

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. NO. 1963/ND/2025

IN

Company Petition No. IB/285/ND/2024

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

IN THE MAIN MATTER OF:

Indian Bank	...	Financial Creditor
	Versus	
M/s Shyam Indofab Pvt. Ltd.	...	Corporate Debtor

IN THE MATTER OF:

Jagdish Kumar Parulkar	...	Interim Resolution Professional
	Versus	
NIRMAL UJJWAL CREDIT CO- OPERATING SOCIETY LTD.	...	Respondent

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on 08.06.2026

PRESENT:

For the Applicant	:	Mr. Aishvary Vikram, Mr. Lucky Sharma, Ms. Navya Bhagat, Advocates
For the Respondents	:	
For the RP	:	Mr. Arvind Kumar, Advocate
For the SRA	:	Mr. Harsh Vardhan Sharma, Mr. Gaurav H. Sethi, Mr. Rahul Kapoor, Mr. Rahul Pawar, Mr. K. Nagpal, Advocates

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Company Petition No. IB/285/ND/2024

Date of Order 08.06.2026

ORDER

Per: Atul Chaturvedi (Member Technical)

1. The present Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), read with Rule 11 of the NCLT Rules, 2016, seeking directions against the Respondent for payment of:
 - a. unpaid license fee/rent,
 - b. unpaid employees' wages/salaries, and
 - c. outstanding electricity and water dues,
2. That the present I.A. has been filed by the interim resolution professional seeking following reliefs:
 - a) Allow the Present Application;
 - b) Direct the Respondent to pay the rentals/license fees, outstanding dues and the employee's salary amounting to a total of Rs. 2,15,48,690/- (Rupees Two Crore Fifteen Lakh Forty-Eight Thousand Six Hundred Ninety only);
 - c) Pass an ex-parte ad interim order of injuncting/restraining the Respondent, whether by themselves, their servants, agents, or otherwise howsoever, from withdrawing, transferring, disposing of, dealing with, or in any way diminishing the value of any of their

assets, including but not limited to funds held in any bank accounts, pending the final determination of this Application;

- d) Pass an ex-parte ad interim order mandating the Respondent to disclose on affidavit within 7 days of service of this order, full details of all their assets, whether tangible or intangible, movable or immovable, within and outside the jurisdiction of this Hon'ble Court;
 - e) Grant interim relief in terms of prayer b to d till the pendency of this Application;
 - f) Pass any other or further Order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case;
3. Brief Facts of the case as per the Applicant:

It is submitted that before commencement of CIRP, the Corporate Debtor entered into an Agreement of Leave and License cum Business Deed dated 24.04.2024 [hereinafter referred to as 'Agreement'] with the Respondent, granting it exclusive use of the manufacturing premises, plant and machinery, and workforce of the Corporate Debtor for manufacturing knit fabrics under the Respondent's brand name.

Under the Agreement, the monthly license fee of Rs. 5,00,000/- was payable in advance (Clause 4), and all electricity, utility dues, and wages of workers

were to be paid by the Respondent (Clause 9) [Clause 4, Annexure A-2 at Pg. 43 and Clause 9, Annexure A-2 at Pg. 45].

It is submitted that the CIRP commenced on 27.08.2024, and the Applicant was appointed as IRP and subsequently confirmed as an RP.

It is submitted that since the Respondent was already operating the unit of the Corporate Debtor under the Agreement of Leave and License cum Business Deed dated 24.04.2024, it was decided to let the Respondent continue so that the Corporate Debtor can derive the commercial benefit in the form of license fees, and the electricity and water dues are paid.

The Respondent, despite using the unit of the Corporate Debtor, failed to pay: (a) license fee for September 2024 to January 2025 amounting to Rs. 25,00,000/-; (b) employees' salaries amounting to Rs. 1,80,00,000/-; (c) electricity dues amounting to Rs. 35,48,690/-, leading to disconnection of electricity supply [Total amount of Rs. 2,15,48,690/-.

The Applicant sent repeated emails, reminders, and notices to the Respondent; the abovementioned amount remained unpaid by the Respondent.

Further, due to the Respondent's non-payment of electricity charges, the electricity connection of the Corporate Debtor was discontinued.

Since the Respondent was not performing its duties under the Agreement, the Applicant was compelled to terminate the Agreement on 17.01.2025 in terms of Clause 5 thereof [Annexure A-9 at Pg. 67-71] and the notice of termination was sent on 20.01.2025.

