NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

COMPANY APPEAL (AT) (INS) 702/2026

(Arising out of Impugned Order Dt. 05.03.2026 passed by Ld. NCLT, Ahmedabad Bench in I.A. 614(AHM) 2025 in C.P.(IB) 177(AHM) 2024)

In the Matter of:

Bhumika Nilay R. Shah
Personal Guarantor of Archon Engicon Ltd.
Residing at: E-104, Sanskar Apartment,
B/h Shelby Hospital, Opp. Karnavati Club,
Satellite, SG Highway,
Ahmedabad - 380015, Gujarat, India. **Appellant**

VERSUS

1. **Prawincharan Prafulcharan Dwary**

   Resolution Professional of Bhumika Nilay Shah
   Having Address at: 407, Akchhat Tower,
   Pakwan Cross Roads, SG Highway, Bodakdev,
   Ahmedabad, Gujarat – 380015, India.
   Email: irp.archonengicon@gmail.com

2. **IDBI Bank Ltd.**

   NPA Management Group, IDBI Complex,
   Near Lal Bungalow, Off. CG Road,
   Ahmedabad – 380009, Gujarat, India.
   E-mail: bhavin_kamothi@idbi.co.in

3. **Bank of Baroda**

   Stressed Asset Management Branch,
   1st Floor, Kamdhenu Complex,
   Nr. Panjarapole Crossroads Ambavadi,
   Ahmedabad – 380015, Gujarat, India.
   E-mail: samahm@bankofbaroda.com

4. **State Bank of India**

   SAM (Stressed Assets Management) Branch,
   4th Floor, Old SBI LHO Building,
   Lal Darwaja, Bhadra, Ahmedabad – 380001, Gujarat, India.
   E-mail: team5samb.ahm@sbi.co.in

5. **Union Bank of India**

   Asset Recovery Branch, 1st Floor,
   Rangoli Complex, Opp. V.S. Hospital,
   Ellisbridge, Ahmedabad 380006,
   Gujarat, India.

6. **Bank of India**

   Ahmedabad Large Corporation Branch,
   2nd Floor, Bank of India Building, Bhadra,
   Ahmedabad – 380001, Gujarat, India.

Respondents

For Appellant: Mr Maulin, Advocate.

For Respondent: Mr Harshit Khare, Mr Prafull Saini, Advocates for R4/SBI.

WITH

COMPANY APPEAL (AT) (INS) 703/2026

(Arising out of Impugned Order Dt. 05.03.2026 passed by Ld. NCLT, Ahmedabad Bench in I.A. 613(AHM) 2025 in C.P.(IB) 179(AHM) 2024)

In the Matter of:

Nilay R. Shah
Personal Guarantor of Archon Engicon Ltd.
Residing at: E-104, Sanskar Apartment,
B/h Shelby Hospital, Opp. Karnavati Club,
Satellite, SG Highway,
Ahmedabad - 380015, Gujarat, India. **Appellant**

VERSUS

1. **Prawincharan Prafulcharan Dwary**

   Resolution Professional of Bhumika Nilay Shah
   Having Address at: 407, Akchhat Tower,
   Pakwan Cross Roads, SG Highway, Bodakdev,
   Ahmedabad, Gujarat – 380015, India.
   Email: irp.archonengicon@gmail.com

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Near Lal Bungalow, Off. CG Road,
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Ahmedabad – 380015, Gujarat, India.
E-mail: samahm@bankofbaroda.com

4. **State Bank of India**

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4th Floor, Old SBI LHO Building,
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E-mail: team5samb.ahm@sbi.co.in

5. **Union Bank of India**

Asset Recovery Branch, 1st Floor,
Rangoli Complex, Opp. V.S. Hospital,
Ellisbridge, Ahmedabad 380006,
Gujarat, India.

6. **Bank of India**

Ahmedabad Large Corporation Branch,
2nd Floor, Bank of India Building, Bhadra,
Ahmedabad – 380001, Gujarat, India.

Respondents

For Appellant: Mr Maulin, Mr. Sushil Rao, Advocates.

For Respondent: Mr Harshit Khare, Mr Prafull Saini, Advocates for R4/SBI.

