NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

29.07.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)
ARUN BAROKA, MEMBER (TECHNICAL)
INDEVAR PANDEY, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.292 of 2025

1. ARC Research and Development Centre Limited,
703, Diwani Mahal, Gulmohar Road,
No.1 JPVD Scheme Vile Parle (W), Nr. Millenium Club,
Mumbai – 400 049. ...Appellant No.1

2. ARC Fintube Technologies Pvt. Ltd.
703, Diwani Mahal, Gulmohar Road,
No.1 JPVD Scheme Vile Parle (W),
Nr. Millenium Club, Mumbai -400 049
Factory site address - R.S. No. 96, NH-8, Village Mangkej,
Taluka Karjan, Dist - Vadodara, Gujarat – 391 240. ...Appellant No.2

Vs

1. Liquidator of Adya Oils and Chemicals Ltd.
Truee IPE LLP
190A, Patel Shopping Centre, B Blgd C Wing,
Chandavarkar Road, Borivali, Mumbai.
Also At:
D-501, Ganesh Meridian, Opp, High Court S.G. Road,
Ahmedabad – 380 060. ...Respondent No.1

2. The Talati, Manglej Village,
Karjan Manglej Dhanora Group Manglej Gram Panchayat,
Taluka Karjan, District - Vadodara,
Gujarat – 301 402. ...Respondent No.2

3. The Mamlatdar,
Karjan Taluka Seva Sadan, Karjan Cross Road,
N.H. No.8, Karjan, Vadodara, Gujarat – 391 240. ...Respondent No.3

4. The Collector, Karjan Taluka Seva Sadan,
Karjan Cross Road, N.H. No.8, Karjan,
Vadodara, Gujarat – 391 240. **...Respondent No.4**

5. The Chief Town Planner,
Town Planning and Valuation Department,
C Block, Narmada Bhavan, Jail Road,
Vadodara, Gujarat – 390 001. **...Respondent No.5**

(Arising out of Order dated 22.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court-V) in IA No. 2658 of 2021 in C.P. (I.B.) No. 2392/MB/2019)

For Appellant:	Ms. Purti Gupta, Ms. Henna George, Ms. Sunidhi Sah, Ms. Khushi Sharma, Advocates
For Respondents :	Mr. Ravi Raghunath, Mr. Namanjeet S. Bhatia, Advocates for R-1

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

1. I had the advantage of going through the opinion of the majority view, the draft judgement authored by Shri. Arun Baroka, Member (Technical), and concurred to by the other Member (Technical), Shri. Indevar Pandey. I disagree with their view and choose to explain why I disagree with them.

2. To outline briefly, the present appeal arises out of the order dated 22.01.2025 passed by the National Company Law Tribunal, Mumbai Bench in IA No. 2658 of 2021, filed by the liquidator under Section 60(5)(c) of the Code in C.P. (I.B.) No. 2392/MB/2019, by which an easement of way by prescription through the property of the appellant has come to be declared. Other relevant facts are:

a) The Corporate Debtor, Adya Oils and Chemicals Ltd., is the owner of non-agricultural land in New Block No. 83 (Old Block No. 87) situated at village Manglej, Taluk Karjan, District Vadodara, Gujarat. The said land was purchased for the purpose of establishing an industrial unit for manufacturing castor oil.

b) The first appellant is the owner of adjacent lands bearing Block Nos. 90 and 92 (Old Block Nos. 94 and 96), which it had purchased in July, 2007 from Jord Engineers India Limited, for the purpose of carrying out certain industrial activities. Construction activity on Plot No. 90 commenced around March–April 2018, and industrial operations began in October 2019. Of the two plots, Plot No. 92 remains vacant.

c) As stated earlier, the property of the CD is in New Block No. 83. According to the Liquidator, vide a proceeding of the Taluka Panchayat Kacheri (captioned as Non-Agricultural Order), dated 04.11.1999, the access to the aforesaid CD's land from NH 8 was provided through Old Block Nos. 94 and 96, which the appellant has purchased, and that the CD has ever since been enjoying an uninterrupted right of way through, for over twenty years, and had thus acquired an easement by prescription.

d) The Corporate Debtor was admitted into CIRP on 16.09.2019, and liquidation commenced on 04.03.2020.

e) While things stood thus, during the COVID 19 lockdown, the appellants constructed a wall along the boundary of their land and blocked access to the CD's property in New Block No. 83. A police complaint was lodged in February 2021. This wall was subsequently demolished but the appellants are alleged to have filled the area near the factory gate with earth and mud and obstructed ingress and egress.

It is in these circumstances, in November 2021, the Liquidator has filed IA No. 2658 of 2021 under Sec.60(5) of the Code before the Adjudicating Authority, seeking injunctions and demolition of alleged obstructions, declaration of easement rights, incorporation of right of way in land records, and directions to local authorities and police for enforcement as well as private parties.

2.2 Before the Adjudicating Authority, the local body and other authorities did not appear and only the appellants herein (respondents 5 and 6 before the tribunal below) contested. The Appellants, in essence, disputed the existence of any such right of way, and pleaded:

a) There has never been any undertaking, agreement, or registered instrument conferring any easementary rights, and that the Non-Agricultural Order (hereinafter NA Order) issued by the Taluka Panchayat, cannot, by itself, create a binding easement against third-party landowners.
b) It is relevant to note that prior to the insolvency of the corporate debtor, neighbouring landowners had instituted civil suits claiming rights of way through the appellants' land. These suits were dismissed by the civil courts on the ground that the plaintiffs failed to establish continuous, uninterrupted, and peaceful enjoyment of easementary rights.

c) At any rate, the Adjudicating Authority does not have jurisdiction to entertain the plea founded on Sec.15 of the Easement Act.