On 23.01.2025, the Respondent replied to the termination notice. It is submitted that the Respondent did not object to the termination of notice, but sought the release of the stock manufactured by the Respondent using the unit of the Corporate Debtor [Annexure A-10 at Pg. 72-80]. The Respondent also sent a legal notice dated 15.03.2025 to the Applicant for the release of the stock.

The Respondent's reply and the request for release of stock clearly show that the Respondent has admitted to the use of the Corporate Debtor's unit for the manufacture of stock. Despite this, the Respondent has made no payment to the Corporate Debtor for the use of the Corporate Debtor's unit.

On 18.03.2025, the Applicant stated that till the outstanding payment is made by the Respondent, the Applicant cannot release the stocks made by the Respondent.

4. Submissions made by the Applicant:

- a) The Applicant has clarified that the amount dues are only for the CIRP period.

At the outset, it is clarified that the Application filed by the Applicant is confined to the amounts due from the Respondent during the period of the CIRP.

- b) The applicant has claimed that the respondents have served upon them a legal notice for the release of items presently lying in the premises of the corporate debtor.

Further, the Respondent's admission that stocks were manufactured during this period using the Corporate Debtor's unit establishes that the amounts are undisputed and admitted when the Respondent was in complete possession and operational control of the Corporate Debtor's unit.

- c) The applicant has submitted that this tribunal has power to entertain the issue and grant the reliefs sought

It is submitted that Section 60(5)(c) IBC confers exclusive and exhaustive jurisdiction upon this Hon'ble Tribunal to adjudicate any question of law or fact arising out of or in relation to insolvency resolution.

It is a settled position that the Hon'ble NCLT has jurisdiction under Section 60(5), particularly where the claim concerns assets of the Corporate Debtor, arises during CIRP/liquidation, and directly impacts the insolvency estate.

For instance, in Mr. Ashish Chaukharia, Resolution Professional of Jet Airways (India) Limited v. TWC Aviation Capital Limited and Ors, the NCLT, Mumbai Bench-I, by its order dated 24 June 2024, held that Engine No. 890506, owned by Jet Airways (India) Ltd., was wrongfully retained and monetised by TWC Aviation Capital Limited after termination of the aircraft lease and retrieval of its own original engines. Holding that the continued use of the Corporate Debtor's engine amounted to unjust enrichment and that assets of the Corporate Debtor must be handed over to the Resolution Professional under the Insolvency and Bankruptcy Code, the Tribunal directed TWC and SpiceJet to return the engine within 60 days and to pay usage charges of for the period of its use, thereby allowing the application in full.

Similarly, in Liquidator of Cox & Kings Ltd. v. Vertiv Energy Pvt. Ltd., the NCLT Mumbai held that receivables due to the Corporate Debtor form part of the insolvency estate and can be recovered under Section 60(5). The Hon'ble in Paragraph 8 of the Judgment, stated explicitly as under:

"8. From a bare reading of the above, it is clear that this Tribunal has wide powers under section 60 (5) of the I&B Code for adjudication of issues relating to insolvency of the Corporate Debtor. In the present case, since recovery of monies due to the corporate debtor has direct nexus to the liquidation proceedings of the Corporate Debtor as it has the effect of protecting the assets of the Corporate Debtor, this Tribunal is empowered to adjudicate upon the same."

Similarly, in Vineet Kumar Chaudhary v. NTPC Ltd., the NCLT recognised that admitted dues must be paid forthwith under Section 60(5). The Hon'ble NCLT in paragraph 8 held as under:

"8. It can also not be disputed that the process of undergoing CIRP or liquidation under the IB Code is a time bound process. Any delay in the process tends to defeat the objects of the Code, as the value of the assets gets eroded with passage of time. Therefore, in our considered view, if the Applicant is relegated to civil court(s) or arbitral proceedings even in respect of admitted dues, it would definitely

defeat the objects of the Code and the objective of concluding the process in a time bound manner would never be possibly adhered to. Even otherwise, in the context of this case, undisputedly, the Corporate Debtor continued to render services to the Respondent despite initiation of CIRP against it and against those services, the Liquidator is seeking to realize the dues. Therefore, it cannot be said by any stretch of imagination that there is no nexus of the dues sought to be recovered or the relief(s) being claimed in the application with the insolvency/liquidation process."