WITH

COMPANY APPEAL (AT) (INS) 704/2026

(Arising out of Impugned Order Dt. 05.03.2026 passed by Ld. NCLT, Ahmedabad Bench in I.A. 612(AHM) 2025 in C.P.(IB) 178(AHM) 2024)

In the Matter of:

Neetima Kad

Personal Guarantor of Archon Engicon Ltd.
Residing at: DX, Kendriya Vihar,
Sector 65, Gurgaon, Haryana-122011

Appellant

VERSUS

1. **Prawincharan Prafulcharan Dwary**

   Resolution Professional of Bhumika Nilay Shah
   Having Address at: 407, Akchhat Tower,
   Pakwan Cross Roads, SG Highway, Bodakdev,
   Ahmedabad, Gujarat – 380015, India.
   Email: irp.archonengicon@gmail.com

2. **IDBI Bank Ltd.**

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   Near Lal Bungalow, Off. CG Road,
   Ahmedabad – 380009, Gujarat, India.
   E-mail: bhavin_kamothi@idbi.co.in

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   Nr. Panjarapole Crossroads Ambavadi,
   Ahmedabad – 380015, Gujarat, India.
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   Ellisbridge, Ahmedabad 380006,
   Gujarat, India.

6. **Bank of India**

   Ahmedabad Large Corporation Branch,
   2nd Floor, Bank of India Building, Bhadra,
   Ahmedabad – 380001, Gujarat, India.

Respondents

For Appellant: Mr Maulin, Mr. Sahil Rao, Advocates.

For Respondent: Mr Harshit Khare, Mr Prafull Saini, Advocates for R4/SBI.

JUDGEMENT

JUSTICE YOGESH KHANNA, OFFICIATING CHAIRPERSON

These three Company Appeals (AT)(Ins) No.*702*, *703* and *704/2026* are filed against an impugned order dated 05.02.2026 passed by the Ld. NCLT, Ahmedabad in IAs No.*612*, *613* and *614/2025* in C(IB) No.*178/2024*, *179/2024* and *177/2024*. The Ld. NCLT has allowed the IA's under Section *114* of the Code, filed by the Respondent(s) RP seeking discharge and it held the liability of appellants is not limited as per the Deed of Guarantee dated 12.06.2014 and it is alleged the said finding is perverse, contrary to the documents on record, lack wisdom of CoC.

2. The learned counsel for the appellant referred to the Deed of Guarantee dated 12.06.2014 signed by the appellants in favour of the consortium of Banks, to ITS para *24* to say their liability is restricted only to an extent of market value of their properties mortgaged. Para *24* of the Deed of Guarantee is as under: -

24. The guarantee of **the guarantors,** is restricted to the extent of the market value of the properties (as described below) mortgaged / to be mortgaged by the Guarantors to secure the credit facility granted / to be granted to **Archon Engicon Limited.**

Description of Properties of the Guarantors to be mortgaged towards security of due repayment to the member Banks of SBI Consortium.

Sr. No	Property Location	Type of Property	Area	Owner / Valuer
1	Sector 2/d, Plot No 1074(Shri Hari Park Society) Nr Swaminarayan Mandir, Gandhinagar (Gujarat) 382007	Bungalow	Land : 330.00 Sq mtrs Construction : 205.80 Sq mtrs	Owner : Shri Sunil Bhagvatilal Mishra and Smt. Anjana Sunil MishraPanchal
3	14., Nandanbaug (Shela) Co. Op. Hou. Soc. Ltd, Nr. Vraj Homes, Village Shela, Tal Sanand, Dist Ahmedabad	Bungalow	Land : 797.66 Sq mtrs Construction : 453.21 Sq mtrs	Owner : Dr Bhumika Nilay Shah and Dr Nilay Shah
4	Flat No DX-53 Kendriya Vihar, Sector 56, Gurgoan (H.R)	FLAT	2102.39 Ft. 195.31	Owner : Shri Karun kad and Smt. Neetima Kad

3. Further reference was made to an Arrangement Letter dated 31.05.2014 issued prior to the Deed of Guarantee dated 12.06.2014 and it record as under: -

000264

Guarantees:

Facility	Name
All the facilities	Mr. Chandrashekar B Panchal
	Mr. Balkrushna J Panchal
	Mrs Nehal C Panchal
	Mr. Hiren S Patel
To the extent of value of secufity provided	Dr. Bhumika Nilay Shah
	Dr. Nilay Shah
	Shri Karun Kad
	Smt. Neetima Kad
	Shri Sunil Bhagvatilal Mishra
	Smt. Anjana Sunil Mishra

4. And to an Inter Creditor Agreement dated 12.06.2014 with other banks which notes: -

Guarantees: -

(i) *Mr. Chandrashekhar B Panchal*
(ii) *Mr Balkrushna J Panchal*
(iii) *Mrs Nehal C Panchal*
(iv) *Mr. Hiren S Patel*
(v) *Ms Bhumika Nilay Shah (Limited Liability - To the extent of the Value of Collateral Property)*
(vi) *Mr. Nilay Shah (Limited Liability -* ***To the extent of the Value of Collateral Property)***
(vii) *Mr Sunil Mishra (Limited Liability - To the extent of the Value of* ***Collateral Property****)*
(viii) *Mrs. Anjana Sunil Mishra (Limited Liability - To the extent of the Value of Collateral Property)*
(ix) *Mr Karun Kad (Limited Liobility - To the extent of the Value of Collateral Property)*
(x) *Ms Neetima Kad (Limited Liability- To the extent of the Value of Collateral Property)*

5. Further reference was also made to a sanction letter dated 5th March, 2014 issued by the Bank of India which records as follows: -

Guarantors' name	Remarks	
Mr. Chandrashekar B Panchal	Latest CA certificate and CBD 23 to be submitted by the company before disbursement.	
Mr. Balkrushna J Panchal		
Mrs Nehal C Panchal		
Mr. Hiren S Patel		
M/s. Bhumika Nilay Shah	To the extent of the value of collateral security provided above (Rs24.75 Crs)	Latest CA certificate and CBD 23 to be submitted by the company before disbursement.
Mr. Nilay Shah		
Mr. Sunil Mishra		
~~Mr. Karun Kad~~		
M/s Neetima Kad		

6. Further reference is made to the sanction letter dated 31.03.2014 issued by the SBI which records as under: -

Facility	Name	
All the facilities	Shri Chandrashekar B Panchal	
	Shri Balkrushna J Panchal	
	Shri Hiren S Patel	
	Shri Nehal C Panchal	
	Shri Sunil Mishra	To the extent of value of property offered as collateral
	Smt Anjana Mishra	
	Smt Bhumika N Shah	
	Shri Nilay Shah	
	Shri Karun Kad	
	Smt Neetima Kad	

7. Lastly the reference was made to the Transaction Audit Report and it notes:-

S. No.	Personal Guarantor
1.	Mr. Chandrashekar D. Panchal
2.	Mr. Balkrushna J. Panchal
3.	Mrs. Nehal C. Panchal
4.	Mr. Hiren S. Patel
5.	Dr. Bhumika N. Shah*
6.	Dr. Nilay Shah*
7.	Mr. Karun Kad*
8.	Mrs. Neetima Kad*
9.	Mr. Sunil Mishra*
10.	Mrs. Anjana Mishra*

**The guarantee is limited to the extent of their share in the immovable property offered as collateral security.*

8. Thus it is the submission made by the learned counsel for the appellants the above documents do reveal the liability of appellants was only limited to the market value of the properties they have mortgaged with the

Bank and nothing beyond it, however, the impugned order has made them personally liable to the entire dues of the borrowers.

9. Heard.

10. Admittedly, earlier the same issues were raised by the appellants in Company Appeal (AT)(Ins) No. *1997/2024*, *1956/2024* and *1997/2024* and the following order was passed by this Tribunal: -

> *4. Learned Counsel for the Respondent replying the submission of the Appellant contends that the issue of the extent of Guarantee given by the Personal Guarantor is to be examined and decided at the time of finalisation of the payment Plan and the said cannot be a ground for challenging the Order admitting Section 95 Application. He further submits that the DRT in its Order has already crystallised the dues.*
>
> *5. We have considered the submissions of Counsel for the Parties and perused the record.*
>
> *6. The submission on which Appellant is challenging the Order of Section 95 is the ground of limited Guarantee. The Application has only been admitted and the payments Plan have yet to be finalised. The said question is to be looked into by the Adjudicating Authority at the time of finalisation of the payment Plan. With these observations, we dismiss the Appeal.*