3. The Adjudicating Authority has allowed prayers (b) to (h) of IA No. 2658 of 2021, including directions for removal of obstruction, protection of right of way, incorporation of access in land records, and assistance by local authorities. Prayer (a) was held to be infructuous as the wall had already been demolished. Its line of reasoning is that: it has authority under Sec.60(5)(c) of the Code, since the obstruction to the pathway will have the effect of affecting the value of the liquidation asset; that the ingredients of Sec.15 of the Easement Act exist; and that the Non-Agricultural Order dated 04.11.1999 has recognised the right to exercise a right of way over the property of the appellant. This is now challenged in this appeal.

Arguments

4. The learned counsel for the appellants argued:

a) that the Adjudicating Authority has egregiously erred in exceeding its jurisdiction since (i) dispute concerning the existence of easementary right goes far beyond the extent of authority which the Adjudicating Authority is vested with. (ii) the dispute pertaining to easementary right requires extensive evidence and can be decided only in a trial in a civil suit and cannot be decided summarily by the Adjudicating Authority. Reliance was placed on the ratio in ***Gujarat Urja Vikas Nigam Limited Vs Amit Gupta***, (2021) 7 SCC 209, and ***Embassy Property***

Development Pvt. Ltd., Vs State of Karnataka & Others [2019 SCC OnLine SC 1542]

b) Adjudicating Authority is not vested with the authority to deal with the property and rights of third parties.

c) the evidentiary value of Non-Agricultural Order dated 04.11.1999 issued by the Taluka Panchayat, in deciding the civil rights of the appellant is misconceived. The said NA Order does not contain any undertaking or grant of right of way by the appellants or their predecessors-in-interest. The order was merely an administrative communication issued to the Corporate Debtor and cannot bind third-party landowners who were not privy to the same.

d) While value maximisation of assets of the corporate debtor is a statutory philosophy in any CIRP process, it still cannot be understood as achieving it at the detriment of the civil right of third parties, who are unconnected and unrelated to the whole CIRP exercise.

e) The first appellant has been the owner of the subject lands for over eighteen years, having purchased the same in 2007, and has never granted any right of way to the Corporate Debtor or to any neighbouring landowners. Whenever any threat arose to its right it was litigated in civil court. The judgement and the decree passed in Regular Civil Suit No. 15 of 2018 by the Principal Senior Civil Judge's Court, Karjan, wherein claims of easementary rights were rejected is an aspect for that which not only establishes absence of any easementary right of way over the property of the appellant, but also the keenness of the appellant not to acquiesce in when any right of way was asserted over its land.

f) Prior to filing the application under Section 60(5), the Liquidator had lodged a police complaint alleging obstruction of access. The said complaint was closed on 09.06.2021 upon investigation by the Vadodara Police authorities, as there was no documentary evidence to substantiate the claim of easement and that an alternative route existed for accessing the property of the corporate debtor. It is contended that having failed to obtain relief from the police authorities, the liquidator was legally estopped from re-agitating the same issue before the Adjudicating Authority.

g) With respect to allegations concerning related-party relationships, it is submitted that mere familial proximity between promoters of different entities cannot justify coercing a distinct legal entity to part with its proprietary rights. The Appellants and the corporate debtor are separate juristic persons, and such allegations cannot substitute legal proof of easementary rights.

5. Per contra, the learned Counsel for the respondent argued:

a) that the dispute has a direct nexus with the liquidation proceedings, since the obstruction to the only access to the Corporate Debtor's property materially affects its saleability and value. Any dispute that arises out of or relating to insolvency is required to be decided by the Adjudicating Authority to avoid delay and multiplicity of proceedings. Reliance was placed on ***Gujarat Urja Vikas Nigam Limited Vs Amit***

Gupta [(2021) 7 SCC 209]. Therefore, driving the Liquidator to a civil suit would unnecessarily delay the liquidation process and prejudice the interests of creditors and stakeholders.

b) that the Corporate Debtor has been using the pathway through the appellants' land continuously for over twenty years pursuant to the Non-Agricultural Order dated 04.11.1999, which recognised such access, and neither the appellants nor their predecessors ever objected to the same.

c) that the appellants obstructed the access only after commencement of CIRP and liquidation by first deliberately constructing a wall and thereafter by dumping earth and mud near the entrance, thereby affecting ingress and egress to the Corporate Debtor's property with a view to reduce the value of the liquidation asset and frustrate the auction process, thereby defeating the objective of value maximisation under the Code.

d) This apart, the appellants and the promotors of the corporate debtor are relatives, and the appellants have not denied it, and given the timing of the obstruction it lends credence to the allegation that it was intended to interfere with the liquidation process.

e) that the plea of an alternative access is factually untenable since the remaining portion of the Corporate Debtor's land is separated by a land belonging to a third party, leaving the disputed pathway as the only effective access.

Discussion & Decision

6. The core issue is on the jurisdiction of the Adjudicating Authority to take cognizance of a dispute involving the existence of an easementary right of way. Whether Sec.60(5) of the Code is expansive enough to accommodate a dispute on an easementary right, and can the legislative philosophy requiring maximisation of asset value of the corporate debtor, which is relevant only for the working of the IBC, feed jurisdiction to the Adjudicating Authority to investigate the existence of a disputed easementary right merely because it is considered as beneficial for the enjoyment of the liquidation-asset?

7. The facts of this case inform that the CIRP has commenced only in September, 2019, and liquidation of the corporate debtor was ordered six months later, in March, 2020. It is not known whether the RP herself was appointed as the liquidator, but, at any rate, the liquidator's personal knowledge about the land of the corporate debtor and the nature of right now asserted before us could have been obtained only from September, 2019, at the earliest, or from March, 2020, at the latest. At least, the liquidator does not claim any knowledge about the liquidation-asset prior to these dates.

8. Now the case of the liquidator be considered. She claims (i) an easementary right of pathway over the property of the appellant for accessing the liquidation asset; (ii) secondly and, perhaps in the alternative or as an aspect of principal contention (there is no clarity on this) claims that vide a proceeding of the Taluka Panchayat dated 04.11.1999, a right of way through the property of the appellant has been given. The appellant refutes any such right of way through his property.