- d) The present case stands on an even stronger footing, as there is no denial of the usage of assets or of contractual obligations by the Respondent. It is settled law that any person who continues to use the assets of the Corporate Debtor during the CIRP must pay for such use, failing which it constitutes unjust enrichment. The Respondent enjoyed the exclusive possession, uninterrupted manufacturing operations, employee services, and electricity consumption, while shifting the financial burden onto the insolvency estate, which is impermissible.
- e) It is submitted that prayers (a) and (b) of the Application have been made in terms of the abovementioned submissions. Prayer (c) to (f)

has been made in terms of the power of the Hon'ble NCLT, which is akin to the powers of a civil court in terms of Section 424 (1) of the Companies Act, 2013, read with Order 38 Rule 5 of the Civil Procedure Code.

- f) It is submitted that the Applicant, due to the past conduct of the Respondent, being unresponsive when a due amount is claimed [Paragraph 30 at Pg. 19 of the Application] and also reflected during the hearing of this application, where despite service of notice 3 times, in all modes, including court notice and Dasti service, has chosen not to appear, there is a likelihood that the Respondent may dispose of its properties to frustrate the order (if any) passed by this Hon'ble NCLT.

Findings And Analysis

5. Despite service of notice by the order of this adjudicating authority, the respondents failed to appear hence this adjudicating authority decided to set the issue ex parte.

Ld. Counsel for the Applicant is present.

Proof of service has been filed.

Even on repeated calls, no one appeared on behalf of the Respondents.

The Respondents called absent and set ex-parte.

6. The applicant has relied their claim on the contractual obligations arising out of the leave and license cum business agreement.
7. The Applicant has categorically stated that the claim is only for the duration of CIRP period.
8. In the present case, the claims arose out of an agreement signed between the parties.
9. It is the responsibility of the IRP to run the corporate debtor as a going concern.
10. The IRP has approached this tribunal for the reliefs sought above on the ground that the withholding/non-payment of the dues will hinder its capacity to properly function.
11. It is a trite law that this tribunal can assume jurisdiction under sec 60(5) of the IBC, if the matter pertains to the insolvency process.
12. Sec 60(5) provides this tribunal jurisdiction to adjudicate any question of law or fact, arising out of or in relation to insolvency resolution.
13. The supreme court in the case of Gujarat Urja Vikas Nigam Ltd. vs. Amit Gupta has discussed the ambit and scope of Sec 60 of the Insolvency and Bankruptcy code:

Relatedly, since the jurisdiction vested in the NCLT under Section 60(5)(c) is of a residuary character, even where a question of law or fact is not specifically covered under Section 14, the NCLT would have

the jurisdiction to consider such a question of law or fact, provided it arises out or is in relation to the insolvency resolution process of the corporate debtor. Any other interpretation of Section 60(5) would render it otiose;

A narrow interpretation of Section 60(5) is neither warranted from the language of the section, nor is it in line with judicial precedents which have interpreted similar provisions in other insolvency laws. Provisions similar to Section 60(5)(c) have been read in an expansive way. In this regard, reliance is placed on the interpretation of Section 446(2) of the CA 1956, Section 4(1) of the PIA and Section 45-B of the BRA;

14. In the same case the Hon'ble Supreme Court discussed in detail the residuary power granted to NCLT under IBC

1.3 Residuary jurisdiction of the NCLT under section 60(5)(c)

80 The respondents have relied upon the decision of this Court in Committee of Creditors of Essar Steel India Limited vs Satish Kumar Gupta⁵⁷, where this Court held that section 60(5)(c) of the IBC "is in the nature of residuary jurisdiction vested in the NCLT so that NCLT may decide all questions of law or fact arising out of or in relation to insolvency or liquidation under the Code"⁵⁸

81 At this stage we may visit some of the precedents emanating from this court where a statutory conferment of residuary powers has been analyzed. A two-judge Bench of this Court discussed the contours of the residuary power in *Remdeo Chauhan vs Bani Kant Das*⁵⁹, while interpreting sub-Section (j) of Section 12 of the National Human Rights Commission Act, 1993 which confers NHRC with "such other functions as it may consider necessary for the promotion of human rights". While construing the provision, this Court held that:

"45....It is not necessary that each and every case relating to the violation of human rights will fit squarely within the four corners of Section 12 of the 1993 Act for invoking the jurisdiction of the NHRC. One must accept that human rights are not edicts inscribed on a rock. They are made and unmade on the crucible of experience and through reversible process of human struggle for freedom. They admit of a certain degree of fluidity. Categories of human rights, being of infinite variety, are never really closed. That is why the residuary clause in Sub-section (j) has been so widely worded to take care of situations not covered by Sub-sections (a) to (i) of Section 12 of the 1993 Act.

