NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1205 of 2025

[Arising out of the Common Order dated 27.05.2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Guwahati Bench in IA(IBC)/119/GB/2024 in CP(IB)/16/GB/2022]

IN THE MATTER OF:

M/s Assam Power Distribution Company Ltd.
(Operational Creditor)
5th Floor, Bijulee Bhawan, Paltanabazar,
Guwahati – 7810001. **...Appellant**

Versus

Mrs. Meena Sureka
(Insolvency Professional)
Central Plaza, 6th Floor,
Room No. H, 41, B.B. Ganguly Street,
Kolkata – 700012 **...Respondent**

Present:

For Appellant : Mr. Nalin Kohli, Sr. Advocate with Mr. Anshul Malik, Mr. Ayuushman Arora and Mr. Aditya Rathee, Advocates.

For Respondent : Mr. Shaunak Mita and Mr. Saurav Jain, Advocates Ms. Meena Sureka, Advocate for Liquidator.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal arises out of the order dated 27th May, 2025 passed by the learned NCLT (Guwahati Bench) in an application preferred under Section 60(5) read with Section 35 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Impugned Order') filed by the Respondent-liquidator, wherein the request to direct the Appellant-Operational Creditor – Assam Power Distribution Company Limited, to pay

the outstanding dues of ₹37,66,906.80 along with applicable interest from 31.12.2014 was allowed while disregarding that parallelly the same group of companies owed the Appellant ₹9,07,03,124/-.

Submissions of Appellant:

2. In I.A. (IBC) 119/GB/2024 in CP(IB)/16/GB/2022, was allowed and the Respondent Company is directed to pay the admitted dues of ₹37,66,906.80 along with applicable interest from 31.12.2014 to the Liquidator of Brahmaputra Rolling Mills Pvt. Ltd.

3. The admitted amount payable to the Appellant from the three (3) entities of the Brahmaputra Group of Industries are as follows:

Entity under Liquidation	**Net claim Admitted in favour of Appellant (Amount in ₹)**
Brahmaputra Galvochem Pvt. Ltd.	18,48,918/-
Brahmaputra Iron and Steel Co. Pvt. Ltd.	46,63,326/-
Brahmaputra TMT Bars Pvt. Ltd.	8,41,90,880/-
Total	**9,07,03,124/-**

4. The Appellant is a Government company with audited accounts. In the instant case, the Appellant on the representation of the Brahmaputra Group of Industries, provided essential electricity services in the year 2013 to the group entities until the disconnection dated 31.12.2014 due to non-payment of legitimate dues. The application moved by the Respondent and the order passed by the learned NCLT, disregarding Regulation 29 of the Liquidation Process Regulations, 2016, has caused significant prejudice and monetary loss to the Appellant.

5. The core issue in the instant matter is whether the Appellant/ Operational Creditor is liable to pay the alleged outstanding dues of ₹37,66,906.80/- to the Respondent despite the applicability of the "Group of Companies Doctrine" read with Regulation 29 of the Liquidation Process Regulation, 2016. Further despite substantive material on record to demonstrate that the Brahmaputra Group of Industries has from the inception presented itself to be a single economic entity, including as evident from the actions of the Respondent herself. In this context it is the appellant's argument that whether selective invocation of separate legal identities at such a belated stage be permitted to support a fragmented claim and ignore the setoff permitted under the settled law and Regulation 29 of the Liquidation Process Regulation, 2016 as held by the Hon'ble Supreme Court in **Bharti Airtel Ltd. & Anr. Vs. Vijay Kumar V. Iyer & Ors. (2024) 4 SCC 668** on the doctrine of set-off has held:

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> 21. A few judgments of this Court and the High Courts allow the defendant to claim equitable set-off in respect of an unascertained sum of money payable as damages. Equitable set-off can also be claimed in respect of an ascertained sum of money. However, the claim for an equitable set-off must haye a connection between the plaintiff's claim for the debt and the defendant's claim to set-off, which would make it inequitable to drive the defendant to a separate suit. It has been accordingly held that the claim for set-off should arise out of the same transaction, or transactions which can be regarded as one transaction. Equitable set-off is allowed in common law, as distinguished from legal set-off, which is allowed by the court only for an ascertained sum of money and is a statutory right. We shall be subsequently examining the right to equitable set-off while examining the provisions of IBC.