9. To understand easementary rights in this country, one should have intimate acquaintance with the Easement Act, 1882. They, by their very nature are deceptively complex and they mercilessly reject any pretentious familiarity while dealing with them. It is therefore, considered necessary to introduce them without reference to few technical terms which the Easement Act uses:

a) First to the definition of easement under Sec.4 of the Easement Act. An easement is a right exercised over the immovable property of one person for the beneficial enjoyment of another immovable property. In this case, the liquidator claims right of way over the property of the appellant for accessing the liquidation asset. Therefore, her claim falls within the definition of easement.

b) Secondly, an easementary right is a burden created on the land over which it is created, and it runs with the land. In the instant case a right of way is sought to be created over the land of the appellant and hence it is a burden on the appellant's land.

c) Thirdly, since an easementary right creates a burden, it restricts the right of the owner over whose land it is created to enjoy his own property. In the instant case since a right of easement of way is claimed, then it reduces the right of the appellant to enjoy his land correspondingly and proportionately. It thus operates directly on the right to property of the one on whose land right of easement is imposed.

d) Moving further, Easement Act recognises different modes of acquiring an easementary right such as (i) natural easement under Sec.7; (ii) easement through lost grant under Sec.8; (iii) easement of necessity under Sec.13, (iv) easement by prescription under Sec.15 (something which the liquidator claims), and (v) customary easement under Sec.18. Each of these easementary rights has their specific features and mode of acquiring it. For instance, right to discharge rain water for the beneficial enjoyment of the property of the one who lives in a higher plane of a hilly terrain through the land of the one who lives in a lower level falls under natural easement, while an easement of necessity arises when a property held under a single title is divided as in partition, or alienated as in a sale of a portion of the land, whereas an easement by prescription by its very definition is acquired against the will of the one in whose land it is so created. And, hence the mode of proving each of them is different.

e) And since an easementary right creates a burden, Easement Act consciously insists that it is less onerous and its extent kept to the barest minimum. This is provided in Sec.22 of the Easement Act.[1] More about it later in this judgement.

10. Moving further with this basic understanding, let the ingredients of what constitutes a prescriptive right of way may be considered. Principally, it is like claiming title through adverse possession. Sec.15 deals with multiple

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[1] 22. Exercise of easement Confinement of exercise of easement.—The dominant owner must exercise his right in the mode which is least onerous to the servient owner; and, when the exercise of an easement can without detriment to the dominant owner be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined.

Illustrations

(a) A has a right of way over B's field. A must enter the way at either end and not at any intermediate point.

(b) A has a right annexed to his house to cut thatching-grass in B's swamp. A, when exercising his easement, must cut the grass so that the plants may not be destroyed.

easementary rights by prescription, of which we are concerned with one specific specie of prescriptive easement: the right of way. Sec.15 reads:

> ***"Sec.15. Acquisition by prescription***.—*Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years, and*
>
> *where support from one person's land or things affixed thereto has been peaceably received by another person's land subjected to artificial pressure or by things affixed thereto as an easement, without interruption, and for twenty years,*
>
> *and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,*
>
> *the right to such access and use of light or air, support or other easement shall be absolute.*
>
> *Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.*
>
> *Explanation I.—Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.*
>
> Explanation *II to rest....."*

The entire easement by prescription rests on the Latin maxim *nec vi, nec clam, nec precario* which means '*without force, without secrecy, without permission*'. What does it mean? If a right of way by prescription is to be acquired, there must neither be any permission granted by the owner of the land over which it is claimed, nor can it be established by force against the will of such owner, nor can it be secretly acquired. It therefore, is a right claimed by an adverse user of land as a pathway, as of right, to repeat with emphasis, as of right, openly and to the knowledge of the owner of the land over which right of way is claimed (in the instant case it is the appellant) that it is being exercised hostile to the right of such owner (read it as appellant). And, it must have been so exercised for an uninterrupted 20 years but ending within 2 years next before the suit is laid, meaning thereby, that it must be exercised uninterruptedly for more than 20 years but less than 22 years when a suit is laid.

11. The critical aspect of every prescriptive right of easement is the mental element, the animus, behind the use which ripens into a right by prescription. It therefore, follows that when one permits another to use one's own land as a way due to personal relationship or whatever, the user cannot be said to have acquired a right of way as of right by prescription, as it is merely a permissive user and no more. And, permission does not create a vested right, and hence any permissive use can last only as long as permission lasts. The liquidator needs to know these differences.

12. The liquidator would now place reliance on a proceeding of the Taluka Panchayat dated 04.11.1999. This proceeding pertains to the grant of Non-

Agricultural permission for carrying out the construction for industrial purpose in Block No:87 (new Block No:83), which is the property of the CD with a list of terms and conditions attached. Condition No:12 is contextually relevant, and it reads:

> *"12. Since the road for the getting entry in the land in question from the National Highway from the Block No:94,96 (new 90, 92) this permission is granted as per the rule and regulation subject to the strict compliance of the undertaking given for the entry by making the Agreement on 20.09.1999 on a stamp of Rs.20-00, and subject to obtaining the permission of the government as per the rules for the entry in the Government Nel (Narrow way)"*

Conceptually, both claim of prescriptive right of way under Sec.15 and right of way through a proceeding of the Panchayat such as the one referred to above cannot co-exist, unless it has the force of a decree of a civil court. While the above extracted portion of the Order refers to certain rules and regulations, they were not reproduced in the Order and hence its binding nature is not known. In effect the legal sanctity of the said proceeding and how far it may bind the appellant is not made evident. More significantly it does not show that the predecessor in title of the appellant had been heard.

13. Next aspect is, is the liquidation-asset land-locked? And, is the way which the liquidator asserts over the appellant's property the only way to access it? This can be now explained through a Google plan with suitable colouration provided by the appellant. Its correctness is not disputed. Indeed, the liquidator

has also produced a Google map but it is not as graphic as the one produced by the appellant. It is reproduced below:

The National Highway is shown in red. The pathway that is shown in blue is the private pathway of the appellant. Then there is another access proceeding downward from the National Highway is shown in green colour, and it stops at the liquidation-asset. This shows that the liquidation asset has an access from the National Highway to reach it. From another plan, an arrow used there is lifted to indicate the same.