11. In the light of above now we need to examine the impugned order. In the impugned order admittedly the issue of limited liability was framed for determination i.e. in para *12(iii)* as under: -

> *12 (iii) Whether the plea of limited liability under the Deed of Guarantee (particularly Clause 24) vitiates the rejection of the repayment plan(s), especially in light of the Hon'ble NCLAT's observation dated 05.12.2024?*

12. It was answered by the Ld. NCLT as under: -

> *15.1 The Personal Guarantors contend that liability is restricted to the value of mortgaged properties under Clause 24 of the Deed of Guarantee dated 12.06.2014, supported by sanction letters, inter-creditor arrangements, and transaction audit reports.*

15.2 They invoke principles of contra proferentem (Haris Marine Products v. Export Credit Guarantee Corporation, (2022) 20 SCC 776), non est factum (Ramathal v. K. Rajamani, 2023 SCC OnLine SC 1022), and specific vs. general clauses.

15.3 The plea of non est factum requires proof that the signatory was misled as to the nature of the document executed. No such pleadings or evidence have been placed on record. The Personal Guarantors participated in DRT proceedings and did not dispute execution of the Guarantee Deed. Hence the ingredients laid down in Ramathal are not satisfied.

15.4 However, Clauses 1, 6, and 9 of the same Deed of Guarantee dated 12.06.2014 impose joint and several liability for the full principal sum (up to Rs. 427 crores) plus interest, costs, and charges. In case of conflict, earlier clauses prevail over later ones, as held in Bharat Sher Singh Kalsia v. State of Bihar (2024) 4 SCC 318 (para 32) has held: " ... if there is a conflict between the earlier clauses (in a Deed) and the later clauses and it is not possible to give effect to all of them, then it is the earlier clause that must override the later clause and not the vice-versa.".

15.5 The rule of contra proferentem applies only where ambiguity persists after harmonious construction. The doctrine cannot be invoked to rewrite a commercial contract or override express liability clauses. In the present case, the Deed of Guarantee has been judicially examined by the DRT and liability has been crystallised. Therefore, the principle does not arise.

15.6 The plea of limited guarantee does not survive and is not tenable at this stage, more so when the Debts Recovery Tribunal vide Recovery Certificate dated 03.08.2021 in O.A. No.83 of 2017 has already adjudicated joint and several liability of the guarantors (including the present Personal Guarantors) and the said order has attained finality.

15.7 The plea of limited liability was rejected at the admission stage (order dated 05.08.2024) and does not survive scrutiny. In compliance with the observation of the Hon'ble NCLAT dated 05.12.2024, we have independently examined Clause 24 of the Deed of Guarantee dated 12.06.2014 along with Clauses 1, 6 and 9, the sanction letters and inter-creditor arrangements relied upon by the Personal Guarantors. Upon harmonious construction, Clause 24 pertains to security realisation and does not restrict the primary contractual liability undertaken under Clauses 1, 6 and 9.

15.8 The contractual clauses must be read harmoniously. Clauses 1, 6 and 9 impose liability upon default for the

> *principal sum with interest and charges. Clause 24 refers to security arrangements. The DRT has already adjudicated liability. The plea of limited guarantee cannot override the crystallised debt. Therefore, even upon consideration as directed by the Hon'ble NCLAT, the liability of the Personal Guarantors is not restricted in the manner contended. The ED attachment does not discharge personal liability under the guarantee (Section 128 Contract Act read with Section 101 IBC moratorium).*
>
> *15.9 The plea of limited liability cannot be re-agitated in collateral proceedings under Section 114 of the Code.*

13. It is the grievance of the learned counsel for the appellant the Deed of Guarantee is misread by the Ld. NCLT. However, when confronted with the fact if they had challenged the judgement dated 3rd August, 2021 passed by the Ld. DRT wherein their liability was crystalized as they have been *jointly and severally liable with the borrowers to the extent of the liability/debt due to the borrowers,* the reply was in negative. Further the appellants never challenged the claims lodged before the Resolution Professional by the Banks against these appellants. Now after sleeping over the judgement dated 3rd August, 2021 of the Ld. DRT and also upon failure to challenge the claims filed against them before the Resolution Professional, they all have come up to challenge the impugned order passed in IAs No. *612 to 614/2025,* filed on 23.04.2025 by the Resolution Professional of the appellants *viz* the personal guarantors of M/s Archon Engicon Ltd under Section *114* of the Code read with Rule *11* of NCLT Rules, 2016 wherein the Resolution Professional requested for the discharge of the Resolution Professional and to pass appropriate directions/orders under Section *114* of the Code.