22. Rory Derham on the law of set-offs observes that insolvency set-offs should not be equated with equitable setoffs. This statement reflects the development of law in the United Kingdom, which has resulted in enactment of special provisions on set-off in case of insolvency. We need not examine in detail the law as applicable to insolvency set-off in the United Kingdom for the present decision, albeit it is relevant to state that they are broader and wider than the provisions of equitable set-off.

23. Insolvency set-off under the law of the United Kingdom is permitted when there are mutual debts, mutual credits and other mutual dealings between the parties at the relevant cutoff time, which is essentially the stage of commencement of the liquidation process. We shall subsequently examine the term "mutual dealings" as applicable to liquidation proceedings in India…

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48. The second exception will be in the case of "equitable setoff" when the claim and counterclaim in the form of set-off are linked and connected on account of one or more transactions that can be treated as one. The set-off should be genuine and clearly established on facts and in law, so as to make it inequitable and unfair that the debtor be asked to pay money, without adjustment sought that is fully justified and legal. The amount to be adjusted should be a quantifiable and unquestionable monetary claim, as the corporate insolvency resolution process is a time-bound summary procedure. It is not a civil suit where disputed questions of law and facts are adjudicated after recording evidence. Set-off of this nature does not require legal proceedings. Further, set-off of money is to be given against money alone. It will not apply to assets. Lastly, being an equitable right, it can be denied when grant of relief will defeat equity and justice…

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50. Thus, while accepting contractual and transactional setoff on the conditions specified, we have struck a balance with the doctrines of pari

passu and anti-deprivation, which we believe is just and fair. Insolvency set-off in terms of Regulation 29 of the Liquidation Regulations is statutory.

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6. Appellant contends that the impugned order dated 27.05.2025 passed by the Ld. NCLT suffers from a patent error in relation to the findings recorded in paragraph 4.4, which states as follows:

> "4.4 The Respondent Company submits that it has admitted claims pending against other entities within the BISCON Group. As per the records placed before this Tribunal, the claims admitted by the Applicant in respect of the entities within the BISCON Group are as follows: –

Entity under Liquidation	**Net claim Admitted (Amount in ₹)**
Brahmaputra Galvochem Pvt. Ltd.	18,48,918.04
Brahmaputra Iron and Steel Company Pvt. Ltd.	46,63,326.09
Brahmaputra Rolling Mills Pvt. Ltd.	-37,66,906.80
Brahmaputra Tubulars Pvt. Ltd.	-4,11,041
Brahmaputra TMT Bars Pvt. Ltd.	2,75,86,788.67
Total	**2,99,21,085.80**

> The Respondent **Company has erroneously stated the admitted claim amount in respect of Brahmaputra TMT Bars Pvt. Ltd. to be ₹8,41,90,880/-,** whereas, as per the records, the correctly admitted amount stands at ₹2,75,86,788.67."

However, the Ld. NCLT failed to consider its own order dated 23.01.2024 in IA (IBC)/17/GB/2024 in CP (IB)/20/GB/2022, by which the revised/enhanced claim was duly admitted by the Respondent to be ₹8,41,90,880/-.

7. In light of the aforesaid facts, the impugned order dated 27.05.2025 passed by the Ld. NCLT is being challenged inter alia on the following grounds:

a. The learned NCLT has incorrectly and narrowly interpreted Regulation 29 of the IBBI (Liquidation Process) Regulation, 2016 by applying it narrowly without considering that the dealings with the Respondent, as a common liquidator, were interrelated and common transaction across the Brahmaputra Group of Industries. The rejection by the learned NCLT of the argument of set-off claims solely on the ground that they arise from different legal entities, despite mutuality of transaction, amounts to a technical interpretation thereby defeating the purpose of the IBC which provides for equal treatment of all stakeholders.