14. During the course of the arguments, when I confronted the learned counsel for the liquidator about this pathway in green, the learned counsel on instruction submitted that the liquidation asset is being sold in parts, and that two such plots have been sold in auction and that the said pathway is available for the use of those auction purchasers and hence the green-coloured way would no more be available for the portion that remains to be sold. Now who has now

created a problem? If only the liquidator had known about easement of necessity under Sec.13, this situation would not have arisen. Contrary to popular perception, an easement of necessity is created when unity of title is divided in multiple parts, such as in partition, or sale of part of the property, an easementary right over one portion for the beneficial enjoyment of the other portion will be created due to sheer necessity. Thus, an easement of necessity under Sec.13 and an easementary right by prescription are distinct and mutually exclusive rights. Has then the liquidator missed Sec.13 and is attempting to cover it up with a claim of right Sec.15? On the other hand, if the liquidation-asset is not sold as yet, then the liquidator has a lot to explain why she needs a right of way through appellant's property when there is an independent access from the National Highways to the liquidation asset. Is it perhaps to outmaneuver these aspects, has she chosen to assert easement of way by prescription?

15. The next contention of the liquidator is that the appellant is a relative of the promotor of the corporate debtor, and so he has closed the right of way to deny access when the corporate debtor was drawn into liquidation. If they are relatives, so be it, for law understands, recognises and respects only the rights of individuals and does not unconcern itself about relationships. For instance, it recognises spousal relationship, but it still treats the rights of the spouses only as individuals. Turning to this case, assuming that statement that the promotor of the corporate debtor was using a specific portion of appellant's property to access the property of the corporate debtor is presumed to be true, there is always a possibility that it could be permissive as it is not unknown in this

country for people to make concessions due to personal relationships, which creates non-binding commitment. This, Sec.52[2] of the very Easement Act terms it as a license, terminable at the will of the licensor. Secondly, under the scheme of the Code, it does not equate a related party under Sec.29A of the Code with the personal relationship an individual may have with the suspended director of the corporate debtor.

16. Where a liquidator asserts the existence of an easementary right of way by prescription over the land of the appellant, and when the appellant denies its existence, the burden is on the liquidator to establish it, for in law the burden is not on the one who denies the existence of a fact but on the one who affirms it. Here, the Liquidator should get familiar with the BSA (formerly the Evidence Act), if not the provisions, at least with its basic principles. In this setting, given the fact that the appellant has raised a dispute, what are all the facts which the liquidator is required to establish?

a) Firstly, she has to prove that the corporate debtor has used a specific and a well-defined part of the appellant's land as a pathway;
b) Secondly, she must provide the exact location of the pathway and its dimension as she claims prescriptive right of way. An adverse right of way can be acquired only over a specific route on a property and not generally through a property. This is because, under Sec.22 of the Easement Act, even if a right of way by prescription is to be created, it

[2] 52. "License" defined.—Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

must be kept to the barest minimum, no more onerous than what is required. The liquidator cannot burden the entire land of the appellant to an easementary right.

c) Thirdly, she should prove a set of complex facts: that the right of way is exercised as of right, which implies that it is not used pursuant to any express or implied permission of the appellant; that it was so exercised openly and to the knowledge of the appellant; and lastly that it was used for an uninterrupted 20 years and more as in 2021, when she filed I.A. 2658 of 2021 (in which the impugned order came to be passed).

17. As indicated in paragraph 11 above, acquisition of an easementary right by prescription has more to do with the mental element behind using a facility than actually enjoying it, and this mental element has to be tested and can be tested only through cross examination of the party asserting it. In most cases involving easementary right, local inspection of the spot is required and most often civil courts, with its familiarity in this branch of law, appoints Commissioner for local inspection under Order XXVI Rule 9 CPC and also have the authority to visit the spot to ascertain any facts under Order XVIII Rule 18 CPC. Indeed, even the Commissioner's Report can be challenged and the Commissioner can be cross-examined. Where are these facilities in a tribunal under the Code for a trial of a dispute? It will be therefore, dangerous to understand and apply the Code as enabling exercise of a jurisdiction merely because it comforts the authority of the tribunals.

18. Moving further, how has the liquidator fared?

a) First, the location of the pathway and its dimension. The liquidator has not even indicated it. The plan in colour shown in paragraph 13 may be referred to. It shows that the properties of the appellant and the corporate debtor appear as an imperfect piece of a jig-saw puzzle, one below the other, with two specific points of contact. Both the lines where the properties of both meet apparently has a substantial length. The liquidator has not indicated where in this dividing line the pathway she asserts runs and what its dimensions are. Mere attempt to show a pathway with an arrow will not suffice. It will amuse a court familiar with the working of the Easement Act.

b) Thirdly, the liquidator has to prove that such an easementary right was exercised uninterruptedly for any duration more than 20 years. But here is a liquidator whose knowledge about the liquidation-asset in question and how it was enjoyed commences either from September, 2019 or March, 2020, depending on when she was appointed, and that it could be no more than a year or so when she filed I.A. 2658 of 2021. Where then is her proof for uninterrupted use of the way that she claims as of right for 20 years? How competent is she then to speak about what she intends to speak?

19. The liquidator neither troubles herself nor the tribunal. She merely tells us: "*I need a pathway, I presume a right of way by prescription is created over appellant's land, I plead nothing; I prove nothing, I will not stand the test of cross*

examination, but grant me a decree because I have to complete the liquidation process under the IBC." Should the tribunal go overboard and assume jurisdiction to decide the dispute at hand merely because it comforts its sense of authority? Conscience of no judicial forum that believes it to be a doctor of bleeding rights with requisite sensitivity to the right of every litigant, will ever permit it.