14. We have also gone through the following paras of the Deed of Guarantee dated 12.06.2014 as under:

1. If at any time default shall be made by the Borrower in payment of the principal sum (not exceeding Rs.427.00 Crores) together with interest, costs, charges, expenses and/or other moneys for the time being due to the Lead Bank in respect of or under the abovementioned credit facilities or any one of them the ***Guarantors shall forthwith on demand pay to the Lead Bank the whole of such principal sum (not exceeding Rs.427.00 Crores) together with interest, costs, charges, expenses and/or other money as may be due to the Lead Bank in respect of the abovementioned credit facilities and shall indemnify and keep indemnified the Lead Bank against all losses of the said*** *principal sum, interest or other money due and all costs, charges, expenses whatsoever which the Lead Bank may incur by reason of any default on the part of the Borrower.*

6. The guarantee herein contained shall be enforceable against the Guarantors ***notwithstanding the securities aforesaid or any of them or any other collateral securities that the Lead Bank may have obtained or may obtain from the Borrower or any*** *other person shall at the time when proceedings are taken against the Guarantors hereunder the outstanding and/or not enforced and/*or remain unrealised.

9. Notwithstanding the Lead Bank's rights under any security which the Lead Bank may have obtained or may obtain the Bank shall have fullest liberty to call upon the Guarantor to pay the principal sum not exceeding Rs.427.00 Crores together with interest as well as costs, (as between Advocate and client) charges and expenses, and/or other money for the time being due to the Lead Borrower the amount due to the Lead Bank in respect of the abovementioned credit facilities and/or requiring the Lead Bank to enforce any remedies or securities available to the Lead Bank.

24.The guarantee of the guarantors, is restricted to the extent of the market value of the properties (as described below) mortgaged/to be mortgaged by the Guarantors to secure the credit facility granted/to be granted to Archon Engicon Limited.

Description of Properties of the Guarantors to be mortgaged towards security of due repayment to the member Banks of SBI Consortium.

Sr. No	Property Location	Type of Property	Area	Owner / Valuer
1	Sector 2/d, Plot No 1074(Shri Hari Park Society) Nr Swaminarayan Mandir, Gandhinagar (Gujarat) 382007	Bungalow	Land : 330.00 Sq mtrs Construction : 205.80 Sq mtrs	Owner : Shri Sunil Bhagvatilal Mishra and Smt. Anjana Sunil MishraPanchal
3	14., Nandanbaug (Shela) Co.-Op. Hou. Soc. Ltd, Nr. Vraj Homes, Village Shela, Tal Sanand, Dist Ahmedabad	Bungalow	Land : 797.66 Sq mtrs Construction : 453.21 Sq mtrs	Owner : Dr Bhumika Nilay Shah and Dr Nilay Shah
4	Flat No DX-53 Kendriya Vihar, Sector 56, Gurgoan (H.R)	FLAT	2102.39 Ft. 195.31	Owner : Shri Karun kad and Smt. Neetima Kad

15. Thus the crux of the matter is besides the mortgage of these properties, did the appellants agree to be the guarantors to the entire loan taken by the borrowers.

16. The Ld. Adjudicating Authority after considering Clause *24* along with Clauses *1, 6* and *9* of the Deed of Guarantee, held Clause *24* pertains to the security arrangement and does not restrict the primary contractual liability undertaken under Clauses *1, 6* and *9*. The said clauses impose liability upon the guarantors for the principal amount together with interest, costs and charges. The Ld. Adjudicating Authority further recorded the contractual clauses are required to be read harmoniously and Clause 24 cannot be construed so as to override the express liability contained in the earlier clauses and that the Ld. Adjudicating Authority cannot be employed to rewrite a commercial contract or override express liability clauses. The Ld. Authority

also examined the alleged conflict between Clause *24* and Clauses *1, 6* and *9* and passed the impugned order. Thus, the contention viz the findings are without reason is factually incorrect.