b. Appellant is a government-owned power utility entrusted with managing and accounting for public funds. The learned NCLT failed to give any weight to the fiduciary and public interest obligations of the Appellant in ensuring that its dues from various entities within the same group are equitably set off before further disbursement under Regulation 29 of the IBBI (Liquidation Process) Regulations, 2016 thereby, imposing a liability without accounting for such dues violates the principles of equity and justice.

c. The learned NCLT has erred in directing the Appellant to pay interest on the amount of ₹37,66,906.80/- from 31.12.2014 despite the disputed nature of the claim and the unresolved cross-claims pending with the same group companies. Further, the learned NCLT has given a relief beyond what was sought by the Respondent in the prayer by imposing interest on the Appellant from 31.12.2014, without any basis or reasoning which is arbitrary and inequitable in the facts and circumstances of the present case.

d. In passing the impugned order which, in effect, unreasonably fastens the entire liability including the interest component upon the Appellant/Discom, despite the admitted fact that it is the Corporate Debtor and its group entities who owed substantial sums to the Appellant. Even assuming, without admitting, the non-applicability

of the *'Group of Companies Doctrine'*, the impugned order leads to an absurd and inequitable outcome where the Appellant is compelled to contribute to the liquidation estate of the Brahmaputra Group of Industries, from which the Appellant itself is a creditor and is yet to recover legitimate dues thereby causing unjust enrichment to the Respondent.

e. No demand whatsoever was raised by the Corporate Debtor on the Appellant at any point prior to the initiation of the CIRP, and any such purported claim was never crystallized. Further, the impugned order disregards the commercial and legal realities of the case and penalises the Appellant by denying the right to set-off, and by forcing it to fund a liquidation estate from which it is entitled to receive amounts, thereby resulting in manifest injustice.

Submissions of Respondent – Liquidator:

8. A Corporate Insolvency Resolution Process (CIRP) was initiated against the corporate debtor by an order dated 18.11.2022 passed by the Hon'ble NCLT, Guwahati Bench (Hon'ble NCLT). The Respondent, Mrs. Meena Sureka was appointed to act as the Resolution Professional of the Corporate Debtor by an order dated 10.02.2023 passed by the Hon'ble NCLT. Thereafter, on 13.10.2023, the Hon'ble NCLT passed an order for initiation of liquidation process against the Corporate Debtor and appointed Mrs. Meena Sureka as the Liquidator.

9. During the CIRP, the Appellant company had filed its claim in Form B dated 08.12.2022 for an amount of ₹21,61,779.88. Upon due verification and reconciliation of accounts, it was discovered that the Corporate Debtor had earlier deposited a substantial amount as load security. After adjustment of the outstanding dues, it was conclusively established that a sum of

₹37,66,906.80 is recoverable from the Appellant and payable to the Corporate Debtor. The same was communicated to the appellant company by an email dated 06.01.2023 attaching a detailed response against the claim and further requested the Appellant company to pay a sum of ₹37,66,906.80 to the account of the Corporate Debtor.

10. In the meantime, NCLT vide order dated 13.10.2023 ordered liquidation and the erstwhile RP was replaced with the Respondent, who also took utmost effort to recover the same from the Appellant company and in this regard several email correspondences have been exchanged.

11. The Respondent in her capacity as liquidator issued "Form B" and pursuant to this the appellant had again submitted his claim in Form C dated 02.12.2023 for an amount of ₹28,39,285.24. After verification of the same the respondent had rejected the said claim and further sent a reminder email to the appellant to pay the outstanding amount which was already stated to the appellant during the CIRP Period.

12. Respondent had sent several reminder emails to the Appellant; however, all efforts went into vein. Lastly the Appellant sent a reply enclosing a letter dated 06.02.2024, wherein the Appellant has admitted its liability of ₹37,66,906.80. However, wrongfully the appellant has attempted to set it off against an alleged counterclaim of ₹8,65,25,177/- purportedly owed by other entities of the BISCON Group. It is submitted that such a counterclaim is not only baseless and unsubstantiated, but also irrelevant and legally untenable

in the present proceedings. The appellant company has chosen to shy away from its debts by counter claiming an amount of ₹8,65,25,177/-.

