictly in terms of the procedure prescribed under the Companies Act of 2013. Meaning thereby that the liquidation proceedings is not a winding up proceeding as prescribed under Section 270 of the Companies Act of 2013. The liquidation proceeding is being ordered under the IBC by the adjudicating authority, namely the NCLT, in a proceeding which is initiated upon the failure of the corporate insolvency resolution to revive the corporate debtor. Therefore, the order of the NCLT for liquidation was an order passed under the IBC, 2016 in its capacity as the adjudicating authority and not under the Companies Act, 2016, as would normally have been passed in a regular winding up process of any corporate debtor or corporate juristic person. It is therefore clear that although the NCLT is the adjudicating authority, both under the IBC, 2016 and the Companies Act, 2013, there are two separate legislations, namely the IBC and the Companies Act of 2013, and under both the legislations there is a separate process clearly laying down the procedure for liquidation and/or winding up of the corporate juristic person and/or the corporate debtor as the case may be. The Adjudicating authority, namely the NCLT, being vested with powers under both the legislations, will have to exercise its powers under the respective legislations depending on the proceedings which are initiated before the NCLT and relevant to the respective legislations.

33. In the facts of the present case, there is no dispute that the liquidation ordered by the NCLT was not a winding up process under the Companies Act of 2013, but is a liquidation under the IBC Act 2016. The term "winding up" as defined in the Companies Act, having included liquidation under IBC, cannot be used to understand that the proceedings under the IBC and the Companies Act of 2013 will be one and the same. There have been two separate legislations. Proceedings initiated under each legislation, will have to be understood in the context of the said respective legislation. Therefore, the liquidation order dated 11.12.2023 passed by the NCLT in respect of the corporate debtor and ordering for liquidation and appointing the liquidator was an order passed by the NCLT under the IBC. Section 238 of the IBC makes it very clear that the provisions of this code, namely the IBC, shall have the effect, notwithstanding anything inconsistent therewith or contained in any other law for the time being in force, or any instrument having the effect by virtue of any such law. This specific section makes it very clear that in cases of any conflict between any law which may appear to be inconsistent with the IBC, then the provisions of the IBC will prevail over any such law.

34. Therefore, juxtaposed to the provisions of the Companies Act of 2013, where Section 279 provides that where winding up order is passed, the pending proceedings can only be commenced with the leave of the tribunal will not operate as a bar in respect of those proceedings which are initiated under the IBC by virtue of Section 238 of the IBC. Therefore, Section 11(6) petition in the present proceedings, being a pending proceeding which was initiated well before the moratorium that may have been imposed under IBC, can proceed without the leave of the tribunal notwithstanding the order of liquidation dated 11.12.2023 passed by the NCLT. This is more so because under the IBC, it is the committee of creditors who are given the liberty to decide the best possible mechanism for protection of their assets for recovery of the debts suffered by the corporate debtor. During the course of the hearing, the minutes of the 16th meeting of the stakeholders of the consultation committee of the stakeholders dated 31st of March 2025 was placed before the court. In the said minutes, there was a detailed discussion with regard to the arbitration proceedings pending and the amount expected to be realized in event of any award in favor of the corporate debtor. The stakeholders consultation committee had clearly approved of the pending arbitration proceedings including the cost of litigation and legal fees for the said arbitration.

35. Under such circumstances and in view of the above discussions, this court is of the view that the arbitration proceedings initiated earlier need not be curtailed and no leave of the tribunal is also required to proceed with the pending arbitration. Since this is an application under 11(6) and the prayer is for appointment of an arbitrator; Mr. Justice Pranoy Kumar Musahary, Former Judge of the Gauhati High Court is appointed as the sole Arbitrator to decide the disputes arising between the parties.

36. The parties are permitted to place a copy of this Order before Mr. Justice Pranoy Kumar Musahary, Former Judge of the Gauhati High Court and apprise the learned prospective arbitrator about the Order of the Court. The learned Arbitrator may proceed to act as the sole arbitrator to resolve the disputes between the petitioner and the respondents upon furnishing the necessary disclosure under Section 12 of the Arbitration and Conciliation Act, 1996. Registry will also communicate this order to Mr. Justice P.K. Musahary, Former Judge of this High Court.

37. Accordingly let the matter be listed again on 24/06/2026 enabling the parties to place the disclosure of the learned prospective Arbitrator sought to be appointed by this Court and place it before the Court. The order confirming the appointment of the Arbitrator will be passed upon issuance of the written disclosure by the prospective Arbitrator.

JUDGE

Comparing Assistant