

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD



ITEM No.301 - IA/1405(AHM)2025
in
C.P.(IB)/195(AHM)2025

Under Section 60(5) IBC r/w Rule 11 NCLT Rules, 2016

IN THE MATTER OF:

Mr. Keshav Khaneja RP of Gensol Engineering Limited
V/s

.....Applicant

Maharashtra State Power Generation Company Limited
Through the Chairman and Managing Director

.....Respondent

Order delivered on: 09/03/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT- I, AHMEDABAD**

**IA No. 1405(AHM) 2025
In
CP (IB) No. 195 (AHM) 2025**

(An application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of: Gensol Engineering Limited

Mr. Keshav Khaneja,
Resolution Professional of Gensol Engineering Limited, available at C-7, Parth Apartment,
Ramdev Nagar, Satellite,
Ahmedabad-380015
Gujarat

.... Applicant

Versus

Maharashtra State Power Generation Company Limited,
Through the Chairman & Managing Director
Having registered address at Prakashgad Plot No G-9 Anant Kanekar Marg Bandra (East),
Mumbai, Maharashtra,
India, 400051
Correspondence Address at 4th Floor, HDIL Tower, Bandra (East), Mumbai - 400051,
Maharashtra

.... Respondent

Order Pronounced on: 09.03.2026

C O R A M :

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)



APPEARANCE:

For the Applicant : Mr. Monark Gehlot, Advocate a.w.
Mr. Keshav Khaneja, RP in person
For the Respondent : Ms. Shubharanjani Ananth, Adv a.w.
Mr. Nachiket D. Mehta, Adv.

ORDER
(Per: Bench)

1. The present Interlocutory Application No.1405 of 2025 filed on 19.11.2025 Vide Inward Diary No. E 2983 is filed by the Resolution Professional of Gensol Engineering Limited ("Corporate Debtor") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (the "Code") against the Respondent, Maharashtra State Power Generation Company Limited ("Respondent"), seeking following reliefs: -

- a. *Allow the present application and set aside/recall the letter dated July 15, 2025, vide which the Respondent has terminated the contract dated February 21, 2024 between the Corporate Debtor and Respondent as illegal and unsustainable in law*
- b. *To restrain the Respondent from taking any steps in furtherance of the letter dated July 15, 2025;*
- c. *To direct refund of the bank guarantee bearing No. 0024NDDG00341324 dated January 25, 2024 and Bank Guarantee bearing no. 0024NDDG00373624 dated February 15, 2024 encashed by the Respondent;*



- d. *To direct the Respondent to produce all correspondences and documents pursuant to which the Respondent has deposited the amount of INR 151.33 Cr. in accounts other than the TRA and the details of the accounts in which the said amount has been deposited by the Respondent in respect of the invoices raised by the Corporate Debtor under the EPC Contract dated February 21, 2024*
- e. *To deposit the amount of INR 151.33 Cr. in the TRA account being account number 57500001427528 immediately and without any further delay*
- f. *Pending the final adjudication of this instant Application, pass an interim stay on the termination of the contract dated July 15, 2025 between the Corporate Debtor and Respondent;*
- g. *Pending the final adjudication of this instant Application, pass an interim stay on the encashment of the bank guarantee bearing No. 0024NDDG00341324 dated January 25, 2024 and Bank Guarantee bearing no. 0024NDDG00373624 dated February 15, 2024, and*
- h. *Pass such appropriate direction and orders as this Hon'ble Tribunal may deem fit and appropriate in the given facts and circumstances of the case;*

2. The present Application has been filed by the Resolution Professional of Gensol Engineering Limited (Corporate Debtor) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking urgent directions against Maharashtra State



Power Generation Company Limited (Respondent) to restrain it from giving effect to the termination of the Letter of Award dated 19.10.2023 and the EPC Contract dated 21.02.2024. It is the case of the Applicant that the termination of the EPC Contract, affected after commencement of the CIRP of the Corporate Debtor, is contrary to the terms of the contract and the settled position of law.

- 2.1. It is further submitted that during the subsistence of the EPC Contract, the Respondent allegedly failed to adhere to the agreed payment mechanism and disbursed invoice amounts in accounts other than the designated Trust Retention Account (TRA) No. 57500001427528, in violation of the contractual terms, thereby causing financial prejudice to the Corporate Debtor and affecting its status as a going concern.
- 2.2. Accordingly, the Applicant seeks directions to the Respondent to place on record all relevant correspondences and documents regarding such payments, disclose the details of accounts where the amounts were deposited, and forthwith deposit the said amounts into the TRA without delay.
- 2.3. It is submitted that the Corporate Debtor is presently undergoing CIRP and the subject EPC Contract is central to the functioning of the Corporate Debtor as a going concern and to the success of the CIRP. The Corporate



Debtor is engaged in the business of providing EPC services and is substantially dependent on receivables arising from such contracts.

- 2.4. It is submitted that any unilateral termination of the said contract would be detrimental and fatal to the CIRP, as it would result in immediate disruption of a crucial source of cash flow and render the Corporate Debtor unviable for prospective resolution applicants, thereby adversely affecting the prospects of successful resolution of the Corporate Debtor.
- 2.5. It is submitted that the Corporate Debtor is engaged in the business of setting up solar power plants on an EPC basis and leasing of electric vehicles, and the continuation of the subject EPC Contract is critical for operating the Corporate Debtor as a going concern. It is submitted that any wrongful termination of the EPC Contract would have wide ramifications on the prospects of successful resolution of the Corporate Debtor. It is further submitted that value maximisation and successful resolution of the Corporate Debtor are the core objectives of the Insolvency and Bankruptcy Code, 2016, and any action taken during the CIRP which is contrary to these objectives is untenable in law.
- 2.6. It is submitted that the Corporate Debtor is a company incorporated under the Companies Act, 1956, having its registered office at 15th Floor, A Block, Westgate Business Bay, SG Road, Jivraj Park, Ahmedabad, Gujarat-380051.



The Corporate Debtor is engaged in the business of setting up solar power plants on an EPC basis and leasing of electric vehicles.

- 2.7. It is further submitted that during its business, the Corporate Debtor submitted its bid pursuant to Tender bearing Ref. No. RFX No. 3000036625 dated 17.04.2023 floated by the Respondent for setting up a 62 MWAC solar power plant at Village Paras, District Akola, Maharashtra (Project Site), along with operation and maintenance (O&M) of the plant for a period of five years.
- 2.8. It is submitted that on 19.10.2023 the Respondent issued a Letter of Award in favour of the Corporate Debtor setting out the preliminary terms and conditions of the Project. Thereafter, on 21.02.2024, an Engineering, Procurement and Construction Contract (“EPC Contract”) was executed between the Corporate Debtor and the Respondent. A copy of the Letter of Award dated 19.10.2023 is annexed as Exhibit-1, and a copy of the EPC Contract dated 21.02.2024 is annexed as Exhibit-2.
- 2.9. It is submitted that in terms of Clause 5(c) of the EPC Contract, the Corporate Debtor mobilised resources and commenced work on the portion of the Project Site handed over by the Respondent in November 2023. In a meeting dated 15.11.2023, it was recorded that only partial land had been handed over and the remaining land was to be provided by January 2024, and that the Respondent was to undertake clearing and fencing of the site to facilitate



execution of the project. A copy of the minutes of meeting dated 15.11.2023 is annexed as Exhibit-3.

- 2.10. It is submitted that the Corporate Debtor repeatedly requested the Respondent to hand over the balance Project Site. In this regard, vide letter dated 24.09.2024 bearing No. GEL/MAHAGENCO/62MW/Land Handover GM03, the Corporate Debtor again sought timely handover of the remaining land and highlighted delays in execution caused due to non-availability of the complete Project Site. However, the Respondent failed to hand over the entire site within time. A copy of the letter dated 24.09.2024 is annexed as Exhibit-4.
- 2.11. It is submitted that in the absence of handover of the complete Project Site, the Corporate Debtor vide letter dated 15.10.2024 bearing No. GEL/MAHAGENCO/62MW/EOT-GM04 sought formal extension of time for completion of the project, citing delays in handing over of the balance land, provision of grid connectivity and terminal bay, and unprecedented rainfall.
- 2.12. The Respondent, vide letter dated 22.10.2024 bearing Ref. No. CE/RE-P&P/62MW/SCOD extension/1548-A, granted extension up to 31.03.2025. In the meantime, the Corporate Debtor also reiterated its request for handover of the complete Project Site vide email dated 21.10.2024. Copies of the letter dated 15.10.2024, letter dated




22.10.2024 and email dated 21.10.2024 are annexed as Exhibit-5, Exhibit-6 and Exhibit-7, respectively.

- 2.13. It is submitted that the Corporate Debtor again sought handover of the balance Project Site vide letter dated 12.12.2024 bearing Ref. No. GEL/MAHAGENCO/62MW/Land Handover-GM13, highlights on-going difficulties in execution. Thereafter, owing to continued non-availability of the complete land and delays attributable to the Respondent, the Corporate Debtor sought a further extension of time for completion of the project till 30.08.2025 vide letter dated 15.01.2025, which was subsequently granted by the Respondent on 26.03.2025 vide letter bearing Ref. No. CE/RE-P&P/62MW/2nd SCOD extension/No. 00235. Exhibit-8, Exhibit-9 and Exhibit-10 is a Copy of letter dated 12.12.2024, 15.01.2025 and 26.03.2025 respectively by the respondent to the Corporate Debtor.
- 2.14. It is submitted that the Respondent, vide letter dated 28.03.2025 bearing Ref. No. CE/RE-P&P/Significant Delays/00248, alleged delays in completion of the project, even though the complete Project Site had not yet been handed over to the Corporate Debtor. Thereafter, the Respondent issued another letter dated 15.04.2025 alleging deficiencies in execution of the work under the EPC Contract. Copies of the letters dated 28.03.2025 and 15.04.2025 are annexed as Exhibit-11 and Exhibit-12, respectively.



- 2.15. It is submitted that in the meantime, the Securities and Exchange Board of India (SEBI), vide interim order dated 15.04.2025, as confirmed by confirmatory order dated 30.07.2025 bearing Ref. No. WTM/KV/CFID/CFID-SEC2/31565/2025-26 (collectively, "SEBI Orders"), flagged certain alleged violations of corporate governance and instances of misutilisation/diversion of funds of the Corporate Debtor and imposed sanctions upon the Corporate Debtor and its promoters. Copies of the orders dated 15.04.2025 and 30.07.2025 are annexed as Exhibit-13 and Exhibit-14, respectively.
- 2.16. It is submitted that the Respondent thereafter issued a Show Cause Notice dated 03.06.2025 alleging delay in implementation and completion of the project and calling upon the Corporate Debtor to explain and rectify the alleged defaults. The said notice was issued despite extension of time having been granted till 30.08.2025 and notwithstanding that the Respondent had yet to hand over the complete Project Site in terms of its obligations. A copy of the Show Cause Notice dated 03.06.2025 is annexed as Exhibit-15.
- 2.17. It is submitted that this Hon'ble Tribunal, vide order dated 13.06.2025 in Company Petition (I.B.) No. 195/AHM/2025 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Adjudicating Authority Rules, admitted the petition and initiated CIRP against the Corporate Debtor. By the said order, the Applicant was appointed as the Interim



Resolution Professional, and was subsequently confirmed as the Resolution Professional of the Corporate Debtor.