13. It is significant to mention that in the said letter the Appellant company has specifically admitted its liability amounting to ₹37,66,906.80/-, towards the Corporate Debtor.

14. The Respondent has wrongly relied upon Sections 173 and 174 of the Electricity Act, 2003. In any case, Section 238 of the IBC, 2016 gives overriding effect to the provisions of the Code in case of any inconsistency with other laws.

15. Despite repeated follow-ups, emails, reminders, and even a legal notice dated 13.03.2024, the appellant has failed to pay the outstanding dues. The appellant, while admitting liability, has resorted to irrelevant and baseless counterclaims against other group entities, which are separate legal persons.

16. After several email correspondences, the Appellant Company by an email dated 05.04.2024 assured to respond to this issue within a period of two weeks. On 26.04.2024, the Appellant sent an email to the Respondent wherein the Appellant acknowledged the legal notice dated 13.03.2024 and again sought time till 07.05.2024 to process and/or resolve the matter citing the election polls in the state but even after that neither replied to the notice nor made the payment to the account of the corporate debtor.

17. It is evident and established in the eye of law that the Corporate Debtor is a separate juristic person, distinct from other group entities, and each of

the BISCON entities namely Brahmaputra Galvochem Pvt Ltd, Brahmaputra Iron & Steel Pvt Ltd, Brahmaputra TMT Bars Pvt Ltd and Brahmaputra Tubulars Pvt Ltd have undergone separate CIRP or liquidation proceedings.

18. In fact, all these group companies have already been dissolved pursuant to the final order of dissolution passed by the Hon'ble NCLT, Guwahati Bench on 13.12.2024. Hence, no claim or counterclaim against those dissolved entities can be adjusted by the Respondent or sought to be set off against the admitted amounts owed by Respondent to the present CD.

19. It is significant to mention that the group companies cannot be tagged along with the Corporate Debtor as the liquidation proceedings of each company were done as separate entity.

20. It is further submitted that as per Regulation 29 of the IBBI (Liquidation Process) Regulations, 2016, it is clearly stated that if the Corporate Debtor and another party owe money to each other, then the amounts should be adjusted against each other. After setting off what each side owes, only the final balance amount either payable to the Corporate Debtor or to the other party will be considered as due.

> "Regulation 29: Mutual credits and set-off
> Where there are mutual dealings between the corporate debtor and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate debtor or to the other party."

The benefit of set-off under Regulation 29 is available only if the same parties (i.e. CD and appellant) are involved and the same cannot be applied in case of third party entities.

21. The Appellant's conduct of admitting the debt, yet continuously seeking extensions under frivolous pretexts and delaying payment, is indicative of mala fide intent. This continued delay is detrimental to the conclusion of the liquidation process and prejudicial to the interest of the stakeholders.

22. The Liquidator is under statutory obligation under Section 35 of the IBC, 2016 to take all necessary steps to protect and realize the assets and actionable claims of the Corporate Debtor. The admitted dues of ₹37,66,906.80 form part of such recoverable assets, and failure to recover the same directly impacts the liquidation estate and the distribution to stakeholders under Section 53 of the Code.

23. The Hon'ble NCLT has passed a detailed and well-reasoned order on 27th May, 2025, directing the appellant to pay the admitted dues of ₹37,66,906.80 along with applicable interest from 31.12.2014 to the Liquidator of Brahmaputra Rolling Mills Pvt. Ltd.

24. The Hon'ble NCLT has further categorically observed as follows:

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> 4.6. This Tribunal notes that while the Applicant has previously issued communications on shared or even incorrect letterheads, including those of entities other than the Corporate Debtor. The Respondent Company has also raised the issue of common date and place for meeting of SCC. Such conduct of informal grouping of companies, cannot in itself alter the

separate legal identity of each company under the Code. While this may have been adopted as a matter of procedural convenience by the Applicant, the Corporate Debtor retains its nature and character as a separate juristic entity. The CIRP or the liquidation process may involve one Resolution Professional or one Liquidator for more than one company as a matter of convenience but the company does not lose its basic identity in the eyes of law.