46. The jurisdiction of NHRC thus stands enlarged by Section 12(j) of the 1993 Act, to take necessary action for the protection of human rights. Such action would include inquiring into cases where a party

has been denied the protection of any law to which he is entitled, whether by a private party, a public institution, the government or even the Courts of law. We are of the opinion that if a person is entitled to benefit under a particular law, and benefits under that law have been denied to him, it will amount to a violation of his human rights."

82. *In D.R. Kohli vs Atul Products Ltd. 60, a three judge Bench of this Court differentiated between the power of Central Excise authorities for recovery of monies due to the Government under two provisions, one of them being a residuary provision:*

"14. The next question relates to the appropriate provision of law under which action could have been taken in this case by the Central Excise authorities. This question was not decided by the High Court in view of its finding on the liability of the respondent to pay excise duty on the products manufactured by it. Since we have not agreed with the decision of the High Court on this point, it has become necessary for us to decide this question in this appeal. While the Department asserts that it was open to it to proceed under Rule 10-A of the Rules, the respondent contends that even if there was any short levy, the proper Rule applicable to its case was Rule 10 and not Rule 10-A. Rule 10 and Rule 10-A of the Rules during the relevant period ran as follows:

10 Recovery of duties or charges short-levied, or erroneously refunded: When duties or charges have been short-levied through inadvertence, error, collusion or misconstruction on the part of an officer, or through misstatement as to the quantity, description or value of such goods on the part of the owner, or when any such duty or charge, after having been levied/ has been owing to any such cause, erroneously refunded, the person chargeable with the duty or charge, so short-levied, or to whom such refund has been erroneously made, shall pay the deficiency or pay the amount paid to him in excess, as the case may be, on written demand by the proper officer being made within three months from the date, on which the duty or charge was paid or adjusted in the owner's account-current, if any, or from the date of making the refund.

10-A. Residuary powers for recovery of sums due to Government:

Where these Rules do not make any specific provision for the collection of any duty, or of any deficiency in duty if the duty has for any reason been short-levied, or of any other sum of any kind payable to the Central Government under the Act or these Rules, such duty, deficiency in duty or sum shall, on a written demand made by the proper officer, be paid to such person and at such time and place, as the proper officer may specify.

15. The points of difference between the above two Rules were that (i) whereas Rule 10 applied to cases of short levy through inadvertence, error, collusion or misconstruction on the part of an officer, or through misstatement as to the quantity, description or value of the excisable goods- on the part of the owner Rule 10-A which was a residuary clause applied to those cases which were not covered by Rule 10 and that (ii) whereas under Rule 10, the deficit amount could not be collected after the expiry of three months from the date on which the duty or charge was paid or adjusted in the owners account-current or from the date of making the refund, Rule 10-A did not contain any such period of limitation."

83 Hence, the residuary jurisdiction conferred by statute may extend to matters which are not specifically enumerated under a legislation. While a residuary jurisdiction of a court confers it wide powers, its jurisdiction cannot be in contravention of the provisions of the concerned statute. In *A. Deivendran vs State of T.N.* 61, a two judge Bench of this Court, while determining the limitations of the residuary jurisdiction under Section 465 of the Code of Criminal Procedure, 1973 62, held that a residuary jurisdiction cannot be invoked when there is a patent defect of jurisdiction or an order is passed in contravention of any mandatory provision of the CrPC. Speaking through Justice G.B. Pattanaik, this Court observed that a

competent court is vested with the power to exercise residuary jurisdiction under section 465 of the CrPC in the following terms:

"15. We may notice also the arguments advanced by Mr Mohan, learned counsel appearing for the State, that the conviction and sentence against the appellants should not be interfered with in view of the provisions of Section 465 of the Code, inasmuch as there has been no failure of justice. We are unable to accept this contention. Section 465 of the Code is the residuary section intended to cure any error, omission or irregularity committed by a Court of competent jurisdiction in course of trial through accident or inadvertence, or even an illegality consisting in the infraction of any provisions of law. The sole object of the Section is to secure justice by preventing the invalidation of a trial already held, on the ground of technical breaches of any provisions in the Code causing no prejudice to the accused. But by no stretch of imagination the aforesaid provisions can be attracted to a situation where a Court having no jurisdiction under the Code does something or passes an order in contravention of the mandatory provisions of the Code.