- 2.18. It is submitted that immediately after initiation of CIRP, the Respondent, vide letter dated 15.07.2025 bearing Ref. No. CE/RE-P&P/62MWSPP/Termination/00809, unilaterally terminated the Letter of Award and the EPC Contract on alleged grounds of delay and non-compliance by the Corporate Debtor. A copy of the termination letter dated 15.07.2025 is annexed as Exhibit-16.
- 2.19. It is submitted that upon commencement of CIRP, the Resolution Professional sought requisite information from the suspended management vide email dated 17.06.2025 to run the Corporate Debtor as a going concern. Thereafter, vide letter dated 29.07.2025, the RP informed the Respondent about initiation of CIRP, assured steps being taken for completion of the project, and requested withdrawal of the termination of the EPC Contract along with refund of the encashed bank guarantees within seven days. A copy of the letter dated 29.07.2025 is annexed as Exhibit-17.
- 2.20. It is submitted that since commencement of CIRP, the Resolution Professional has made continuous efforts to engage with the Respondent for revival and completion of the project, payment of outstanding dues and refund of the bank guarantees. The RP and his team held meetings with the Respondent on 01.10.2025 and 16.10.2025 and thereafter issued a letter dated 17.10.2025 seeking



cooperation; however, no response has been received till the filing of the present Application. A copy of the letter dated 17.10.2025 is annexed as Exhibit-18.

2.21. It is submitted that the unilateral termination of the EPC Contract by the Respondent after commencement of CIRP has seriously jeopardised the commercial viability and prospects of successful resolution of the Corporate Debtor and is prejudicial to the interests of its stakeholders. The said actions are stated to be contrary to the terms of the EPC Contract and the provisions and objectives of the Insolvency and Bankruptcy Code, 2016. Aggrieved thereby, the Applicant has filed the present Application seeking appropriate reliefs on the grounds set out herein, without prejudice to one another.

The Respondent's unilateral termination of the EPC Contract during CIRP is patently illegal and in direct violation of the settled principles of law

2.22. It is submitted that value maximization and successful resolution of the Corporate Debtor are primary objectives of the Code, and therefore any action during the CIRP which undermines these objectives is untenable in law and cannot be sustained.

2.23. It is submitted that a contract which is central to the Corporate Debtor's survival as a going concern and to the success of the CIRP cannot be terminated during the CIRP, as settled by the Hon'ble Supreme Court in Gujarat



Urja Vikas Nigam Ltd. v. Amit Gupta & Ors. (2021) 7 SCC 209, which held that termination of such foundational contracts would defeat the CIRP and is therefore impermissible.

- 2.24. The Gujarat Urja Judgement ratio was reiterated by the Hon'ble Supreme Court in TATA Consultancy Services Limited v. Vishal Ghisulal Jain ((2022) 2 SCC 583) ("Tata Consultancy Judgement")
- 2.25. It is submitted that judicial precedents clearly establish that a contract which is central to the success of the CIRP cannot be terminated during its pendency, particularly where such termination is triggered solely on account of the Corporate Debtor's insolvency.
- 2.26. It is submitted that in the present facts and circumstances, the Respondent's unilateral and arbitrary termination of the contract post-commencement of CIRP, along with invocation of the bank guarantee, is contrary to the terms of the EPC Contract, settled judicial precedents, and the overarching objectives of the Code.
- 2.27. It is submitted that the EPC Contract, valued at over INR 292.5 crores and being one of the Corporate Debtor's principal solar EPC projects its core line of business has a direct and substantial bearing on its commercial viability and the prospects of a successful resolution.
- 2.28. It is submitted that the Corporate Debtor achieved substantial project progress approximately 70% under the supply contract and 20% under the services contract



despite non-handover of the complete project site, and repeatedly sought site delivery to complete the project within time; consequently, an extension of the scheduled commercial operation date was sought and duly granted by the Respondent.

- 2.29. It is submitted that the EPC Contract is central to the Corporate Debtor's operation as a going concern and to the success of the CIRP, being a primary source of revenue in its core EPC business; any unilateral termination would extinguish a crucial cash flow stream, render the Corporate Debtor commercially unviable for prospective resolution applicants, and thereby jeopardize the prospects of a successful resolution.
- 2.30. It is submitted that the Corporate Debtor has expended substantial time and resources and performed a significant portion of its obligations under the EPC Contract, and is tentatively entitled to receive approximately INR 18.32 crores (along with applicable interest) for the work completed, underscoring the centrality and vitality of the said contract to its status as a going concern and the success of the CIRP.
- 2.31. It is submitted that in view of the aforesaid factual matrix, the ratio of the Hon'ble Supreme Court in Gujarat Urja squarely applies to the present case, as in both instances a contract central to the Corporate Debtor's functioning as a going concern was sought to be terminated during the pendency of the CIRP.



2.32. Considering the above, it is submitted that the termination of the EPC Contract by Respondent No. 1 is patently illegal, unsustainable in law, and contrary to the ratio laid down by the Hon'ble Supreme Court in Gujarat Urja; accordingly, the termination cannot be sustained and is liable to be set aside, with the Termination Letter being recalled.

Without prejudice, the termination of the EPC Contract and the Conduct of the Respondent is contrary to the terms of the EPC Contract and the contractual obligations

2.33. Without prejudice, it is submitted that the termination is also contrary to the terms of the EPC Contract, as under Clause 5 the completion timeline was to commence only upon handover of the entire project site; however, the Respondent failed to hand over the complete site, as recorded in the minutes of meeting dated 15.11.2023 (Exhibit-3), despite undertaking to do so by January 2024, and notwithstanding repeated requests by the Corporate Debtor for site handover, fencing, and clearance, thereby preventing timely and uninterrupted execution of the project and vitiating the basis of termination.

2.34. It is submitted that the resolution of the Corporate Debtor ought not to be jeopardized on account of the Respondent's conduct and delays attributable to it, including its failure to deposit requisite payments into the



Trust and Retention Account in terms of the EPC Contract.

2.35. It is submitted that pursuant to the EPC Contract, the Corporate Debtor availed a project facility of INR 192.87 crores from IREDA, under which all invoice payments were required to be routed through the designated Trust and Retention Account (TRA); the Respondent, vide letter dated 15.03.2023 (Exhibit-19), expressly agreed to remit all EPC-related payments solely into the said TRA, the details of which were duly communicated by the Corporate Debtor.

2.36. It is submitted that despite having expressly agreed to route all invoice payments through the designated TRA, the Respondent, in breach of its contractual and financial obligations, deliberately disbursed payments to accounts other than the TRA, thereby causing financial prejudice to the Corporate Debtor and undermining the agreed funding structure, with such payments being made in flagrant violation of the stipulated TRA mechanism.

S No	Invoice Date	Amount (INR) (Cr.)	Remarks
1.	27.02.2025 and 04.03.2024	55.63	Amount not released in designated TRA
2.	28.03.2024	48.53	Amount not released in designated TRA
3.	31.03.2024	7.20	Amount not released in designated TRA
4.	Payment released against Advance Bank Guarantee dated 26.06.2024.	39.97	The advance payment also not released in the designated TRA.
	Total	151.33	



- 2.37. It is submitted that since the payments made by the Respondent did not reflect in the designated TRA, IREDA, vide letters dated 16.04.2025 and 24.04.2025 (Exhibit-20 colly), called upon the Respondent to confirm the invoices raised and payments released and to ensure that all pending invoice payments be routed through the TRA in terms of the loan agreement; however, the Respondent failed to respond to either communication.
- 2.38. It is submitted that in the absence of any response to the earlier communications, IREDA, vide letters dated 02.05.2025 bearing ref. no. TS-11012/4/2023-IREDA/1/6092/2025 and dated 06.05.2025 bearing ref. no. IREDA/DF/2025-26/1/6108/2025 (Exhibit-21 colly), expressly highlighted the Respondent's contravention in failing to route payments against the Corporate Debtor's invoices through the designated TRA; despite repeated requests, the Respondent deliberately failed to furnish any information or response, thereby casting serious doubt on the propriety of its conduct and the ultimate destination of funds lawfully due to the Corporate Debtor.
- 2.39. It is submitted that with respect to payments released by the Respondent into accounts other than the designated TRA, no communication or explanation for such deviation from the agreed payment terms has been provided till date; further, the Applicant, vide email dated 09.10.2025 (Exhibit-22), sought clarification from the Suspended Management regarding such discrepancies, but no response or supporting correspondence evidencing any



change in payment terms has been received, and upon review of available records, no such modification has been found.

2.40. It is submitted that in light of the SEBI orders noting fund diversion, the Respondent's unexplained failure to route payments through the designated TRA, coupled with the abrupt termination of the EPC Contract immediately upon commencement of CIRP, raises serious concerns regarding its conduct and evidences a pattern aimed at frustrating the CIRP; such actions are contrary to contractual obligations and gravely prejudice the Corporate Debtor's commercial viability, value, and stakeholder interests, and therefore the unlawful and arbitrary termination warrants being set aside in furtherance of the Code's objectives of value maximization and successful resolution.

The RP of Corporate Debtor in pursuance of his duties is desirous to take necessary efforts to complete the EPC Contract in a timely manner

2.41. It is submitted that under Section 20 and Section 25 of the Code, the IRP is statutorily obligated to preserve and protect the value of the Corporate Debtor's assets and to manage its operations as a going concern; accordingly, the relevant extract of Section 20 is reproduced for ready reference in the petition.

2.42. It is submitted that in discharge of his statutory duties to preserve the Corporate Debtor as a going concern and



protect its assets, the RP has made repeated bona fide efforts to cooperate with the Respondent with a view to revive and complete the EPC Contract in terms thereof.


2.43. It is submitted that the EPC Contract is an essential contract for the Corporate Debtor and its termination jeopardizes the CIRP; further, the Respondent has encashed bank guarantees aggregating to INR 68,97,00,000/- while an amount of INR 18,80,51,047/- remains outstanding and payable to the Corporate Debtor, thereby materially affecting its commercial viability and prospects of resolution, and hence the unilateral termination deserves to be set aside.

2.44. It is submitted that the Applicant craves leave to amend the present Application and to place additional documents on record upon receipt of requisite information; the Respondent's conduct, in causing delays and thereafter relying upon them to terminate the contract, reflects a deliberate attempt to frustrate the CIRP and defeat the rights of the Corporate Debtor and its stakeholders, which is contrary to the settled position of law and the objectives of the Code and cannot be sustained.

3. In response to the above averments made by the Applicant a **reply** was filed by the Respondent Maharashtra state Power Generation Company Limited on 27.01.2026 vide Inward Diary No. 555 thereby denying all the averments and making following submissions:



- 3.1. It is submitted that the Respondent–MAHAGENCO, through its authorised signatory, has filed the counter affidavit affirming knowledge of the facts and circumstances of the case, denying all averments in the Application save and except those specifically admitted, and has placed on record the authorisation to sign and verify pleadings as Annexure-R-1.
- 3.2. It is submitted that the Answering Respondent, MAHAGENCO (Maharashtra State Power Generation Company Limited), formerly MSEB, is a major state-owned power generation company in Maharashtra with a total generation capacity of 13,880.55 MW and supplies power within the State of Maharashtra.
- 3.3. It is submitted that the Respondent has raised a preliminary objection to maintainability, contending that the present Application seeks to convert a purely commercial and technical dispute arising from an EPC contract into an insolvency issue and to obtain contractual enforcement reliefs under Section 60(5) of the Code, which are stated to be beyond the limited residuary jurisdiction of this Hon'ble Tribunal, and therefore liable to be dismissed in limine.
- 3.4. It is submitted that the Respondent contends that the Application essentially challenges the termination and seeks continued performance/enforcement of the EPC Contract dated 21.02.2024, which constitutes a contractual dispute falling within the arbitration clause



(Clause 28) of the said contract and is therefore stated to be arbitrable in nature.