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4.10 Furthermore, as per the records placed before this Tribunal, the respective load security deposits of each entity were distinct and maintained in the name of each individual Corporate Debtor separately. The bills for charges against consumption of electricity were also separately raised on each of the BISCON Group entities by the Respondent Company. This conduct unequivocally affirms the Respondent Company's recognition of the separate legal identity of each Corporate Debtor and undermines its present contention of a collective or consolidated treatment.

4.11. Subsequently, when the Applicant, in its capacity as Liquidator, sought recovery of the balance load security amount from the Respondent Company after adjusting the outstanding electricity dues as on the date of disconnection, i.e. 31.12.2014, the Respondent Company sought to alter its earlier position by raising a defense of set-off against purported dues from other entities of the group. Therefore, the doctrine of approbate and reprobate squarely applies on the Respondent Company itself and it cannot be permitted to blow hot and blow cold at its convenience

4.13. The variance in voting rights further reinforces that each entity is being dealt with separately under the Code, both in SCC constitution and in the application of Section 53 of the Code, i.e. waterfall mechanism.

4.14. Hence, we are of considered opinion that, having filed and pursued separate claims, the Respondent Company is entitled to the benefit under

Section 53 of the Code only and set-off as demanded by the Respondent Company is not allowable under the Code.

4.15. Therefore, the Respondent Company shall be entitled to distribution of admitted claim strictly in accordance with the priority prescribed under Section 53 of the Code, and to the extent of realizations made in the respective liquidation estate. Any surplus or deficiency in recovery in one entity cannot be adjusted against the dues of another entity under liquidation. The Respondent Company's attempt to aggregate dues owed by other group entities and set them off against the Corporate Debtor in this application is thus not legally tenable.

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25. The Appellant's conduct shows clear intent to delay and avoid payment. Hence, the Respondent prays for dismissal of the appeal and seeking appropriate directions to the Appellant to pay the sum of ₹37,66,906.80 along with interest, in the interest of justice and for effective liquidation.

26. There is and can be no genuine defense to the present application. In fact, the only purported contention of the Appellant is that the Corporate Debtor is part of a group and that since these "group" of entities (apart from Corporate Debtor) totally owed some amount to Appellant, the Appellant is not liable to pay the admitted amounts to the Corporate Debtor. Such contention of the appellant militates against the provisions of the Code and of law generally. The plea of set-off is not available if different parties are involved.

27. In any event, the other entities in question all stand dissolved by orders passed by this Hon'ble Tribunal under Section 54 of the Code. Thus, because

of such reason also, the Appellant cannot take the plea of set-off. In short, the Appellant having admitted its liability to the present Corporate Debtor (inter alia, in Appellant's letter dated 06.02.2024) cannot avoid repayment on the fallacious ground that there was amount owed by other BISCON group entities. It is reiterated that the CIRP and Liquidation Proceedings of the said entities were conducted as separate processes, and not as part of any group insolvency.

Analysis

28. As per the impugned order the Appellant-Operational Creditor - Assam Power Distribution Company Ltd. has been directed to pay the admitted dues of Corporate Debtor 37,66,906 (approximately) along with applicable interest from 13.12.2014 to the liquidator of the Corporate Debtor (CD) namely Brahmaputra Rohini Mills Pvt. Ltd.

29. Appellant is aggrieved with this order and claims that the same group of companies owed the Appellant ₹9,07,03,124 (approximately ₹9 crores). The main ground of the Appellant is that the CD namely M/s. Brahmaputra Rolling Mills Pvt. Ltd. is part of a group of companies and that since these groups of entities (apart from CD) totally owed some amount to the Appellant and therefore that Appellant is not liable to pay the admitted amounts to the CD.