20. Having told the liquidator the quality of the case she has brought before this tribunal and the law on it briefly, it may have to be conceded that I am not certain if the liquidator is familiar with an easementary right, how it is acquired, and when its existence is disputed, how to plead and prove it. Anyone who is familiar with this branch of law and its principles would have told the liquidator that it falls purely within the exclusive realm of classical civil law[3], and that merely because the liquidator considers a pathway is required, or, spots something on the ground in the appellant's property, she cannot believe that the corporate debtor has acquired an easementary right by prescription, and that when the appellant resists and raises a dispute, the same can be decided only by a competent civil court. The liquidator needs to be informed that the Easement Act, which has come into force in 1882, is still the same in its 144th year, with several reams of printed judgements describing its contours, cannot be dumped in the dustbin merely because the liquidator does not want to know it. Ignorance is not a greater sin than one's unwillingness to know. And, merely because the liquidator requires this tribunal to go unifocal and look only to the

[3] A branch of law which is now driven to bleed due to systematic neglect in the contemporary times on a conceptual misconception that unless a branch of law enjoys a fancied status as a super specialty branch, it is not worthy of pursuit,

IBC's urgency, other law, contextually, the Easements Act and what it prescribes and preaches cannot be rejected, for what is involved is not just the interest of the corporate debtor or the right of its creditors, but also the right of a third party, the appellant, who admittedly is not a stakeholder in the liquidation process and whose property is not part of the liquidation asset. Who will care for his right? And who can consider his right? How competent this tribunal is to deal with these issues? Does the liquidator want this tribunal to decide on the existence of an easementary right that she claims without referring to the Easement Act? It appears so, but no judicial mind trained in civil law will allow its conscience to be consumed by any such grand misconception.

21. Indeed, what is disturbing is that when the liquidator had approached the Gram Panchayat with its application dated 09.09.2021, seeking right of way over the appellant's property, the Gram Panchayat had advised her to approach the civil court, which to me is a right advice but may not be from an expert in civil law. But it is ignored. Knowing the waning importance given to civil law and its inability to establish itself as a super specialty branch due to the sustained neglect of ignorant intelligentsia, it may not be hazardous to guess that there may not be too many competent civil lawyers around to advise her. It is time for those who assume responsibility for the legal system in this country, including the legal-educationists, to go for a huddle and to introspect seriously.

22.1 Having explained why civil court should be the forum of choice for remedying a dispute on the existence of an easementary right and the reasons therefor, I shift the focus to discuss why tribunals may not have jurisdiction to decide this issue. The tribunal, with its limited summary jurisdiction, has the authority to deal with the legal consequences that flow from: (a) admitted facts, including those which have been conclusively decided by a competent court; (b) not disputed facts; (c) facts that do not prima facie establish a dispute; and (d) those disputes that may arise out of undisputed pre-existing legal relationship between the corporate-debtor and a third party such as those created by a contract.

22.2 Here, few illustrations may provide greater clarity to what is explained above:

a) While dealing with the defence of pre-existing dispute over the existence of a debt in the context of a petition filed under Sec.9, if the tribunal finds that there is prima facie merit in that defence, instantly it lays its hands off the issue and relegates the petitioner to approach the civil court. It indicates two aspects: (i) that a tribunal exercises its jurisdiction only where facts are admitted, or not shown to disclose any *prima facie* dispute; and (ii) that it is not equipped to deal with complex questions of disputed facts.

b) Let another example be considered. A case of a promotor of the corporate debtor holding only a share merely in the property, be it with other co-sharers or co-owners[4]. In law, every co-owner or co-sharer is entitled to every inch of land, which implies none of them can exclude the others from enjoying it. However, law also enables a co-sharer to enjoy a specific portion of a jointly held land for convenience but with the consent of others. This may not amount to partition of the property,

[4] In law co-ownership and co-sharership is not the same.

and may not bind the civil court when it contemplates a metes and bounds partition among all the co-owners, though it may not ignore it either. Now, if a co-owner or co-sharer of a property promotes a company, occupies a portion of any such property for his convenient enjoyment with the consent of other co-owners/co-sharers, and if the said company faces a liquidation, can the liquidator seek partition before the tribunal under Sec.60(5) because securing a clear title may maximise the value of liquidation-asset, and can it be entertained by the tribunal merely because filing a suit before the civil court will be laborious and time consuming? And, if the other co-sharers of such promotor-co-sharer resist any attempt of the liquidator to invoke the jurisdiction of the tribunal in defending their individual civil right involved in partitioning a property, can it be termed *malafide*? Qua vadis justice then be in this country?

c) There can be another situation where a corporate debtor shows a vacant plot of land as its asset, but a third-party disputes the title of the corporate debtor and claims a title in himself over the same property. Can the disputed-title be decided by the tribunal merely because one of the parties to the dispute, namely the corporate debtor, shows the property as its own in its books? Can the tribunal construct title documents without a trial and decide the issue because IBC has a set a time line.

d) Then there are disputes that arise out of a pre-existing and undisputed legal relationship between the corporate debtor and a third party. ***Gujarat Urja Vikas Nigam case*** is one that falls in this category.

There the corporate debtor was in the business of electricity-generation and its only customer is Gujarat Urja Vikas Nigam based on a Power Purchase Agreement. The purchaser of energy under the PPA unilaterally terminated the contract when the energy-generator was drawn into CIRP. Then the court, to keep the CD as a going concern, held that the termination of contract is bad. But it must be underscored that the Court does not force a new contract on an unwilling purchaser merely because the corporate debtor must run as a going concern. Another circumstance may be seen in the ratio of ***Jhanvi Rajpal Automotive Pvt., Vs R.P. of Rajpal Abikaran Pvt. Ltd., & another*** [(2023) ibclaw.in 09 NCLAT], where after the expiry of the lease period a tenant was holding over, it was directed to be evicted by the tribunal. What is significant in these categories of cases is that there always or at the least, existed a pre-existing legal relationship between the corporate debtor and the other party, chiefly based on contracts, and hence the corporate debtor had a subsisting interest in the subject matter of such contract which may have an impact in the CIRP or liquidation process.