28. Dispute Resolution and Arbitration

a. Negotiation

The parties should negotiate in good faith and make every effort to resolve any disagreements, disputes, controversies or claims, whatever their nature, that arise as a consequence of this Contract or are related to it.

b. Arbitration

In respect of all matters, which are left to the decision of the CE(RE- P & P) in line with the contract, including the granting or withholding certificates, the CE(RE- P & P) shall, if required to do so by the EPC Contractor, give in writing a final decision thereon. If the final decision is not accepted by the EPC Contractor the matter will, at the request of the EPC Contractor be referred to arbitration under the provision for arbitration hereinafter contained but, subject to the right of reference to arbitration; such decision shall be final and binding on the EPC Contractor.

ii. Except where otherwise provided, if at any time, any question, dispute or difference, whatever shall arise between EPC Contractor and the MAHAGENCO upon or in relation to or in connection with this contract either of the parties may give to the other notice in writing of the existence of such a question, on rejection of the matter, the dispute or difference shall be referred to the sole arbitrator jointly appointed by MAHAGENCO and the EPC Contractor at the time of dispute after ascertaining the terms of reference mutually.

iii. The Arbitrator will preferably be a member of Arbitration Council and arbitration proceedings will take place as per provisions of Arbitration and Conciliation Act, 1996 or any statutory modifications or re-enactment thereof, and the rules made there under and for the time being in force shall apply

iv. The EPC Contractor will ensure that the work under this contract shall continue during arbitration proceedings and dispute and no payments due from or payment by the MAHAGENCO shall be withheld on account of such proceedings except to the extent which may be in dispute.

v. The arbitral tribunals reasoned award shall be final and binding on the Parties.

vi. The fees of the arbitrator shall be borne by the Party nominating them.

vii. All others terms and conditions as per tender code 3000036625 remains unchanged.

viii. The Bombay High Court will only have jurisdiction in this case.



- 3.5. It is submitted that the Respondent asserts that the EPC Contract contains an arbitration clause providing the agreed remedy for all disputes, and therefore the present Application seeking to challenge termination and enforce the contract under Section 60(5) of the Code raises an arbitrable dispute and is stated to be misconceived and not maintainable before this Hon'ble Tribunal.
- 3.6. It is submitted that the Respondent contends that Section 60(5) of the Code is not a forum for adjudication of contractual disputes, particularly where termination is based on alleged breach, delay, or non-performance unrelated to insolvency, and that the reliefs sought setting aside termination dated 15.07.2025, restraining consequential steps, refund of bank guarantees, deposit of amounts, and continuation of the contract are misconceived, being matters for the contractual dispute resolution mechanism; it is further stated that as a state utility dealing with public funds and infrastructure, continuation of the contract is not feasible in public interest in view of alleged persistent defaults.
- 3.7. It is submitted that the Respondent issued an Request for Proposal dated 17.04.2023 for selection of an EPC contractor for a 62 MW (AC) solar power project at Paras, Akola, requiring bidders to inspect the site and satisfy themselves as to feasibility and providing that no post-award claims would be entertained; the Corporate Debtor submitted its bid declaring that it had inspected the site



and unconditionally accepted the tender and contract terms (Annexure R-2 and Annexure R-3).

- 3.8. It is submitted that the tender eligibility required proof of financial stability and solvency, and the Corporate Debtor submitted solvency certificates and financial statements showing non-current assets of ₹509.41 crores, current assets of ₹955.69 crores, and total income of ₹373.13 crores as on 31.03.2023, on the basis of which its bid was found eligible for the EPC Contract; the financial statements for FY 2022–23 are filed as Annexure R-4.
- 3.9. It is submitted that the Respondent alleges that from the inception the Corporate Debtor was uncooperative and delayed submission of the Performance Bank Guarantee, which was required on or before 26.10.2023 but was furnished in three parts only on 25.01.2024, 15.02.2024, and 22.03.2024 after repeated follow-ups by the Respondent.
- 3.10. It is submitted that the Corporate Debtor was awarded the EPC Contract dated 21.02.2024 for engineering, procurement, erection, testing and commissioning of a solar PV project at Paras, Akola, Maharashtra, which stipulated detailed obligations regarding execution, timelines, performance, and bank guarantees, and provided for termination in the event of default. The relevant clauses of the agreement are as follows:



3. Description and Object of the Contract:

b. Object of the Contract

i) The object of this Agreement is to set out key terms and conditions for implementation of Project Agreements which shall guarantee the due performance of all the responsibilities and obligations of the EPC Contractors under the Project Agreements and ensure coordination between the Owner and the EPC Contractor in an integrated manner with seamless interface between the other contracts. This Agreement will prevail in case of any inconsistencies arising in any of these contracts under this Agreement.

ii) The terms and conditions that regulate and govern the design, engineering, manufacture, supply, erection, testing, commissioning and operations and maintenance of the 62 MWAC Crystalline Technology Grid Interactive Solar Power Plant at the site of Owner, are set forth in the Project Agreements attached hereto as Appendix 3."

Appendix 3A: Contract Agreement for Supply of Materials

Appendix 3B: Contract Agreement for Civil and Services

Appendix 3C: Contract Agreement for Operation & Maintenance



4. Project Site

i. Location of the Plant:-

Project Location	Latitude, Longitude	Project Capacity MW (AC)	Area, Hectares	Substation Location
Village Paras, Taluka Balapur, District Akola, Maharashtra, India	Latitude: 20.71° N Longitude: 76.80° E	62	103	220 kV Paras MSETCL Substation

5. Execution Plan –

a. Time of Completion



The EPC Contractor shall provide full program of the supply in detail and delivery schedule along with work schedule thereto. Strict adherence and guaranteed delivery schedule mentioned in terms & conditions shall be the essence of the contract and delivery must be maintained. The work must be completed as per the TIMELINE below from the date of handing over of site. The EPC Contractor shall also provide a Bar/PERT Chart indicating completion schedule for various items involved in the work within the stipulated completion period and the EPC Contractor shall strictly adhere to that schedule.



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Sr.No.	Stage	Reference Form D
1.	Handing over of entire project land	Zero Date (D)
2.	Site development work	D+45
3.	Approval of all major drawings	D+100
4.	Completion of civil works including but not limited to Section-IIA of RfP tender document	D+150
5.	Completion of supply of major equipment's like: SPV Modules (including structures for the above), Power Conditioning Units, Power Evacuation equipment's etc.	D+270
6.	Installation of all major equipment's & Interconnection of all major equipment's and completion of installation	D+330
7.	Achievement of Commissioning with entire contracted capacity	D+365



7(h) -Breach of Contract

The MAHAGENCO may at any time by notice in writing summarily terminate the Contract without compensation to the EPC Contractor in any of the following events:

i. If the EPC Contractor being an individual or if a firm, any partner thereof shall at any time, be adjudged insolvent or shall have a receiving order or order from administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any conveyance or assignment with his creditors or suspend payment or if the firm be dissolved under Partnership Act,

OR

ii. If the EPC Contractor being a Company is wound up voluntarily or by the order of a court or a Receiver, Liquidator or manager on behalf of the Debenture holder is appointed or circumstances have arisen which entitle the Court or debenture holder to appoint a Receiver, Liquidator or Manager.

OR

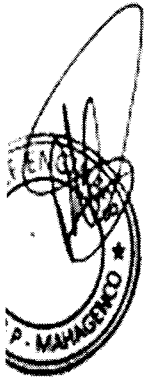
iii. The EPC Contractor commits any breach of the contract not herein specifically provided for, provided always that such determination shall not prejudice any right to faction or remedy which shall have accrued or shall accrue thereafter to the MAHAGENCO and provided also that the EPC Contractor shall be liable to pay to the MAHAGENCO. The EPC Contractor shall under no circumstances be entitled to pay again or repurchase.

24. Termination of Contract by MAHAGENCO

Termination of the Contract by the Owner

i. The MAHAGENCO may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the EPC Contractor, terminate the contract in whole or part;

ii. If the EPC Contractor fails to deliver or execute any or all of the goods within the time period(s) under the contract or any extension thereof granted by the MAHAGENCO





pursuant to the clause for Delay in Execution or Failure to Supply or If the EPC Contractor fails to perform any other obligations(s) under the contract.

iii. In the event the MAHAGENCO terminates the contract in whole or in part, pursuant to above, the MAHAGENCO may procure, upon such terms and in such manner as it deems appropriate, Goods similar to those undelivered, the EPC Contractor shall be liable to the MAHAGENCO for any excess costs for such similar goods. However, the EPC Contractor shall continue the performance of the contract to the extent nor terminated.

iv. The Owner can terminate this Contract under circumstances authorised by the applicable Law, those established in this Contract or in the event of any of the following ("Event of Default"):

a. The EPC Contractor does not replenish or provide fresh performance guarantee upon encashment of Performance guarantee by MAHAGENCO.

b. The actual units (kWh) generated for a year is below the contracted value for three consecutive years of Operation and Maintenance period.

c. The EPC Contractor fails to perform any other obligation(s) under the Contract

d. The EPC Contractor assigns mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the project in contravention of the provisions of This Agreement.

e. The EPC Contractor transfers or novates any of its rights and/ or obligations under This agreement, in a manner contrary to the provisions of This Agreement; except where such transfer is in pursuance of an applicable Law; and does not affect the ability of the transferee to perform. and such transferee has the financial capability to perform, its obligations under This Agreement or to a transferee who assumes such obligations under This Agreement and This Agreement remains effective with respect to the transferee;

3.11. It is submitted that the Respondent contends that despite the zero date for commencement being fixed as 15.11.2023, the Corporate Debtor failed to adhere to the contractual timelines under the EPC Contract dated 21.02.2024, and that the termination was effected only after multiple opportunities were granted to cure alleged



persistent delays and breaches, which, according to the Respondent, rendered termination lawful in view of the public utility nature of the 62 MW (AC) solar project. The following table sets out the dates and events which clearly demonstrate persistent delay, non-performance and breach by the Applicant leading to lawful termination of the EPC Contract by the Respondent:

S. No.	Date	Event	Annexures
1.	19.10.2023	Letter of Award issued to M/s Gensol Engineering Ltd. for development of 62 MW Solar Power Project at Paras, Akola.	Exhibit-1 in the Application Paperbook
2.	15.11.2023	Project commencement / Zero date. The Applicant was obligated to mobilise manpower, materials and equipment and commence execution strictly as per the EPC execution plan and schedule.	Exhibit-3 in the Application Paperbook
3.	08.12.2023	The Respondent issued a letter recording that the Corporate Debtor had failed to submit the mandatory Performance Bank Guarantee within the stipulated period from the LoA.	ANNEXURE R-5
4.	21.02.2024	EPC Contract executed between Applicant and Respondent for development of 62 MW Solar Power Project at Paras, Akola. The contract was an integrated EPC arrangement with time expressly declared as the essence of the contract.	Exhibit-2 in the Application Paperbook
5.	30.05.2024	MAHAGENCO issued a letter stating repeated failures by Corporate Debtor since October 2023 in submitting MDL, L2 Schedule, soil test report, topography, PVsyst and other mandatory engineering documents, despite multiple review meetings and a special meeting held from 20.05.2024 to 24.05.2024. The Corporate Debtor had committed to submit six hard copies of soil test	ANNEXURE R-6