30. In the facts and circumstances of the case we find that the CD is a separate juristic person. The CD is distinct from other group entities of the BISCON group [namely Brahmaputra Galvochem Pvt. Ltd., Brahmaputra Iron and Steel Co. Pvt. Ltd. and Brahmaputra TMT Bars Pvt. Ltd. and

Brahmaputra Tubulars Pvt. Ltd.] and each of them have undergone separate CIRP and later on liquidation proceedings. It is also brought to our notice that all the group companies have already been dissolved, pursuant to the final order of dissolution passed by NCLT Guwahati Bench on 13.12.2014. Thus, the group companies cannot be tagged along with the CD, as the liquidation proceedings of each company were done as separate entity. We find Respondent's justification of set-off of the claims or the counter claims against these dissolved entities to be adjusted against the admitted amounts owed by Respondent to the present CD to be without any legal backing.

31. The Appellant has relied on regulation 29 of the IBBI (liquidation process) Regulations, 2016 which states that if the CD and another party owe money to each other than the amounts should be adjusted against each other. After setting-off what each side owes, only the final balance amount either payable to the CD or to the other party will be considered as due. The Regulation 29 is extracted as below: -

> "Regulation 29: Mutual credits and set-off
> Where there are mutual dealings between the corporate debtor and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate debtor or to the other party."

We observe that per Regulation 29 of the IBBI (Liquidation Process) Regulations, 2016, if the Corporate Debtor and another party owe money to each other, then the amounts should be adjusted against each other. After setting- off what each side owes, only the final balance amount either payable to the Corporate Debtor or to the other party will be considered as due. The

benefit of set-off under Regulation 29 is available only if the same parties (i.e. CD and Appellant) are involved and the same cannot be applied in case of third-party entities. In this case, there are third party entities and these parties have also undergone dissolution.

32. We further observe that the liquidator is under statutory obligation under Section 35[1] of the Code to take necessary steps to protect and realise

[1] **Section 35. Powers and duties of liquidator.**

(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:—
(a) to verify claims of all the creditors;
(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;
(c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;
(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;
(e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;
(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified;
Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.
(g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;
(h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;
(i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;
(j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;
(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor;
(l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;
(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;
(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and
(o) to perform such other functions as may be specified by the Board.

the asset and actionable claims of the CD. The admitted dues of ₹37,66,906 approx form part of such recoverable assets and the failure to recover the same directly impacts the liquidation estate and the distribution to stakeholders under Section 53 of the Code. Therefore, we cannot find any fault in the course of action being followed by the liquidation. The argument that the Appellant is the Govt. owned power utility entrusted with managing and accounting for public funds and NCLT should keep in mind that it is fiduciary and public interest obligation of the appellant in ensuring that its dues from various entities within the same group or equitably set of before disbursement under Regulation 29 of the liquidation process, 2016 is not a ground sustainable under the Insolvency and Bankruptcy Code. The liquidation process is governed by the liquidation process regulations under the code and the liquidator has proceeded as per that procedure and the Appellant had also filed its claims as per that procedure. At this stage, by clubbing of the claims and setting off against its dues is not sustainable

33. We also find that in the claim form submitted by the Appellant, before the IRP, it is clearly noted at serial No. 7 i.e., details of any mutual credit, mutual debts or other mutual dealings between the CD and the OC which may be set off against the claim and we find there is a "N/A" entry.

34. The Respondent-Liquidator has also brought to our notice that communication dated 06.02.2024, which was received from the Appellant at

(2) The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53:
Provided that any such consultation shall not be binding on the liquidator:
Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.

page No. 126 of the Appeal paper book, wherein the Appellant has calculated its claim basis Electricity Supply Code Of Regulation, 2017, which relates to a single consumer having more than one service connections in his name, and is therefore not applicable in this case as in the present case there are distinct connections in the name of distinct legal entities and therefore the vary basis of calculation of the claim is factually incorrect. On the other hand, the claim secured by the Respondent and the justification for its calculation is as follows:

	Claim Made	**Claim Accepted**
Principal Amount as on 31.12.2014	41,75,776.00	41,75,776.00
Outstanding Surcharge as on 31.12.2014	2,42,466.00	2,42,466.00
Delayed payment surcharge @ 1.5% per month on outstanding principal as on 18.11.2022	59,28,686.68	--- (Refer Note 1 Below)
Less: Load Security Amount with Interest as on 31.12.2014	81,85,148.80	81,85,148.80
Net Amount payable/ (Refundable) as 28.10.2022	**21,61,779.88**	**(37,66,906.80)**