23. What could therefore be deduced from the above is that no tribunal can create any new right or new obligation which did not exist when a CIRP commenced, merely because creating them is considered ideal for the completion of the CIRP or the liquidation process.

24. It should be realised that IBC does not have solutions for all the problems that may affect a liquidation-estate. Where civil suit is the remedy, the Code

enables it vide Sec.33(5) when it authorises liquidator to institute civil suits, but with the leave of the Adjudicating Authority. Why then shy of a civil court if that is the forum of remedy? Does anyone go to an ophthalmologic surgeon to treat cardiac issues merely because an ophthalmologist offers speedier remedy to the illness he treats? It needs to be understood that the tribunals constituted by the Code may have faster solutions but only for what they can handle within its realm. A classic instance of this is seen when the asset of the corporate debtor comes under the cloud of the Prevention of Money Laundering Act, where the tribunals have wisely stepped back to direct the resolution professional or the liquidator, as the case may be, to approach the Enforcement Directorate, or the tribunals constituted under the PMLA.

25. The liquidator should remember that statutes may vary, rights they create may vary, but the legal system in this country treats every right of every citizen equally. This tribunal, even as it administers the IBC, cannot insult this Constitutional philosophy merely because the Code has set the completion of the insolvency resolution process on an urgency mode. After all, the Code does not advocate that a corporate debtor be resurrected, come what may, even if it is with the blood of the third-party rights. Right to property of every nature, kind, variety and width is a Constitutionally protected right under Article 300 A of the Constitution and it cannot be meddled with by the Code. Parliament has laid the highway for legislations to travel, and also has earmarked the lane in which every statute that it has passed shall operate. Lane-crossing is prohibited in legislative operations, unless it is enabled. In the context of IBC lane crossing is enabled to a limited extent in Sec.238 of the Code, but it is restricted only to

those legislations which overlap with the insolvency resolution process as designed by the Code. Where does an Easement Act figure in this scheme? Where does its sphere of operation overlap with the objectives contemplated under the Code? I searched for it and found none. The message on jurisdiction therefore, be stated: that which the IBC does not proclaim to exist, may not the tribunal believe it to exist.

26. To sum up, the core issue is whether the Adjudicating Authority has the authority to entertain a dispute of prescriptive right of way. The answer is an easy guess: an emphatic No.

27. In the result I allow this appeal, and set aside the Order of the Adjudicating Authority dated 22.01.2025 passed in C.P. (I.B.) No. 2392/MB/2019. The liquidator is free to approach the civil court for establishing the right to pathway of the liquidation asset in terms of Proviso to Sec.33(5) of the Code. Turning to costs, it follows the event, and it is not imposed on the victims of a wrong but on the one who victimises. In the instant case, the liquidator deserves to be viewed differently as she cannot be presumed to be familiar with a complex statute such as the Easement Act and its working. Hence, No costs.

[Justice N. Seshasayee]
Member (Judicial).

rs/beena

<u>J U D G M E N T</u>
<u>(Hybrid Mode)</u>

<u>[Per: Arun Baroka, Member (Technical)]</u>

This Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("the Code") has been preferred by ARC Research and Development Centre Limited (Appellant No.1) and ARC Fintube Technologies Pvt. Ltd. (Appellant No.2) against the order dated 22.01.2025 ("impugned order") passed by the National Company Law Tribunal, Mumbai Bench ("Adjudicating Authority") in I.A. No. 2658 of 2021 in C.P.(IB) No. 2392/MB/2019, whereby the Adjudicating Authority allowed the application filed by the Liquidator of Adya Oils and Chemicals Ltd. ("Corporate Debtor") and issued directions restoring and protecting the Corporate Debtor's right of way over New Block Nos. 90 and 92 (Old Block Nos. 94 and 96), belonging to the Appellants, for access to the Corporate Debtor's land at New Block No. 83 (Old Block No. 87) ("Subject Property").

2. By the impugned order, prayers (b) to (h) of I.A. No. 2658 of 2021 were allowed, prayer (a) having become infructuous as the obstructing wall raised by the Appellants stood demolished during the pendency of the application. Aggrieved thereby, the Appellants are before this Appellate Tribunal.

<u>Brief Facts</u>

3. The Corporate Debtor, Adya Oils and Chemicals Ltd., owns and operates an industrial unit at New Block No. 83 (Old Block No. 87), Village Manglej, Taluka Karjan, District Vadodara, Gujarat. Access to this unit from the National

Highway has, since 1999, been through New Block Nos. 90 and 92 (Old Block Nos. 94 and 96), presently owned by the Appellants.

4. The origin of this access is traceable to the Non-Agricultural (N.A.) permission bearing No. N.A.S.R./2/99/99-2000/Land Vashi/1466/99 dated 04.11.1999 ("NA Order") granted by the Taluka Panchayat Kacheri, Karjan, permitting construction for industrial purposes on the Corporate Debtor's land. The NA Order, granted after obtaining reports/clearances from no fewer than thirteen concerned authorities (Executive Engineer, National Highway Department; Special Land Acquisition Officer, Narmada Yojna; Deputy Collector; Chief District Health Officer; Deputy Town Planner; Collector, Vadodara under Section 63AA of the Tenancy Act, and others), expressly records that entry to the land in question was to be secured from the National Highway through Block No. 94/96, subject to an undertaking executed on a stamp paper dated 20.09.1999. This right of way was never under challenge by the erstwhile owner (M/s Jord Engineers) or by the Appellants at any point between 1999 and the commencement of CIRP.

5. Corporate Insolvency Resolution Process against the Corporate Debtor commenced on 16.09.2019. It is not in dispute that the access through New Block Nos. 90 and 92 continued to be used without interruption for over two decades, including during the CIRP, until the Appellants raised a boundary wall blocking the said access during the Covid-19 lockdown period.