		and topography reports by 27.05.2024, which were not received.	
6.	11.06.2024	MAHAGENCO issued a communication stating that site work could not be expedited due to non-submission of critical civil and structural drawings, including geotechnical survey report, soil test report, MMS structure drawings, pile load test report, grading plan, fencing and control room drawings. The Corporate Debtor was held fully responsible for delays arising from poor engineering response.	ANNEXURE R-7
7.	18.06.2024	The Respondent issued a communication on urgent preparatory requirements such as quality laboratory setup, finalisation of quarries for aggregate and sand and approval of concrete mix design, emphasizing that delay would jeopardise the COD of 14.11.2024.	ANNEXURE R-8
8.	15.07.2024	MAHAGENCO called upon the Corporate Debtor to submit mandatory third-party factory test reports, insurance certificates, RFID details, and warranty certificates for 67.86 MWp PV modules already delivered at site. Despite repeated reminders, these documents were not submitted.	ANNEXURE R-9
9.	06.09.2024	The Respondent issued a communication that more than 60% of engineering drawings had been approved to facilitate progress. However, daily project reports repeatedly recorded "NO PROGRESS ON SITE" due to lack of manpower and machinery. Gensol's own L2 schedule continued to fix COD as 14.11.2024.	ANNEXURE R-10
10.	19.09.2024	MAHAGENCO again warned that mandatory third-party SPV module test reports, insurance certificates and RFID details had not been submitted even after more than six	ANNEXURE R-11



		months of follow-up, reserving the right to take contractual action.	
11.	24.09.2024	First written communication from Corporate Debtor raising alleged issues regarding land shortfall nearly ten months after site handover and just weeks before the contractual completion date, indicating an afterthought.	Exhibit-4 in the Application Paperbook
12.	15.10.2024	First request for extension sought by Corporate Debtor admitting inability to complete the project within the original contractual completion period.	Exhibit-5 in the Application Paperbook
13.	22.10.2024	Limited extension granted by the Respondent in public interest and without waiver of contractual rights to enable completion of the project.	Exhibit-6 in the Application Paperbook
14.	14.11.2024	Contractual completion date for achieving commissioning of the entire contracted capacity. The Corporate Debtor failed to complete the project within the stipulated timeline.	---
15.	15.01.2025	The Corporate Debtor expressly conveyed its inability to complete the project even within the extended timeline and sought a further extension.	Exhibit-9 in the Application Paperbook
16.	26.03.2025	Further extension granted by Respondent.	Exhibit-10 in the Application Paperbook
17.	14.03.2025– 24.03.2025	Work at the project site was completely halted, as recorded in daily progress reports of PMC M/s TUV, evidencing total inactivity across critical project fronts.	---
18.	28.03.2025	The Respondent issued a detailed letter recording persistent and unresolved delays based on PMC reports, repeated “NO WORK” entries, shortages of steel, cement and column posts, inconsistent daily progress reports, and complete stoppage of work from 14.03.2025 to 24.03.2025. MAHAGENCO clarified	Exhibit-11 in the Application Paperbook



		that 125.92 hectares of land had been handed over and only 23.47 hectares were affected by encroachments, which could not justify the delay. Delays were attributed to negligence, lack of professionalism, inadequate manpower and material management by Corporate Debtor.	
19.	15.04.2025	Intimation notice issued by the Respondent invoking the termination clause of the contract, warning that if work was not resumed within three days, the Respondent would initiate necessary action in accordance with the agreement.	Exhibit-12 in the Application Paperbook
20.	03.06.2025	Show cause notice issued by MAHAGENCO calling upon Corporate Debtor to explain why action including termination should not be taken for persistent breach and non-performance.	Exhibit-15 in the Application Paperbook
21.	13.06.2025	Commencement of Corporate Insolvency Resolution Process (CIRP) against Corporate Debtor. By this date, contractual defaults and breaches had already crystallised and multiple notices had been issued.	---
22.	15.07.2025	EPC Contract terminated by MAHAGENCO strictly in exercise of contractual rights due to prolonged delay, non-performance, and failure to fulfil contractual obligations. Termination was based on pre-existing breaches and not on insolvency.	Exhibit-16 in the Application Paperbook

3.12. It is submitted that the Respondent contends that it had been consistently communicating contractual defaults, non-submission of mandatory documents and lack of site progress to the Corporate Debtor since 08.12.2023, and that no grievance regarding alleged shortfall of land was



raised until 24.09.2024 nearly ten months after commencement and shortly before the contractual completion date of 14.11.2024 thereby rendering such allegation an afterthought.

3.13. It is submitted that the Respondent contends that the Corporate Debtor raised the issue of non-handover of land for the first time only on 24.09.2024 after a delay of over ten months, and despite prior communications and meetings, failed to achieve contractual milestones; the Respondent asserts that by letter dated 28.03.2025 it had clarified that 125.92 hectares of land had already been handed over with only 23.47 hectares affected by encroachment, and that delays were attributable to work stoppage, material shortages, inadequate manpower and inconsistent progress by the Corporate Debtor, which led to issuance of the show cause notice dated 03.06.2025 and eventual termination in exercise of contractual rights.

3.14. It is submitted that the Respondent contends that the CIRP commenced on 13.06.2025 whereas steps toward termination had been initiated much prior thereto, and that the termination of the EPC Contract dated 21.02.2024 was on account of longstanding contractual breaches, persistent delay and non-performance existing prior to insolvency and not on account of the CIRP, and was effected in exercise of contractual rights to safeguard public interest and ensure completion of the project.



- 3.15. It is submitted that relying on the judgment of the Hon'ble Supreme Court in **Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta & Ors.**, the Respondent contends that NCLT's power to restrain termination under Section 60(5) of the Code is confined to cases where termination is solely on account of insolvency and would result in corporate death, and that in the present case the termination was for pre-existing contractual breaches, delay and non-performance and not on account of insolvency, and therefore falls outside the scope of interference under Section 60(5).
- 3.16. It is submitted that placing reliance on **Tata Consultancy Services Ltd. v. SK Wheels Pvt. Ltd. Resolution Professional, Vishal Ghisulal Jain**, the Respondent contends that the NCLT's residuary jurisdiction under Section 60(5) cannot be invoked where termination of a contract is founded on pre-existing contractual defaults independent of insolvency, and that intervention is warranted only where such termination is solely on account of insolvency and would result in the corporate death of the Corporate Debtor.
- 3.17. It is submitted that in view of the clarification in **Gujarat Urja**, the Respondent contends that the termination in the present case was not on account of insolvency but due to persistent non-performance and pre-existing contractual defaults, as reflected in its letters dated 28.03.2025, 15.04.2025 and 03.06.2025, and therefore



the termination was on legitimate contractual grounds unrelated to the CIRP.

- 3.18. It is submitted that the Respondent reiterates that the Application is liable to be rejected as the termination dated 15.07.2025 was based on alleged persistent breach, delay and non-performance and not on insolvency, and that the disputes raised including extent of work, attribution of delay, entitlement to extension of time and invocation of bank guarantees are contractual and arbitrable in nature and not amenable to summary adjudication under Section 60(5) of the Code.
- 3.19. It is submitted that the Respondent disputes the Applicant's reliance on the contract being a "central contract," contending that the Corporate Debtor has multiple projects and that the Respondent's contract cannot be treated as its sole or foundational contract, and further asserts that a contracting party cannot be compelled to continue with a defaulting contractor in derogation of contractual rights and public interest obligations.
- 3.20. It is submitted that the Respondent relies on the Corporate Debtor's statutory disclosure dated 05.11.2024 under Regulation 30 of the SEBI Listing Regulations, recording a solar EPC order book of ₹5,424 crores with revenue visibility exceeding ₹10,000 crores, to contend that the Corporate Debtor's business is not confined to the Respondent's project and that the EPC Contract



cannot be treated as a sole or central contract; the said disclosure is filed as **Annexure R-12**

3.21. It is submitted that without prejudice to the foregoing, the Respondent, having set out the relevant facts and law, proceeds to deal with the averments and allegations in the Interlocutory Application filed by the RP of Gensol Engineering Ltd. in seriatim is as follows:

- i. It is submitted that the Respondent denies the averments in paragraph 1 of the Application and states that it had repeatedly called upon the Corporate Debtor to perform its obligations within contractual timelines, issuing several letters (Annexures R-5 to R-11) and granting an extension vide letter dated 26.03.2025 (Exhibit-10), yet no progress was achieved at site, whereupon the contract was terminated in terms of Clause 24(iv); it is further contended that the Respondent is entitled to claim liquidated damages, denies any contractual obligation regarding routing of payments through the TRA or any resultant loss, and has filed a statement of payments made from inception till termination as **Annexure R-13**.
- ii. It is submitted that the Respondent denies the averments in paragraphs 2 and 3 of the Application and contends that the EPC Contract dated 21.02.2024 is not central to the Corporate Debtor's functioning as a going concern, and calls upon the Applicant/RP to place on record details of all ongoing contracts of the Corporate



- Debtor, including those with Damodar Valley Corporation and NTPC Ltd., in support of its claim.
- iii. The Respondent states that the averments in paragraphs 5–7 of the Application are matters of record and hence not specifically traversed.
 - iv. It is submitted that the minutes of meeting dated 15.11.2023 (Exhibit-3) record that the Corporate Debtor undertook to complete topography/drone survey and soil testing within 10 days and to clear feasible land locations, raised no protest regarding the extent of land, and agreed to treat 15.11.2023 as the zero date for commencement of work.
 - v. It is submitted that the Respondent denies the averments in paragraphs 9 and 10 of the Application, stating that between 15.11.2023 and September 2024 multiple review meetings were held (Annexures R-5 to R-11) wherein the Corporate Debtor was repeatedly called upon to adhere to timelines and perform its obligations, and that no contemporaneous grievance regarding non-handover of land was raised.
 - vi. It is further contended that extensions were granted only on account of heavy rains and grid connectivity issues beyond the Corporate Debtor's control, yet the Corporate Debtor failed to perform, necessitating issuance of the letter dated 28.03.2025 and subsequent action.
 - vii. It is submitted that the Respondent denies the averments in paragraphs 11 and 12 and contends that

the termination was effected only after multiple opportunities were granted to the Corporate Debtor to cure alleged persistent breaches and delays, and that in view of the public utility nature of the 62 MW (AC) solar project, continued non-performance necessitated lawful termination in accordance with the EPC Contract: -

S. No.	Date	Correspondence	Reference
1.	30.05.2024	MAHAGENCO issued a letter stating repeated failures by Corporate Debtor since October 2023 in submitting MDL, L2 Schedule, soil test report, topography, PVsyst and other mandatory engineering documents, despite multiple review meetings and a special meeting held from 20.05.2024 to 24.05.2024 as directed by the Hon'ble Director (Projects). The Corporate Debtor had committed to submit six hard copies of soil test and topography reports by 27.05.2024, which were not received.	ANNEXURE R-6
2.	11.06.2024	MAHAGENCO issued a communication stating that site work could not be expedited due to non-submission of critical civil and structural drawings including geotechnical survey report, soil test report, MMS structure drawings, pile load test report, grading plan, fencing and control room drawings. The Corporate Debtor was held fully responsible for delays arising from poor engineering response.	ANNEXURE R-7
3.	18.06.2024	The Respondent issued a communication on urgent preparatory requirements such as quality laboratory setup, finalisation of quarries for aggregate and sand and approval of concrete mix design, emphasizing that delay would	ANNEXURE R-8



		jeopardise the COD of 14.11.2024.	
4.	15.07.2024	MAHAGENCO called upon the Corporate Debtor to submit mandatory third-party factory test reports, insurance certificates, RFID details and warranty certificates for 67.86 MWp PV modules already delivered at site. Despite repeated reminders, these documents were not submitted.	ANNEXURE R-9
5.	06.09.2024	The Respondent issued a communication that more than 60% of engineering drawings had been approved to facilitate progress. However, the daily project reports repeatedly recorded "NO PROGRESS ON SITE" due to lack of manpower and machinery. Gensol's own L2 schedule continued to fix COD as 14.11.2024.	ANNEXURE R-10
6.	19.09.2024	MAHAGENCO again warned that mandatory third-party SPV module test reports, insurance certificates and RFID details had not been submitted even after more than six months of follow-up, reserving the right to take contractual action.	ANNEXURE R-11
7.	14.03.2025– 24.03.2025	Work at the project site was completely halted, as recorded in daily progress reports of PMC M/s TUV, evidencing total inactivity across critical project fronts.	---
8.	28.03.2025	The Respondent issued a detailed letter recording persistent and unresolved delays based on PMC reports, repeated "NO WORK" entries, shortages of steel, cement and column posts, inconsistent daily progress reports and complete stoppage of work from 14.03.2025 to 24.03.2025. MAHAGENCO clarified that 125.92 hectares of land had been handed over and only 23.47 hectares were affected by encroachments, which could not justify the delay. Delays were attributed to negligence, lack of	Exhibit-11 in the Application Paperbook



		professionalism, inadequate manpower and material management by Corporate Debtor.	
9.	15.04.2025	Intimation notice issued by the Respondent invoking the termination clause of the contract, warning that if work was not resumed within three days, the Respondent would initiate necessary action in accordance with the agreement.	Exhibit-12 in the Application Paperbook
10.	03.06.2025	Show cause notice issued by MAHAGENCO calling upon Corporate Debtor to explain why action including termination should not be taken for persistent breach and non-performance.	Exhibit-15 in the Application Paperbook
11.	15.07.2025	EPC Contract terminated by MAHAGENCO strictly in exercise of contractual rights due to prolonged delay, non-performance, and failure to fulfil contractual obligations. Termination was based on pre-existing breaches and not on insolvency.	Exhibit-16 in the Application Paperbook