In view of our interpretation already made, that after a criminal proceeding is committed to a Court of Sessions it is only the Court of Sessions which has the jurisdiction to tender pardon to an accused and the Chief Judicial Magistrate does not possess any such jurisdiction, it would be impossible to

hold that such tender of pardon by the Chief Judicial Magistrate can be accepted and the evidence of the approver thereafter can be considered by attracting the provisions of Section 465 of the Code. The aforesaid provision cannot be applied to a patent defect of jurisdiction. Then again it is not a case of reversing the sentence or order passed by a Court of competent jurisdiction but is a case where only a particular item of evidence has been taken out of consideration as that evidence of the so-called approver has been held by us to be not a legal evidence since pardon had been tendered by a Court of incompetent jurisdiction. In our opinion, to such a situation the provisions of Section 465 cannot be attracted at all. It is true, that procedures are intended to subserve the ends of justice and undue emphasis on mere technicalities which are not vital or important may frustrate the ends of justice. The Courts, therefore, are required to consider the gravity of irregularity and whether the same has caused a failure of justice. To tender pardon by a Chief Judicial Magistrate cannot be held to be a mere case of irregularity nor can it be said that there has been no failure of justice. It is a case of total lack of jurisdiction, and consequently the follow up action on account of such an order of a Magistrate without jurisdiction cannot be taken into consideration at all. In this view of the matter the contention of Mr Mohan, learned Counsel appearing for the State in this regard has to be rejected."

84 In *Johri Lal Soni vs Bhanwari Bai* ("Johri Lal Soni"), a two judge Bench of this Court had to determine whether an insolvency court can scrutinize the validity of a transfer made seven years before the transferor was adjudged as insolvent, when Section 53 of the PIA classified only those transfers as voidable against the receiver, where the transferor was adjudged insolvent on a petition presented within two years after the date of transfer. This Court, in view of the wide discretion granted in terms of Section 4, held that the insolvency court will have the jurisdiction to determine the validity of void transfers undertaken at any point of time. While Section 53 was applicable only to voidable transactions, this Court was of the view that Section 4 provides a discretion to an insolvency court to decide all questions which arise in a case of insolvency and an interpretation which allowed the court to examine void transfers undertaken at any point of time would be in consonance with the object of the provision. The Court held:

"4. We now proceed to interpret the provisions of s. 4 itself, the relevant part of which may be extracted thus:

4. (1) Subject to the provisions of this Act, the Court shall have full power to decide all questions whether of title or priority, or of any nature whatsoever and whether involving matters of law or of fact, which may arise in any case

of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary

to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

5. It would be seen that the section has been couched in the widest possible terms and confers complete and full powers on the Insolvency Court to decide all questions of title or priority, or of any nature whatsoever, which may arise in any case of insolvency. The only restriction which is contained in Section 4 is that these powers are subject to the other provisions of the Act. In other words, the position is that where any other section of the Act contains a provision which either runs counter to Section 4 or expressly excludes the application of Section 4, to that extent Section 4 would become inapplicable. Counsel for the respondent strongly relied on the provisions of Section 53 which runs thus:

53. Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration shall, if the transferor is adjudged insolvent on a petition presented within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the Court."

It is relevant to note that unlike Section 4 of the PIA, Section 60(5)(c) of the IBC is not subject to other provisions of the statute. Hence, Section 60(5)(c) of the IBC has been worded more expansively than Section 4 of the PIA.

85 In respect of the interplay between Sections 53 and 4 of the PIA, in Johri Lal Soni (supra), this Court further held:

"6. It was submitted that the effect of Section 53 of the Act clearly is that it bars the jurisdiction of the Insolvency Court to determine the validity of any transfer made beyond two years of the transferor being adjudged insolvent. It is no doubt true that the words "within two years after the date of the transfer" being voidable as against the receiver does fix a time-limit within which the transfer could be annulled by the Court. But a plain construction of Section 53 would manifestly/indicate that the words "within two years after the date, be voidable as against the receiver and shall be annulled by the Court" clearly connote that only those transfers are excepted from the jurisdiction of the Court which are voidable. The section has, therefore, made a clear distinction between void and voidable transfers-a distinction which is well-known to law. A void transfer is no transfer at all and is completely destitute of any legal effect: it is a nullity and does not pass any title at all. For instance, where a transfer is nominal, sham or fictitious, the title remains with the transferor and so does the possession and nothing passes to the transferee. It is manifest, therefore, that such a transfer is no transfer

in the eye of the law. Such transfers, therefore, clearly fall beyond the purview of Section 53 of the Act which refers only to transfers which are voidable. It is well settled that a voidable transfer is otherwise a valid transaction and continues to be good until it is avoided by the party aggrieved. For instance, transfers executed by the transferor to delay or defraud his creditors may be avoided under Section 53 of the Transfer of Property Act. Similarly, transfers made under coercion, fraud or undue influence may be avoided by the party defrauded. It is only such transfers which, if they take place beyond two years of the date of transfer, cannot be enquired into by the Court by virtue of Section 53 of the Act. This appears to us to be the plain and simple interpretation of the combined reading of Sections 4 and 53 of the Act. Indeed, if a different interpretation is given, it will render the entire object of the section [4] nugatory, because the Court would be powerless to set at naught transfers which are patently void, merely because they had been made at a particular point of time."