6. The Liquidator lodged a police complaint regarding the obstruction, which was closed on 09.06.2021. The Liquidator thereafter approached the Adjudicating Authority by way of I.A. No. 2658 of 2021 under Section 60(5) of the Code, praying, inter alia, for an injunction against further construction, demolition of the obstruction, a declaration of the Corporate Debtor's right of way, and directions for its permanent incorporation in the revenue records.

7. During pendency of the application, and after the police complaint, the offending wall was demolished; however, the Liquidator's grievance is that the approach to the gate was thereafter filled with mud and raised so as to render ingress and egress difficult, effectively perpetuating the obstruction in substance if not in form.

8. By the impugned order dated 22.01.2025, the Adjudicating Authority held that the Corporate Debtor had acquired an easementary right of way by prescription under Section 15 of the Indian Easements Act, 1882, having enjoyed uninterrupted, open and peaceable use of the access for more than twenty years; that the Appellants, as subsequent purchasers, stepped into the shoes of the earlier owner subject to the burden of the existing easement; that the timing of the obstruction (post-CIRP) and the undisputed relationship between the Appellants' promoters and the erstwhile promoters of the Corporate Debtor evidenced a deliberate design to depress the value of the Corporate Debtor's assets; and that the application was maintainable under Section

60(5)(c) of the Code inasmuch as the obstruction had a direct nexus with, and bearing upon, the liquidation process. Prayers (b) to (h) were accordingly allowed.

Submissions of the Appellant

9. The Impugned Order dated 22.01.2025, passed by the Ld. Adjudicating Authority in Company Appeal (AT) (INS) No. 292/2025 suffers from a jurisdictional error. The Hon'ble NCLT travelled beyond the statutory powers under the Insolvency and Bankruptcy Code, 2016 by purporting to confer easement rights in favour of the Corporate Debtor, Adya Oils and Chemicals Ltd., over two parcels of land bearing Survey Nos. 90 and 92, which are owned by Appellant. Such easement rights were erroneously granted in terms of Section 15 of the Indian Easements Act, 1882, pursuant to an application filed by Respondent No.1/Liquidator under Section 60(5) of the IBC per IA No. 2658 of 2021 in Company Appeal (AT) (Insolvency) No. 292 of 2025.

10. NCLT was not entitled in law to grant to pass a direction under Section 65 in respect of a civil matter governed by the Indian Easement Act, 1882.

11. The proceedings before NCLT/NCLAT are summary proceedings. The NCLT cannot decide disputed issues, which are predominantly civil in nature and is a matter of trial.

12. The property in question viz. the Plots of the Appellants were not the property of the Corporate Debtor. Therefore, the application filed by the

Liquidator for the alleged easement rights under Section 60(5)(c), IBC was not maintainable. Reliance is placed on [1]**Gujarat Urja Vikas Nigam.** The relevant extract from para 69 is reproduced below:

> "Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related issues, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor. However, in doing so, we issue a note of caution to NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and for a when the dispute is one which does not arise solely from or relate to the insolvency of the corporate debtor. The nexus with the insolvency of the corporate debtor must exist"
>
> [Emphasis supplied]

The relevant extract of para 74 is reproduced herewith as below:

> "Therefore, we hold that the RP can approach NCLT for adjudication of disputes that are related to the insolvency resolution process. However, for adjudication of disputes that arise dehors the insolvency of the corporate debtor, the RP must approach the relevant competent authority. For instance, if the dispute in the present matter related to the non-supply of electricity, the RP would not have been entitled to invoke the jurisdiction of NCLT under IBC. However, since the dispute in the present case has arisen solely on the ground of the insolvency of the corporate debtor, NCLT is empowered to adjudicate this dispute under Section 60(5)(c) of IBC."
>
> [Emphasis Supplied]

13. Similarly in the matter of [2]**Embassy Property Development Pvt. Ltd.** wherein it was observed as under-

> "This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, The Resolution Professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5)."
>
> [Emphasis Supplied]

14. The Corporate Debtor was never granted the right of way by the Appellants to its plot. Thus, there has been no peaceable, open and uninterrupted access for twenty years in order to invoke Section 15 of the Indian Easements Act, 1882, for grant of Easement rights. Anyhow, it was not within the domain of NCLT to decide the issue regarding the easement rights.

15. The Appellants had restricted the access to the plot by installing gates on its premises to which no objection was ever raised by the Corporate Debtor. Even otherwise, the Corporate Debtor had an alternate route. A limited affidavit in this respect challenging the jurisdiction of NCLT was filed (page no. 196/200 in Company Appeal (AT) (Ins.) No. 292/2025). A further affidavit was also filed by the Appellant No.1 challenging the jurisdiction and also bringing into the notice of the court that the reliance upon an order dated 04.11.1999 (page no. 116 in Company Appeal (AT) (Ins.) No. 292 of 2025) of Taluka Panchayat Kacheri for creating a right of easement was unfounded as there was no undertaking on record (page no. 207/210 in Vol II in Company Appeal (AT) (Ins) No. 292/2025). Anyhow, the Ld. Adjudicating Authority does not have the mandate under IBC

to pass any order for providing the Easement Rights. It did not contain an undertaking/right of way by the Appellants.

16. Reliance upon the judgment [7]**Swiss Ribbon** is ill-founded since maximization of the value of the assets of the Corporate Debtor does not imply grabbing the rights and properties of third parties as has been done in the case.

17. Appellant No.1 is the owner of the plot in question for over 18 years having purchased the plots in 2007 and has never granted any right of way to the Liquidator or any other owner(s) of the neighboring plots and in fact, the Appellant No.1 had challenged the existence of such purported right of way in different litigations.

18. Without prejudice, it is a settled law that easement by necessity is not available when there is an alternative way to access a property, which was available.

19. The occupiers of the adjoining lands had also initiated similar claims against the Appellant No.1 to establish a right of way but the said claims were unsuccessful in civil proceedings.

20. Prior to filing of application under Section 60(5), IBC, the Liquidator had filed a police complaint, which was closed on 09.06.2021 due to lack of written documents or financial transaction to prove the claim of the Liquidator that easement rights ever existed in favour of the Corporate Debtor and existence of

an alternate route available to the Liquidator to access the plot of the Corporate Debtor. The Liquidator was thus legally estopped from raising the said issue before the Ld. Adjudicating Authority.