3.22. It is submitted that the Respondent contends that the record demonstrates continuous communications highlighting defaults and lack of progress since 08.12.2023, absence of any contemporaneous protest regarding alleged land shortfall until 24.09.2024, and acceptance by the Corporate Debtor of delays and inadequate mobilisation; it is further asserted that the allegation of non-handover of land is an afterthought and that disputes relating to termination are contractual and arbitrable under Clause 28 of the EPC Contract and not amenable to adjudication under Section 60(5) of the Code.



- 3.23. It is submitted that the Respondent states it is not aware of any SEBI proceedings or interim order dated 15.04.2025 and therefore does not admit the Applicant's contentions in that regard.
- 3.24. It is submitted that the Respondent alleges suppression of material correspondence by the Applicant and contends that the Corporate Debtor was in serious and persistent breach of contractual obligations from the outset, including delayed submission of the Bank Guarantee, and that even another contract for a 150 MW project with the Respondent was terminated for non-performance **(Annexure R-14)**.
- 3.25. It is submitted that the Respondent reiterates that the CIRP commenced on 13.06.2025 whereas steps toward termination had commenced earlier, and that the show cause notice dated 03.06.2025 and termination were based on longstanding contractual breaches and delays independent of insolvency.
- 3.26. It is submitted that the Respondent asserts that it acted within contractual rights to terminate the EPC Contract for pre-existing breaches, and that the moratorium or commencement of CIRP did not divest such contractual rights where breaches pre-dated CIRP.
- 3.27. It is submitted that despite extensions, including vide letter dated 26.03.2025, the Corporate Debtor allegedly failed to resume work or mobilise resources, and had abandoned the project site prior to termination,



necessitating invocation of bank guarantees and termination after due opportunity.

- 3.28. It is submitted that the Respondent contends that the RP did not take steps to cure defaults post-CIRP and only sought refund of invoked bank guarantees, and that termination and encashment of the Performance Bank Guarantee (24.04.2025) occurred prior to CIRP without any contemporaneous protest.
- 3.29. It is submitted that the Respondent alleges that the present Application seeks restoration of a position prior to CIRP and is an abuse of process, and that public interest in completion of the power project cannot be jeopardised for revival of the Corporate Debtor.
- 3.30. It is submitted that the Respondent denies the averments contained under the heading “Submissions on behalf of the Applicant” and states that the same are incorrect and liable to be rejected.
- 3.31. It is submitted that while value maximization and successful resolution are objectives of the Code, the Respondent contends that the present Application does not serve such purposes and that the Corporate Debtor has multiple EPC contracts, and the Applicant/RP has not placed complete particulars of all ongoing contracts on record.
- 3.32. It is submitted that relying on ***AA Estate Pvt. Ltd. v. Khernagar Co-operative Housing Society Ltd. [(2025), IB Law.in492 SC]*** read with Gujarat Urja and TCS, the



Respondent contends that only existing and enforceable rights as on the CIRP commencement date constitute the “estate” of the Corporate Debtor and that the moratorium under Section 14 does not revive contracts already validly terminated prior to insolvency.

- 3.33. It is submitted that the Respondent asserts that the moratorium does not protect inchoate or forfeited rights arising from non-performance and cannot be used to resurrect extinguished contractual interests or defeat lawful termination under general law.
- 3.34. It is submitted that the Respondent contends that the Code is not intended to shield a defaulting corporate debtor from consequences of persistent non-performance or to revive projects of public importance at the cost of contractual and public interest considerations.
- 3.35. It is submitted that relying on AA Estate Pvt. Ltd. and Gujarat Urja, the Respondent contends that the termination was not on account of insolvency but due to persistent non-performance and pre-existing breaches, as reflected in letters dated 28.03.2025, 15.04.2025 and 03.06.2025, and therefore the termination was on legitimate grounds unrelated to the CIRP.
- 3.36. It is submitted that the Respondent denies the averments in paragraphs 26 and 27 and relies on its Technical Audit & Assessment Report dated 28.05.2025 (**Annexure R-15**) stating that only about 30% of the work had been



completed against the required timeline, and reserves its rights to claim liquidated damages, costs, and charges.

3.37. It is submitted that the Respondent contends that the Corporate Debtor has other ongoing projects with public sector entities including Damodhar Valley Corporation and NTPC, and therefore the present EPC Contract cannot be treated as the central business of the Corporate Debtor and the contrary averments are liable to be rejected.

3.38. The Respondent contends that the challenge to termination and allegations against it raise issues dehors insolvency and are contractual disputes amenable to arbitration, and therefore the averments in paragraphs 31 to 34 of the Application are liable to be rejected: -

- i. It is submitted that the Corporate Debtor had agreed to commence work from the zero date i.e., 15.11.2023 and, as per minutes of meeting dated 15.11.2023 (Exhibit-3), undertook to complete topography/drone survey, soil testing, and clearance of feasible land locations within 10 days i.e. 25.11.2023, without raising any protest regarding extent of land.
- ii. It is submitted that the Respondent had been consistently communicating contractual defaults, non-submission of mandatory documents and lack of site progress since 08.12.2023, and that no grievance regarding alleged shortfall of land was raised until 24.09.2024—almost ten months after commencement and shortly before the contractual completion date of



14.11.2024 rendering such allegation an afterthought; it is further alleged that the Corporate Debtor had abandoned the project site prior to termination.

iii. It is submitted that in any event, disputes relating to termination are contractual and arbitrable under Clause 28 of the EPC Contract dated 21.02.2024 and, being dehors insolvency, are not amenable to the Tribunal's residuary jurisdiction under Section 60(5) of the Code.

3.39. It is submitted that the Respondent denies the averments under the heading "Failure to deposit the payments into the Trust and Retention Account" contained in paragraphs 35 to 41 of the Application and states that the same are incorrect and liable to be rejected: -

- i. The Respondent was under no contractual obligation to deposit payments into the Trust and Retention Account (TRA) and, under Clause 9 of the EPC Contract, was only required to make payment of the contract price to the Corporate Debtor.
- ii. That IREDA is not a party to the EPC Contract and the Respondent came to know of the Corporate Debtor's financing arrangement only subsequently; any request to route payments to the TRA was at the instance of the Corporate Debtor and accepted without creating a binding contractual obligation.
- iii. Any dispute regarding routing of payments is purely contractual in nature, the Corporate Debtor has been paid amounts as per contractual terms, and the RP



cannot seek to enforce alleged obligations arising out of the Corporate Debtor's separate loan arrangement with IREDA against the Respondent.

- iv. The Respondent is not privy to the loan agreement between the Corporate Debtor and IREDA, no consent of the Respondent was obtained for such financing arrangement, and no document has been produced to establish any binding obligation on the Respondent in respect of the TRA.
- v. The allegations of loss to the Corporate Debtor on account of payments not being routed through the TRA are denied and the Application, to that extent, is stated to be misconceived and liable to be rejected.

3.40. The Respondent denies the averments in paragraphs 42 to 48 and, relying on **AA Estate Pvt. Ltd. and others vs Khernagar Sukhsadan Cooperative Housing Society Ltd. [(2025)IB Law.in 492 SC]**, Gujarat Urja and TCS, contends that only existing, subsisting and enforceable rights as on the CIRP commencement date constitute the Corporate Debtor's estate, and that the EPC Contract did not create any proprietary or enforceable right warranting protection under Section 14 of the Code.

3.41. The Respondent denies that any sum of ₹18,80,51,047/- is payable to the Corporate Debtor and asserts its entitlement to liquidated damages, costs and penalties, reserving its right to file an appropriate claim.

3.42. The Respondent contends that termination of the EPC Contract was effected for breach and persistent non-



performance, that the project has stalled due to the present proceedings, and that in view of the public utility nature of the 62 MW solar project, the Application is liable to be dismissed with costs as not maintainable.

4. To the above averments made by Respondent, a **rejoinder** affidavit was filed by the Applicant on 27.01.2026 vide Inward Diary No. D689 stating following submissions:

- 4.1. It is submitted **that the Applicant is the duly appointed** Resolution Professional (“RP”) of Gensol Engineering Limited (hereinafter referred to as the “Corporate Debtor”), having been appointed pursuant to the order dated 13.06.2025 passed by this Hon’ble Tribunal in the present matter. The Applicant is therefore competent and authorised to file and prosecute the present application on behalf of the Corporate Debtor.
- 4.2. It is submitted that the Applicant has perused the affidavit in reply dated 08.01.2026 filed by the Respondent in the present Application and, being conversant with the facts and circumstances of the case, is competent and authorised to file the present Rejoinder thereto.
- 4.3. It is submitted that the Applicant has filed the present Application seeking appropriate reliefs against the patently illegal termination of the EPC Contract by the Respondent, which is contrary to settled law and in breach of the terms of the EPC Contract.



- 4.4. It is further submitted that the Respondent, despite failing to perform its contractual obligations including deposit of monies in the TRA, has terminated the EPC Contract solely on account of the imminent insolvency of the Corporate Debtor and notwithstanding that the delay in completion of the Project is attributable to the Respondent alone.
- 4.5. It is submitted that, prior to dealing with the averments made in the Affidavit in Reply, the Applicant briefly reiterates the factual background for the convenience of this Hon'ble Tribunal. The material facts have already been set out in detail in the Application and are being summarised herein only for the sake of completeness and clarity.
- i. It is submitted that the Corporate Debtor entered an EPC Contract with the Respondent on 21.02.2024 for setting up the Project at the Project Site along with an O&M contract for a period of five years. The Corporate Debtor commenced work at the portion of the Project Site earlier handed over to it in November 2023. A copy of the EPC Contract is annexed with the Application as Exhibit-2.
 - ii. It is further submitted that the Respondent failed to hand over the entire available land to the Corporate Debtor and failed to fulfil other contractual obligations, including clearing and fencing of the Project Site, in breach of the EPC Contract.