Note 1: As per Regulation 6.3.14 of the AERC Supply Code, and other regulations mentioned by you in mail dated 04.01.2023 and previous mails, the Load Security amount along with Interest as on 31.12.2014 should be first adjusted with Late Payment Surcharge amount as on 31.12.2014, and then with Arrears of electricity charges as on 31.12.2014. In this case after making the above adjustments no Principal or Surcharge Amount is due as on 31.12.2014. So there is no Additional Surcharge payable by the company. The detailed excel sheet calculation is attached.

Also with regards to your mail dated 04.01.2023, wherein you have calculated the total outstanding together for all the companies of the Brahmaputra Group along with Brahmaputra TMT Bars Private Limited. In this regard we would like to state that Brahmaputra TMT Bars Private Limited is in CIRP proceedings with another Resolution Professional so separate calculations for all the companies need to be made as each company has separate legal identity and is to be dealt with individually."

35. We find that the justification provided by the Liquidator – Respondent is in-consonance with the Electricity Supply Code as per regulation 16.3.14 of the AERC supply code.

36. The appellant has also relied on the judgment of this Tribunal in **Company Appeal (AT) (Ins.) No.1081 of 2024** which had allowed the security amount to be adjusted setting off as per Regulation 29. There is no quarrel in accepting the judgment cited but it will not be applicable in the present facts of the case, as we are dealing not with the single CD and not between two entities but multiple entities having multiple CIRP and liquidation proceedings. Therefore, this judgment is of no assistance to the Appellant.

37. The Appellant is harping on the Group of Companies doctrine and claims that the group of companies' doctrine have been presenting themselves as a singular entity before the Appellant and to substantiate it's claim the Appellant has produced one communication sent by the BISCON Group of companies, which is placed at page No. 128 of the Appeal paper book in which they have shared information with respect to change of the office address. We find that in this communication the BISCON, which is Brahmaputra group of industries, just intimated that that have shifted their registered office from Athgaon to Bora Service and all the units were operating work from the new address. We find that this communication does not change the distinct legal character of these companies and this letter is of no assistance to the appellant. We don't find any infirmity in the finding of the NCLT that CIRP or the liquidation process may involve one RP or one liquidator for more than

company as a matter of convenience but the company does not lose its separate legal status in the eyes of law.

38. We also note that as per records placed before us, the respective load security deposits of each entity were different and maintained the name of each individual CD separately. The bills against consumption of electricity were also raised separately in each of the units of the BISCON Group.

39. We observe that only defense to the present application is that the CD is part of a group and that since these "group" of entities (apart from CD) totally owed some amount to Appellant, the appellant is not liable to pay the admitted amounts to the CD. Such contention of the Appellant militates against the provisions of the Code and of law generally. The plea of set-off is also not available if different parties are involved.

40. We also find that the Respondent has wrongly relied upon Sections 173 and 174 of the Electricity Act, 2003[2]. In any case, Section 238 of the IBC, 2016 gives overriding effect to the provisions of the Code in case of any inconsistency with other laws.

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[2] **Section 173. (Inconsistency in laws):**

Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989.

Section 174. (Act to have overriding effect):

Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

41. It is observed that the liquidator has sought recovery of the balance load security amount from the Appellant separately after adjusting the outstanding electricity dues as on the date of this connection i.e., 31.12.2014. We also observe that each entity is being dealt with separately under the Insolvency and Bankruptcy Code 2016, both in the stakeholder consultation committee constitution and also in the application of Section 53 of the Code i.e., the waterfall mechanism. Therefore, the Appellant company is entitled to the benefit under Section 53 of the Code only and set-off as demanded by the appellant is not allowable under the Code. We find that there is no justification in the appeal and there are no reasons for us to interfere with the order of the Adjudicating Authority.

Order:

42. Based on the above analysis the appeal is dismissed and all the related IAs are also disposed of. Parties to meet their own costs.

[JusticeN Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

New Delhi.
July 03, 2026.

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