17. In any case the liability of the Appellants had already been adjudicated by the Ld. DRT *vide* order dated 03.08.2021 in O.A. No. *83/2017* for Rs 1,49,26,12,243/-, wherein the validity of the Deed of Guarantee was upheld and the guarantors were held jointly and severally liable for the entire dues. The said order had attained finality and was never challenged by the Appellants, therefore, now the Appellants cannot seek to re-agitate the extent of their liability in collateral proceedings under Section 114 of the Code.

18. The arguments raised by Appellants is they have been proceeded ex-parte in the DRT proceedings and were not given opportunity to be heard and thus the order passed by DRT is perverse. The entire submissions of Appellant is wrong and incorrect, since the order dated 03.08.2021 duly records at Para 11 of the order as under:

> *"11. Defendants no. 1 to 9 filed their written statement at Exh. R/16 and further the Defendants no. 10 and 11 adopted the written statements. 12. In this case although defendant nos. 1 to 4, 6, 7, 10 & 11 facilitated exparte proceedings against them but written statement filed on behalf of Defendant No. 1 to 11 is on record and I feel judicious to consider so filed written statement with a view to observe principles of natural justice and decide this matter judiciously".*

19. This makes it clear the Appellants had duly participated in the DRT proceedings, presented their case and filed written statements and now they cannot allege they were unrepresented and could not challenge DRT order

dated 03.08.2021. The Appellants thus, had participated in the DRT proceedings and had not disputed execution of the Guarantee Deed.

20. It is important to note the repayment plan was considered over several meetings of the CoC, and the Appellants were given repeated opportunities to improve and enhance the plan. In the 3rd CoC meeting dated 13.12.2024, queries were raised and the RP requested enhancement of the plan. Further, in the 4th meeting dated 21.12.2024, the enhanced plan was considered and further improvement was sought; thereafter, the final modified plan was placed before the creditors which stands for an amount of Rs. 1.60 crores each, totalling to Rs. 3.20 crores. It is important to note the CoC in the meetings had also discussed about feasibility and viability of the repayment plan.

21. Eventually when the final modified repayment plan dated 04.01.2025 was put up for voting then it didn’t receive requisite 66% voting share in favour of the Repayment Plan and was accordingly rejected. The Appellants therefore, after the plan had failed to obtain the requisite statutory approval, cannot seek to invalidate the entire process on the basis of an objection which does not demonstrate any prejudice or any finding in the impugned order that the statutory process was vitiated.

22. Section 114 contemplates consideration of the repayment plan on the basis of the report of the meeting of creditors and does not confer jurisdiction upon the Ld. Adjudicating Authority to substitute its own commercial view where the statutory majority has not been achieved. The Ld. Authority

expressly held in the absence of approval under Section 111, the Adjudicating Authority cannot independently approve the plan.

23. It is important to note the final Repayment Plan(s) of Rs.1.60 Crore & Rs.2.75 Crore against the admitted claims of Rs.1221,55,30,202 submitted by the Personal Guarantors failed to secure the requisite affirmative voting share of 66%, conducted pursuant to the 5th CoC meeting dated 02.01.2025. It is to be noted only 21.35% (IDBI) of the voting share voted in favour, 20.14% {BoB 14.03% & UBI 6.11%) of the voting share voted against while 42.16% (SBI) abstained and 15.91% (BOI) absent. Hence, the repayment plan didn't receive 66% requisite voting share and accordingly the plan was rejected.

24. In view of the aforesaid facts and submissions made hereinabove, we find the present Appeals being devoid of merit and contrary to the statutory scheme of the Insolvency and Bankruptcy Code. The decision of the CoC in rejecting the repayment plan is binding in law. In these circumstances, the appeals deserve to be dismissed in its entirety and the impugned order be upheld.

25. The appeals are accordingly dismissed and the impugned order is upheld.

26. Pending applications, if any, are disposed of.

(Justice Yogesh Khanna)
Officiating Chairperson

(Mr. Barun Mitra)
Member (Technical)

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dated: 21-09-2026
BM