- iii. It is submitted that, after execution of the EPC Contract, the Corporate Debtor availed financial assistance from IREDA and, in terms of the loan agreement, payments against invoices raised by the Corporate Debtor were required to be routed exclusively through the TRA. The Respondent had agreed to the said arrangement vide its letter dated 15.03.2024. However, in breach of its agreed obligations, the Respondent disbursed certain payments into accounts other than the TRA, thereby causing prejudice to the Corporate Debtor and to public funds.
- iv. It is further submitted that despite repeated communications from IREDA seeking confirmation of invoice amounts and requesting that pending invoice payments be released through the TRA in accordance with the agreed mechanism, the Respondent failed to respond and ensure compliance with the agreed payment structure.
- v. It is submitted that owing to the failure of the Respondent to fulfil its obligations under the EPC Contract, the Corporate Debtor, without any fault on its part, was unable to complete the Project within the stipulated time and was constrained to seek a formal extension of time on 15.10.2024. The Respondent, vide its letter dated 22.10.2024, granted an extension to the Corporate Debtor for completion of the Project up to 31.03.2025.



- vi. It is submitted that as the Respondent failed to hand over the entire Project Site, the Project could not be completed within time for reasons not attributable to the Corporate Debtor. Consequently, the Corporate Debtor sought a further extension on 15.01.2025, which was granted by the Respondent vide letter dated 26.03.2025 extending the timeline up to 30.08.2025.
- vii. It is submitted that instead of fulfilling its obligations and handing over the entire Project Site, the Respondent merely addressed communications alleging delay without indicating any intention to terminate the EPC Contract.
- viii. It is further submitted that only after the SEBI proceedings concerning the Corporate Debtor and the filing of the Section 7 application under the Code, the Respondent, in a deliberate manner, proceeded to terminate the EPC Contract vide termination notice, which is contrary to settled principles of law.
- ix. It is submitted that vide order dated 13.06.2025 passed by this Hon'ble Tribunal in the Company Petition, CIRP was initiated against the Corporate Debtor and the Applicant was appointed as the IRP and thereafter confirmed as the RP. Since then, the Applicant has been managing the affairs of the Corporate Debtor in accordance with the provisions of the Code and the regulations framed thereunder.
- x. It is submitted that during the CIRP, the Applicant became aware of the termination of the EPC Contract



and, in good faith, engaged with the Respondent for withdrawal of the termination and refund of the encashed Bank Guarantees, while also attempting to explore revival and completion of the Project. However, the Respondent failed to withdraw the termination or refund the Bank Guarantees, thereby necessitating the filing of the present Application.

4.6. That, the Reply filed by the Respondent is an attempt to divert attention from its clear breaches of the contractual terms and settled legal position and to justify the illegal termination of the EPC Contract. It is further submitted that the Respondent has sought to portray the dispute as purely contractual and unconnected with the CIRP, whereas the termination of the EPC Contract is directly linked to the CIRP of the Corporate Debtor and has severely prejudiced the prospects of its revival and resolution.

4.7. It is submitted that the grounds for relief have already been set out in detail in the Application and are reiterated herein. All averments and submissions made in the Application may be read as an integral part of the present Rejoinder. Without prejudice and at the risk of repetition, the Applicant further submits as under: -

The EPC Contract is vital to the Corporate Debtor's CIRP, and the Respondent cannot be permitted to take unilateral decisions affecting the same



- 4.8. The EPC Contract is central to maintaining the Corporate Debtor as a going concern and to its successful resolution under the Code. The Respondent's contention regarding the Corporate Debtor having a wide project footprint and order book is untenable and does not dilute the necessity of continuation of the EPC Contract.
- 4.9. The Applicant reiterates that the continuation of the said contract is crucial for the CIRP and all submissions made in the Application in this regard are reaffirmed and may be read as part of the present Rejoinder.
- 4.10. It is submitted that it is not for the Respondent to determine the centrality of the EPC Contract to the CIRP. The CoC, in its commercial wisdom, and the RP have found continuation of the EPC Contract essential for running the Corporate Debtor as a going concern, and the Respondent cannot substitute its own judgment in this regard.
- 4.11. It is submitted that the Respondent, while portraying the termination of the EPC Contract as a mere contractual action arising from alleged breaches by the Corporate Debtor, has in fact sought to justify such termination on the ground of insolvency, which is contrary to settled principles of law and impermissible during the subsistence of CIRP.



4.12. It is submitted **that** the Respondent's attempt to distinguish and exclude the applicability of the judgments in **Gujarat Urja** and **Tata Consultancy** is untenable and contrary to settled law. The said Supreme Court rulings squarely apply to the present case and clearly bar termination of the EPC Contract of the Corporate Debtor in the prevailing CIRP circumstances.

The Respondent has illegally terminated the EPC Contract solely on account of the imminent commencement of CIRP against the Corporate Debtor

4.13. It is submitted that the Respondent, in an opportunistic and calculated manner, terminated the EPC Contract on account of the imminent CIRP proceedings against the Corporate Debtor and the SEBI orders against its erstwhile management, which action is arbitrary and unsustainable in law.

4.14. It is submitted that the Respondent has sought to retrospectively rely on routine project correspondences to justify termination of the EPC Contract; however, the record reveals that no such termination was ever contemplated during the said exchanges and that the decision to terminate was taken only after initiation of Section 7 proceedings and SEBI's orders against the erstwhile management, rendering the termination arbitrary and unsustainable.

4.15. It is submitted that the chronology of events demonstrates that the Respondent, being aware of the imminent




initiation of CIRP upon filing of the Section 7 application and SEBI's interim orders, issued the Show Cause Notice dated 03.06.2025 and, thereafter, post commencement of CIRP, proceeded to terminate the EPC Contract on 15.07.2025, evidencing an opportunistic and mala fide exercise to defeat the insolvency process.

- 4.16. It is submitted that post commencement of CIRP and appointment of the RP, the Respondent has failed to extend cooperation despite repeated efforts by the RP to resolve the issues and has instead adopted delaying tactics and raised baseless allegations, thereby acting to the detriment of the resolution process. Without prejudice, the Respondent is itself in breach of its obligations under the EPC Contract and cannot be permitted to terminate the contract on the ground of delays arising from its own failure to perform its contractual obligations.
- 4.17. It is submitted that, without prejudice, the termination of the EPC Contract by the Respondent is contrary to the terms of the EPC Contract itself and is therefore unsustainable in law.
- 4.18. It is further submitted that under the EPC Contract, the Respondent was obligated to hand over the entire Project Site to the Corporate Debtor to enable execution of the Project; however, the Respondent failed to do so, thereby preventing performance by the Corporate Debtor. Consequently, the Respondent cannot rely on delays



occasioned by its own default to justify the illegal termination of the EPC Contract.

- 4.19. It is submitted that the Respondent's contention that the issue of handing over of the Project Site is an afterthought is misconceived and denied. The record reflects that partial handover of the Project Site was a continuing issue between the parties, and as recorded in the meeting dated 15.11.2023, nearly 60% of the site had not been handed over, with a commitment to complete handover by January 2024, which was not fulfilled, thereby causing delays in project execution and achievement of contractual milestones.
- 4.20. It is submitted that despite repeated correspondences highlighting the delay in handing over of the complete Project Site, the Respondent failed to hand over the same, thereby constraining the Corporate Debtor to seek extension of time for completion of the Project in terms of the EPC Contract, which delays are attributable to the Respondent.
- 4.21. It is submitted that the Respondent is seeking to portray the issue of non-handover and its own non-performance as an afterthought, whereas the termination of the EPC Contract was a calculated step taken upon the imminent admission of the Corporate Debtor into CIRP, with alleged breaches being cited belatedly despite the delays being attributable to the Respondent's own failure to perform its



contractual obligations and no prior indication of any intent to terminate.

- 4.22. It is submitted that the Respondent has selectively relied on routine correspondences to contend that termination was on account of alleged breaches by the Corporate Debtor; however, the said correspondences do not evidence any contemporaneous intention to terminate and pertain only to procedural aspects of the project. The decision to terminate was taken only upon the imminent initiation of CIRP, with belated allegations of delay being raised as a pretext.
- 4.23. It is further submitted that the Respondent itself failed to discharge its binding obligation to deposit monies in the TRA, thereby contributing to the delays and rendering the termination unsustainable.
- 4.24. It is submitted that the Respondent has acted in breach of its binding obligation to deposit payments into the TRA and has wrongly contended that no such contractual obligation existed. The Respondent had, vide letter dated 15.03.2024, expressly committed to IREDA to deposit all payments into the TRA and is therefore bound by the same; its failure to deposit such monies evidences lack of bona fides and contributed to the delays, rendering the termination of the EPC Contract unsustainable.
- 4.25. It is submitted that a letter evincing clear intention can create a binding obligation, and in the present case the Respondent, vide letter dated 15.03.2024 addressed to



IREDA, unequivocally agreed to deposit payments towards EPC invoices into the TRA. The said commitment, being clear and unconditional, is binding on the Respondent, and its subsequent failure to deposit the monies in the TRA constitutes a breach of its admitted obligation.

- 4.26. It is submitted that a plain reading of the Respondent's letter dated 15.03.2024 establishes an unequivocal and unqualified commitment to deposit monies payable under the EPC Contract into the TRA, thereby creating a binding legal obligation upon the Respondent. Having so bound itself, the Respondent is estopped from contending that it was not obligated to deposit the said monies into the TRA.
- 4.27. It is submitted that the Respondent has failed to offer any contemporaneous explanation for its breach of the admitted obligation to deposit monies in the TRA despite repeated correspondences from IREDA, and has only at a belated stage raised vague and untenable contentions regarding an alleged alternate bank account. Such conduct is contrary to its written commitment dated 15.03.2024 and reflects lack of bona fides, further compounded by baseless allegations against the RP, thereby warranting grant of the reliefs sought.
- 4.28. It is submitted that, without prejudice to the foregoing submissions, the Applicant has provided a para-wise response to the Reply and specifically denies all statements and allegations therein which are contrary to the present Application/Rejoinder, and nothing contained



in the Reply is admitted save and except what is expressly admitted herein.

- 4.29. It is submitted that the contents of paragraphs 1 to 6 of the Reply are matters of record and require no specific reply save and except denial of all adverse inferences. It is specifically denied that the present dispute is merely commercial or technical; rather, the unilateral termination of the EPC Contract in the facts of the case is impermissible under the Code, and this Hon'ble Tribunal is competent to set aside the same. The present Application is maintainable and the reliefs sought therein deserve to be allowed.
- 4.30. It is submitted that save insofar as the contents pertain to matters of record, all adverse inferences, and allegations in paragraph 7 of the Reply are denied. The delay in completion of the Project is attributable to the Respondent's failure to hand over the entire Project Site, and the correspondences relied upon do not indicate any contemporaneous intention to terminate the EPC Contract. Allegations regarding delay in furnishing performance security are denied as irrelevant and an afterthought, having not been cited in the Show Cause Notice or Termination Letter, and cannot be relied upon to justify the termination.
- 4.31. It is submitted that the delay in completion of the Project is not attributable to the Corporate Debtor but solely to the Respondent's failure to fulfil its obligations under the



EPC Contract, including failure to hand over the entire Project Site. The Corporate Debtor committed no breach of the EPC Contract, and the correspondences relied upon by the Respondent pertain only to routine matters and do not evidence any default or non-cooperation on the part of the Corporate Debtor.

- 4.32. It is submitted that the averments in paragraphs 7 to 12 of the Reply are denied in toto as being untenable in law and on facts. The unilateral termination of the EPC Contract is squarely hit by the principles laid down by the Hon'ble Supreme Court in Gujarat Urja and Tata Consultancy, and the Respondent cannot contend that the EPC Contract is not central to the CIRP or that this Hon'ble Tribunal lacks jurisdiction. The termination is illegal, contrary to the said judgments as well as to the terms of the EPC Contract, and is liable to be set aside.
- 4.33. It is submitted that the averments in paragraph 13 of the Reply are denied as incorrect and contrary to record. The delay in completion of the Project is not attributable to the Corporate Debtor, nor did the Corporate Debtor abandon the Project; rather, the termination dated 15.07.2025 was a unilateral and mala fide action by the Respondent. Upon taking charge, the RP promptly engaged with the Respondent, expressed readiness to complete the Project, re-engaged the EPC team, and sought cooperation vide letters dated 29.07.2025 and 17.10.2025.