86 The decision in Johri Lal Soni (supra) gave an expansive interpretation to the powers of an insolvency court under Section 4 of the PIA, which is similar to Section 60(5)(c) of the IBC. This Court held that an insolvency court was empowered to consider the validity of void transfers under Section 4 of the PIA, which did not explicitly fall under Section 53 of the PIA. However, this Court's decision was premised on the finding that Section 53 of the PIA only

dealt with voidable transfers. This Court noted that the jurisdiction of an insolvency court will be restricted in matters where a voidable transfer has taken place beyond the time-limit stipulated under Section 53 within which the transfer could be annulled by the court. Hence, in the name of exercising a residuary jurisdiction, a court cannot cloak itself with jurisdiction which is contrary to the provisions of a statute. However, at the same time, as held by this Court in Johri Lal Soni (supra), an interpretation which renders the objective of a residuary jurisdiction nugatory cannot be upheld by this Court. A fine line has to be drawn between ensuring that a residuary jurisdiction is not rendered otiose due to an excessively restrictive interpretation, as well as, guarding against usurpation of power by a court or a tribunal not vested in it.

87 The residuary jurisdiction of the NCLT under Section 60(5)(c) of the IBC provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings. If the jurisdiction of the NCLT were to be confined to actions prohibited by Section 14 of the IBC, there would have been no requirement for the legislature to enact Section 60(5)(c) of the IBC. Section 60(5)(c) would be rendered otiose if Section 14 is held to be the exhaustive of the grounds of judicial intervention contemplated under the IBC in matters of preserving the value of the corporate debtor and its status as a 'going concern'. We hasten to add that our finding on the validity of the exercise

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

15. The Hon'ble Supreme Court in the case of Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta has emphasized that it is the role and of the IRP/RP to run the corporate debtor as a going concern. *27. The detailed provisions that have been stated hereinabove make it clear that the resolution professional is a person who is not only to manage the affairs of the corporate debtor as a going concern from the stage of admission of an application under Sections 7, 9 or 10 of the Code till a resolution plan is approved by the Adjudicating Authority.*

16. The corporate debtor is duty bound to run the company as a going concern while ensuring maximum recovery for all creditors.

17. To run a company as going concern certain necessary payments need to be made, the Hon'ble Supreme Court has rightly stated in the case of Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta.

There is no doubt that a key objective of the Code is to ensure that the corporate debtor keeps operating as a going concern during the insolvency resolution process and must therefore make past and present payments to various operational creditors without which such operation as a going concern would become impossible. Sections 5(26), 14(2), 20(1), 20(2)(d) and (e) of the Code read with Regulations 37 and 38 of the 2016 Regulations all speak of the corporate debtor running as a going concern during the insolvency resolution process. Workmen need to be paid, electricity dues need to be paid, purchase of raw materials need to be made, etc.

18. In the present case the respondent party has without ascertaining any reason and despite using the premises of the corporate debtor to achieve its objectives as mentioned in the agreement between them, has refused to clear the dues.
19. The respondents have failed to pay the consideration as mandated in the agreement which has made it difficult to run the corporate debtor as a going concern.
20. The two most important objective of the IRP/RP as mandated by the IBC and various judicial pronouncements is to run the corporate debtor as a going concern and the asset value maximization.
21. Considering the interests of the corporate debtor and all other stakeholders/creditors into account, this tribunal is of the view that the

respondents need to clear their dues for the rights enjoyed by them arising out of the agreement.

22. If a party acts or abstains to act to fulfill the obligations arising out of the agreement, then the party is rightfully expected to get the consideration amount.

23. The act of the respondent to not pay the wages of the employee, utility bills and the rent/license fee for using the premises, has hindered the IRP in smooth functioning of its duties.

24. The Respondent is ordered to clear all the dues within 4 weeks from the receipt of the order.

25. The I.A. is accordingly disposed.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (JUDICIAL)**