- 4.34. The Respondent's contention that termination had become a fait accompli or that the Project stood abandoned is misconceived and raised only as a post-facto justification for the illegal termination.
- 4.35. It is submitted that the status of any other contracts of the Corporate Debtor is irrelevant to the present proceedings. The Respondent has raised baseless and scandalous allegations regarding the intent behind the present Application, which are denied in toto and reflect lack of bona fides
- 4.36. It is again reiterated that:
- i. It is submitted that the EPC Contract is central to the CIRP of the Corporate Debtor, and the Respondent cannot supplant its own assessment over that of the RP and the CoC as to the necessity and centrality of the contract for successful resolution.
 - ii. It is further submitted that the termination of the EPC Contract by the Respondent was a calculated action taken on account of the imminent insolvency of the Corporate Debtor and is patently illegal and contrary to the settled legal position.
 - iii. It is submitted that the termination of the EPC Contract is contrary to the terms of the EPC Contract itself and, for the reasons set out in the Application and Rejoinder, does not withstand legal scrutiny.
 - iv. It is further submitted that the delay in completion of the Project and failure to achieve contractual milestones



are not attributable to the Corporate Debtor but were caused by the Respondent's failure to hand over the Project Site, an issue consistently raised by the Corporate Debtor with the Respondent.

- v. It is submitted that the Respondent has breached its binding obligation to deposit the monies payable under the EPC Contract into the TRA.
 - vi. It is further submitted that the Respondent had never indicated any intention to terminate the EPC Contract prior to the SEBI orders and the filing of the Company Petition, and the alleged breaches and non-performance now relied upon are merely routine procedural matters raised as a post-facto justification for the termination.
- 4.37. It is submitted that the averments in paragraph 14 of the Reply are denied. The judgments of the Hon'ble Supreme Court in *Gujarat Urja* and *Tata Consultancy* squarely apply and interdict the unilateral termination of the EPC Contract, whereas the reliance placed on the AA Estate judgment is misconceived and inapplicable. The EPC Contract is central to the CIRP of the Corporate Debtor, and its termination would jeopardise the Corporate Debtor's status as a going concern and defeat value maximisation under the Code; accordingly, the termination is liable to be set aside.
- 4.38. It is submitted that the averments in paragraph 15 of the Reply are denied. The Corporate Debtor never abandoned the Project and had consistently raised the issue of partial/non-handover of the Project Site from the



inception, including by letters dated 15.10.2024 and 12.12.2024 seeking extension of time on that ground. The delay in completion of the Project is attributable to the Respondent's failure to hand over the entire Project Site, and the Respondent cannot rely on such delays to justify termination. The termination of the EPC Contract is therefore unsustainable in law and liable to be set aside by this Hon'ble Tribunal.

4.39. It is submitted that the averments in paragraph 16 of the Reply are denied. The Respondent was under a binding obligation to deposit monies payable under the EPC Contract into the TRA, having expressly agreed to do so vide letter dated 15.03.2024, which position is also admitted in the Reply. The Respondent's failure to honour its commitment and to furnish any explanation to IREDA for such failure reflects adversely on its conduct and renders its defence untenable.

4.40. It is submitted that the issue of non-deposit of monies in the TRA is not a mere contractual dispute, and the RP is duty-bound under the Code to examine such transactions. Instead of cooperating, the Respondent has adopted delaying tactics and raised baseless allegations against the Applicant and the present proceedings, which are denied in toto and reflect lack of bona fides on the part of the Respondent.

4.41. It is submitted that the averments in paragraphs 17 and 18 of the Reply are denied in toto. The judgments in



Gujarat Urja and Tata Consultancy squarely prohibit the unilateral termination of the EPC Contract, and the Respondent's reliance on the AA Estate judgment is misconceived. The Respondent was not entitled to terminate the EPC Contract and remains liable for outstanding dues, while no damages are payable by the Corporate Debtor. The Application does not prejudice any public interest, and grant of the reliefs sought would facilitate continuation and timely completion of the Project

4.42. It is submitted that the Respondent's submissions and allegations are frivolous, irrelevant, and devoid of merit, and therefore liable to be rejected; accordingly, the present Application deserves to be allowed.

5. In compliance with the Order dated 28.01.2026, this Hon'ble Tribunal directed both parties to file their written submissions/synopsis along with relevant citations. Pursuant thereto, the **Applicant** filed its **written submissions** on 04.02.2026 vide Inward Diary No. D-1013, the contents whereof are reproduced hereunder.

- i. *Gujarat Urja Vikas Nigam Limited v. Amit Gupta & Ors.*
[[2021]7SCC 209]
- ii. *TATA Consultancy Services Limited v. Vishal Ghisulal Jain*
[[2022] 2 SCC 583]



- iii. *Eureka Forbes Limited v. Allahabad Bank & Ors. In Civil Appeal No. 4029 of 2010 (SLP (C) No. 3883 of 2008)*
- iv. *Swiss Ribbons vs. Union of India, (2019) 4 SCC 17*
- v. *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta (2020) 8 SCC 531*

6. Further, the Respondent, i.e., Maharashtra State Power Generation Company Limited (MAHAGENCO), has also filed its **Written Submissions** on 09.02.2026, vide Inward Diary No. D1139, wherein the Respondent has placed reliance upon the following judgments:

- i. *Gujarat Urja Vikas Nigam Limited v. Amit Gupta & Ors. [(2021)7SCC 209]*
- ii. *TATA Consultancy Services Limited v. SK Wheels Pvt. Ltd. Resolution Professional, Vishal Ghisulal Jain [(2022) 2 SCC 583]*
- iii. *AA Estates Pvt Ltd Vs Kher Nagar Sukhsadan Cooperative Housing Society Ltd. & Ors 2025 INSC 1366*

7. We have heard the counsel for the applicants and the Respondent and have perused the material on record. For proper adjudication the following issues arise for consideration:

- (i). **Issue I:** - Whether the present application under Section 60(5) of the Code is maintainable for the reliefs sought?



- (ii). **Issue II:** - Whether the EPC Contract in question is central to the Corporate Debtor's operations and necessary for keeping it as a going concern?
- (iii). **Issue III:** - Whether the termination of the EPC Contract dated 21.02.2024 on 15.07.2025 during the subsistence of CIRP is in violation of Section 14 of the Code?

Observation and Directions of this Tribunal: -

8. The present Interlocutory Application No. 1405 of 2025 has been filed by the Resolution Professional of the Corporate Debtor under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking, inter alia, to set aside the termination of the Engineering, Procurement and Construction (EPC) Contract dated 21.02.2024 executed between the Corporate Debtor and the Respondent, Maharashtra State Power Generation Company Limited ("MAHAGENCO"), and for consequential directions including refund/return of bank guarantees and continuation of the contract.
9. The Corporate Debtor was awarded the EPC works for execution of a 62 MW (AC) Solar Power Project at Paras, Taluka Balapur, District Akola, Maharashtra, pursuant to a Letter of Award dated 19.10.2023. Thereafter, the EPC Contract was executed on 21.02.2024.



10. The EPC Contract dated 21.02.2024 (Exhibit 2 of the Petition) reflects that the project involved obligations relating to supply, erection, testing, commissioning, and completion of the solar power plant within prescribed timelines, subject to conditions relating to performance guarantees, submission of drawings, mobilization, and milestone compliance.

11. It is not in dispute that:

- i. Performance Bank Guarantees were required to be submitted by October 2023 but were furnished only between January 2024 and March 2024.
- ii. The Respondent addressed multiple communications in 2024 and 2025 highlighting delays in mobilisation, drawings, supply of materials and site progress.
- iii. The Respondent granted extensions of time including a conditional extension dated 22.10.2024 and a further extension on 26.03.2025, subject to delivery of remaining materials before 30.04.2025. Further, extension was granted up to 30.08.2025.
- iv. The said condition admittedly remained unfulfilled.
- v. A Show Cause Notice dated 03.06.2025 was issued calling upon the Corporate Debtor to rectify breaches.
- vi. Thereafter, the Respondent proceeded to terminate the contract vide termination letter dated 15.07.2025 citing persistent delays, non-performance, and breach of contractual obligations.



- 12.** CIRP against the Corporate Debtor commenced on 13.06.2025 pursuant to admission of the Section 7 petition. Thereafter, the Respondent issued a termination letter dated 15.07.2025 (Annexed as Exhibit-C of the Petition) terminating the EPC Contract citing persistent delays, non-performance, and failure to comply with contractual obligations despite extensions and notices.
- 13.** Aggrieved by the said termination letter dated 15.07.2025 and invocation of bank guarantees, the Resolution Professional has filed the present application contending that termination during the subsistence of CIRP is illegal, arbitrary and in violation of the provisions of the Code, and that continuation of the EPC Contract is essential for maintaining the Corporate Debtor as a going concern.
- 14.** The Respondent has opposed the application contending that the termination was for cause, preceded by repeated defaults and delay notices, and that the present application seeks enforcement of contractual rights and adjudication of disputes which are arbitrable and beyond the scope of Section 60(5) jurisdiction.



15. Findings on Issue No. I: -

- 15.1. The present Interlocutory Application has been filed by the Resolution Professional under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“the Code”) seeking, inter alia, to declare the termination of the EPC Contract dated 21.02.2024 as illegal, to direct continuation of the contract, and to grant consequential contractual reliefs against the Respondent.
- 15.2. The Respondent has raised a preliminary objection as to maintainability. It is contended that the dispute arising from the termination of the EPC Contract dated 21.02.2024 is purely contractual in nature and falls within the ambit of the arbitration clause contained under Clause 28 of the EPC Agreement (Annexed in the Petition at Pg.117). The Respondent submits that questions relating to the validity of termination dated 15.07.2025, invocation and refund of Bank Guarantees, extension of timelines, and alleged breaches are matters requiring adjudication under the agreed arbitral mechanism.
- 15.3. It is further contended that the reliefs sought in the present Application, particularly setting aside the termination and directing continuation of the EPC Contract during CIRP, are in the nature of specific performance of contractual obligations, which this Hon’ble Tribunal cannot grant in exercise of jurisdiction under Section 60(5) of the Insolvency and Bankruptcy Code,



2016. The Respondent therefore submits that the present Application is not maintainable and that the parties must be relegated to arbitration in terms of the contractual framework.

15.4. This Tribunal has considered the submissions of both the parties.

15.5. Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 confers wide residuary jurisdiction upon the Adjudicating Authority to entertain and dispose of:

“any question of law or fact arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor.”

15.6. The scope of this provision is not confined to core insolvency determinations alone but extends to all matters having a direct nexus with, or impact upon, the insolvency resolution process.

15.7. In the present case, the termination of the EPC Contract dated 21.02.2024 was effected during the subsistence of the CIRP and the moratorium under Section 14 of the Code. The Corporate Debtor was admitted into CIRP by order dated 13.06.2025, and thereafter the Respondent issued the termination letter dated 15.07.2025 (placed on record as Exhibit-16 to the Application and as Annexure-R14 to the Counter Affidavit). The Resolution Professional has specifically pleaded that:

- the said contract constitutes a significant project of the Corporate Debtor,



- Its continuation is necessary to maintain the Corporate Debtor as a going concern, and
- Termination during CIRP adversely affects value maximisation and resolution prospects.

- 15.8. Thus, the dispute is not a standalone commercial disagreement detached from insolvency proceedings. Rather, the central question raised is whether such termination during CIRP violates the moratorium and undermines the statutory objective of keeping the Corporate Debtor as a going concern.
- 15.9. This Tribunal is not concerned, at this stage, to adjudicate upon damages, quantify claims, or finally determine contractual breaches in a manner akin to an arbitral tribunal. The limited inquiry before this Authority is whether the impugned termination, in the factual matrix of the ongoing CIRP, is permissible under the framework of the Code.
- 15.10. While disputes relating to damages, breach of contract, or quantification of claims may fall within the scope of arbitration, the question whether termination of a contract during CIRP adversely affects the insolvency resolution process falls within the exclusive jurisdiction of the Adjudicating Authority under Section 60(5)(c) of the Code.
- 15.11. The mere existence of an arbitration clause cannot oust the jurisdiction of this Tribunal where the relief sought pertains to protection of the CIRP and enforcement of



statutory moratorium. Contractual forums govern adjudication of inter se claims; however, questions relating to the impact of termination on insolvency proceedings fall squarely within the jurisdiction of this Authority.

- 15.12. In ***Embassy Property Developments Pvt. Ltd. v. State of Karnataka Civil Appeal No. 9170 of 2019***, the Hon'ble Supreme Court has held that the Adjudicating Authority under Section 60(5) is empowered to decide questions arising out of or in relation to the insolvency resolution process of the Corporate Debtor, where such issues have a direct bearing on CIRP.
- 15.13. CIRP got initiated in the case of the Corporate Debtor on 13.06.2025. The management of the affairs of the corporate debtor vested in the Interim Resolution Professional and the powers of the Board of Directors stood suspended and were to be exercised by the Interim Resolution Professional.
- 15.14. In the present case, since the termination occurred during CIRP and the relief sought is intrinsically connected with the business of the Corporate Debtor and continuation of the Corporate Debtor as a going concern, this Tribunal is satisfied that the dispute arises "in relation to" the insolvency resolution process within the meaning of Section 60(5)(c).
- 15.15. Accordingly, this Tribunal holds that the present Application is maintainable to examining the effect of the



impugned termination on the CIRP and the Corporate Debtor as a going concern, without entering into adjudication of detailed contractual disputes between the parties.

16. Findings on Issue No. II: -

- 16.1. From the material available on record, it is evident that the EPC Contract dated 21.02.2024, executed pursuant to the Letter of Award dated 19.10.2023, pertains to the development of a 62 MW (AC) Solar Power Project at Paras, District Akola, Maharashtra. The value of the contract, as placed on record by the Applicant, is approximately INR 292.5 Crores, making it one of the largest projects undertaken by the Corporate Debtor.
- 16.2. The record further reflects that substantial financial exposure and execution steps had already been undertaken by both parties. Payments were released by the Respondent to the Corporate Debtor from time to time and performance-related bank guarantees were furnished by the Corporate Debtor. The Respondent has itself placed on record a statement of payments from inception till termination (Annexure R-13 of the Reply), indicating the magnitude of financial involvement in the project.
- 16.3. The contractual timelines were extended into the year 2025. The revised SCOD stood extended up to 31.03.2025, and thereafter a further extension was sought by the Corporate Debtor by letter dated 15.01.2025 seeking extension up to 30.08.2025. The



Respondent granted a conditional extension by communication dated 26.03.2025. Subsequent correspondence dated 28.03.2025 also indicates that the project continued to remain under execution and under review.

- 16.4. These communications with letters dated 22.10.2024 granting extension of time and subsequent exchanges dated 12.12.2024, 15.01.2025, and 26.03.2025, clearly demonstrate that the EPC Contract remained subsisting and operative till shortly before commencement of CIRP on 13.06.2025, and that both parties continued to treat the project as ongoing.
- 16.5. The Resolution Professional has specifically submitted that this project constitutes a major revenue-generating asset of the Corporate Debtor and that completion of the project would significantly enhance the valuation of the Corporate Debtor during CIRP. There is no material placed before this Tribunal to demonstrate that the Respondent has re-awarded the project to any third party after issuance of the termination letter dated 15.07.2025. In such circumstances, permitting the contract to remain operative during CIRP would not cause irreversible prejudice to the Respondent.
- 16.6. On the contrary, termination of a project of approximately INR 292.5 Crores, at an advanced stage of execution and during the subsistence of CIRP, would materially diminish the asset base, commercial prospects, and resolution



value of the Corporate Debtor. The Code mandates preservation of the Corporate Debtor as a going concern under Sections 20 and 25, and the Resolution Professional is duty-bound to protect and preserve the value of the assets and operations of the Corporate Debtor.

- 16.7. Considering the scale of the project, the financial exposure involved, the timeline of execution extending into 2025, and the absence of any material showing substitution of the Corporate Debtor by another contractor, this Adjudicating Authority is satisfied that the EPC Contract is central to the business operations and commercial viability of the Corporate Debtor.
- 16.8. The dispute relating to routing of payments through the Trust and Retention Account involves interpretation of the contractual arrangement and the loan agreement between the Corporate Debtor and IREDA. Such disputes are contractual in nature and cannot be conclusively adjudicated in proceedings under Section 60(5) of the Code. The parties are therefore left at liberty to pursue appropriate remedies in accordance with law.
- 16.9. Accordingly, this Tribunal holds that protection of the EPC Contract during the subsistence of CIRP is necessary to preserve the Corporate Debtor as a going concern and to ensure effective resolution under the Insolvency and Bankruptcy Code, 2016.



7. Findings on Issue No. III: -

- 17.1. The record reflects that the Corporate Debtor was awarded the project pursuant to Letter of Award dated 19.10.2023, followed by execution of the EPC Contract dated 21.02.2024 between the parties. It is not in dispute that the project was an ongoing EPC work forming part of the operational business of the Corporate Debtor. From the documents placed on record, it is evident that during execution of the project, certain delays were alleged by the Respondent and correspondence ensued between the parties regarding completion timelines and performance obligations.
- 17.2. It is borne out from the record that the Respondent, vide communication dated 22.10.2024, granted an extension of time for completion of the project. Thereafter, the Corporate Debtor sought further extension, and the Respondent vide its communication dated 26.03.2025 granted extension of time for completion of the project up to 30.08.2025, subject to certain conditions. Thus, as on 26.03.2025, the extended completion timeline up to 30.08.2025 was in force.
- 17.3. In the interregnum, an interim order came to be passed by SEBI on 15.04.2025 against the Corporate Debtor. Thereafter, the Respondent issued a show-cause notice dated 03.06.2025 to the Corporate Debtor alleging delay and non-performance. Subsequently, CIRP against the Corporate Debtor commenced on 13.06.2025 by order of



the Adjudicating Authority. It is not in dispute that the Corporate Debtor continues to be under CIRP as on the date of this order.

- 17.4. During the subsistence of CIRP, the Respondent issued the termination letter dated 15.07.2025 (Exhibit 16 of the Application) terminating the EPC Contract dated 21.02.2024. Thus, the termination of the contract has admittedly taken place after commencement of CIRP and during the period when moratorium under Section 14 of the Code was in force.
- 17.5. The Respondent has contended that the termination is based on persistent delay and breach of contractual obligations on the part of the Corporate Debtor, and that such breaches existed prior to commencement of CIRP. The Respondent has further submitted that the termination is contractual in nature and not on account of insolvency, and therefore the same does not fall within the ambit of Section 14 of the Code.
- 17.6. On the other hand, the Applicant/Resolution Professional has contended that extension of time up to 30.08.2025 had been granted by the Respondent and that the termination was effected on 15.07.2025, i.e., prior to expiry of the extended completion timeline. It has been further submitted that the termination was effected after commencement of CIRP and in the backdrop of the SEBI order and the insolvency proceedings, and that the project constitutes a major ongoing project of the Corporate



Debtor, the continuation of which is necessary for maintaining the Corporate Debtor as a going concern during CIRP.

17.7. It is not in dispute that extension of time for completion of the project was granted by the Respondent up to 30.08.2025 vide communication dated 26.03.2025. The termination of the contract has been affected on 15.07.2025, i.e., prior to the expiry of the extended completion period. The record does not indicate that any fresh or supervening fundamental breach was recorded after the grant of extension dated 26.03.2025 and prior to issuance of the termination letter dated 15.07.2025 which would justify termination before the expiry of the extended completion period. The termination of the contract before expiry of the extended timeline and during the subsistence of CIRP is a factor which this Tribunal cannot ignore while examining the effect of such termination on the ongoing CIRP.

17.8. This Tribunal is conscious that it is not required, in proceedings under Section 60(5) of the Code, to adjudicate upon the merits of the contractual disputes between the parties, including attribution of delay or entitlement under the contract. However, where termination of a subsisting contract during CIRP has the effect of materially affecting the Corporate Debtor's operations and its status as a going concern, this Adjudicating Authority is empowered to examine whether permitting such



termination to operate would defeat the objectives of the Code.

- 17.9. It is apparent that the EPC Contract in question is a substantial ongoing project forming part of the business operations of the Corporate Debtor. The continuation of the project is necessary for preserving the value of the Corporate Debtor and maintaining it as a going concern during CIRP. If the termination dated 15.07.2025 is permitted to operate during the subsistence of CIRP, the same would have the effect of disrupting the ongoing operations of the Corporate Debtor and may adversely impact the resolution process, though this Tribunal is mindful of the Respondent's public utility role as per *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta* (2021) 7 SCC 209. However, in the absence of evidence of immediate re-award or irreversible prejudice to public interest, preservation of the Corporate Debtor as a going concern under S.20/25 prevails during CIRP. Regarding delay, the Applicant states that the Respondent was required to handover entire project land on Zero Date (D), which was not done and this also led to project delays..
- 17.10. In the facts and circumstances of the present case, particularly considering that
- extension of time up to **30.08.2025** was in force,
 - termination has been effected on 15.07.2025 prior to expiry of the extended period, and



- termination has been effected during the subsistence of CIRP which commenced on 13.06.2025,

17.11. This Adjudicating Authority is of the considered view that permitting the termination to operate during the subsistence of CIRP would be detrimental to the Corporate Debtor's status as a going concern and to the ongoing resolution process.

17.12. At the same time, this Adjudicating Authority refrains from recording any final findings on the contractual disputes between the parties regarding delay, breach or damages, and all rights and contentions of the parties in that regard are kept open.

17.13. Accordingly, the termination letter dated 15.07.2025 issued by the Respondent in respect of the EPC Contract dated 21.02.2024 is directed to remain inoperative during the subsistence of CIRP without prejudice to the rights and contentions of the parties.

18. In view of the findings recorded on the issues framed for consideration, this Tribunal holds as follows: -

- i. The termination letter dated 15.07.2025 issued by the Respondent in respect of the EPC Contract dated 21.02.2024 shall remain inoperative during the subsistence of the Corporate Insolvency Resolution Process of the Corporate Debtor.



- ii.** The Respondent is directed to maintain status quo in respect of the said EPC Contract and the project site and shall not take any further coercive steps pursuant to the said termination during the subsistence of the CIRP.
- iii.** The Resolution Professional shall take all necessary steps in terms of Sections 20 and 25 of the Insolvency and Bankruptcy Code, 2016 to preserve and protect the value of the project and may engage with the Respondent for continuation of the project in accordance with law.
- iv.** It is clarified that this order is passed for the limited purpose of preserving the Corporate Debtor as a going concern during the CIRP. All contractual rights and contentions of the parties, including claims relating to delay, damages, bank guarantees or any other disputes arising out of the EPC Contract, are kept open to be agitated before the appropriate forum in accordance with law.

19. Accordingly, **Interlocutory Application No. 1405 of 2025** in CP(IB) No. 195 of 2025 stands **allowed** to the aforesaid limited extent. No Order as to Costs.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)
Aditi/LRA

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)