21. The occupiers of the adjoining lands had also initiated similar claims. against the Appellant No.1 to establish a right of way but the said claims were unsuccessful in civil proceedings.

22. It is imperative to mention that the map which has been submitted by both the Appellant and the Respondent clearly elucidates that there is a right of way available to the Corporate Debtor. If any part of that land has been transferred to any third party, the Respondent, who has a land parcel available, cannot be coerced to permit a right to way to the Corporate Debtor.

23. It is further pertinent to mention that the NA order which has been referred to by the Respondent Liquidator, thus, cannot have any applicability upon the Appellant for the very reason that the Appellant/its predecessor had not given any undertaking of any nature whatsoever. This was only communicated to the Corporate Debtor by the Taluka and the Appellant Company was not privy to any such document.

24. It is also pertinent to mention that the investigation report submitted by the Vadodara police which led to closure of the case very clearly indicated that there was no document or fact of any nature which could substantiate the claim

of the Respondent Liquidator and only thereafter, once the respondent liquidator was not given any indulgency by the police, it had attempted filing application before the NCLT which was erroneously admitted.

25. It is contended that the Respondent' land was not land-locked and had a right to way. However, as understood by the submissions made by the Respondents, two/three plots of land out of the total block are not currently in the hands off the Corporate Debtor. It is stated that if the Respondent for whatever reasons is not having the control on the assets, it cannot compel or coerce a third party to provide a right of way. Anyhow, the right of way, if at all, is to be established through the Civil Court and IBC being a summary proceedings and being created under the specific statute, the Respondent could not claim and the NCLT could not have granted the Right of Way to the Respondent only with the objective of enhancing the value of the assets of the Corporate Debtor at the stake of the third party.

26. It is also pertinent to mention that as regards, the issue pertaining to the promoters of the Respondent being the relatives of the promoters of the appellant, it is most that simply being close family/relatives do not result in a situation whereby a third-party relative can be coerced to give a right of way. The Appellant and the Respondent are separate legal entities and this particular factum cannot be ignored. The Respondent was never land locked and if on account of any conduct of the Respondent, it does not have the right of way. It

cannot coerce the Appellant to hand across the property, when admitted there was a clear right of way in favour of the Respondent as duly admitted by the Respondent.

27. Therefore, in view of the above facts and submissions, it is prayed that the order dated 22.01.2025 passed by the Ld. Adjudicating Authority, Mumbai in IA/2658/2021 in C.P. (L.B.) No. 2392/MB/2019 should be set aside.

Submissions of the Respondent 1/Liquidator

28. The Respondent No.1/Liquidator claims that the Appellants have erroneously contended that the issues raised by the Respondent No.1 and relief claimed in IA 2658 of 2021 was not maintainable under Section 60(5)(c) of the Code, but that the R1 ought to have approached a Civil Court.

29. Respondent No.1 heavily relies on the judgment of Hon'ble Supreme Court [1]**Gujarat Urja**. Respondent No. 1 contends that from the above enunciation of law it is clear that:

a. The Ld. Adjudicating Authority (Hon'ble NCLT) is envisioned as a single forum to efficiently deal with disputes with a view to avoid delay by approaching different forums.

b. The test laid down is 'nexus with insolvency of the Corporate Debtor'.

c. In addition, Section 60(5)(c) of Code empowers the Ld. Adjudicating Authority to even decides 'questions of facts'.

30. The above tests are satisfied in the present case since, but for the insolvency, the Appellants would not have blocked the right of way to access the Subject Property belonging to the Corporate Debtor (at New Block No. 83 (Old Block No. 87)) through their New Block No. 90 and 92 (Old Block No. 94 and 96).

31. The Appellants have not shown any objection raised by them at any point of time prior to the CIRP of the Corporate Debtor objecting to the Corporate Debtor's use of the right of way granted by the NA Order dated 04.11.1999. Pertinently, the NA order dated 04.11.1999 was neither challenged by Jord Engineers (earlier owner) or by the Appellants at any point of time in any manner known to law.

32. Further, while the Appellants purchased New Block No. 90 and 92 (Old Block No. 94 and 96) in 2007, they never raised the wall until after CIRP and Liquidation commenced and during Covid-19 and later also demolished the wall. There is no explanation for the timing of such construction and blockages to access the Subject Property thereafter, except a vague reference to prevent pigs from entering.

33. In the present case, the very origin of the dispute is to unfairly influence the liquidation proceedings by family members of the Promoters of the Corporate Debtor. The dispute thus arises out of and is in relation to the liquidation proceedings and the actions of the Appellants materially impacts the value of the asset (Subject Property) of the Corporate Debtor thus impinging on the objective

of maximization of the value as mandated in the preamble of the Code. The motive of the Appellants was to ensure that the Subject Property is landlocked such that no one comes ahead to purchase the same, and the value is brought down so that the same may be purchased by the erstwhile promoters or their nominees.

34. The Respondent No.1 has filed the maps as of 2020 and 2025 vide their I.A. No. 6654 of 2025 showing how the access has been blocked by the Appellants, and it is undisputed that the access which was previously available has now been blocked by the Appellants.

35. If the liquidator is to file a suit for seeking the reliefs sought in the present application, it will significantly delay and prejudice the auction sale of the Subject Property in question. It will serve the interests of the Appellants to impede the auction sale of the property at the correct price. At their gain to acquire the land at an artificially low price, the interests of lenders and other stakeholders will suffer, thereby defeating the objects of the Code.

36. The status of the auction of the plots is as follows:

New Block No.	**Old Block No.**	**Land Belongs to**	**Current Situation of the land**
77	81	Adya Oils	E-auctioned to NPA Advisors (but auction not confirmed as subject to CA(AT)(Ins.) No. 227-228 of 2024 pending before this Hon'ble Appellate Tribunal)
79	83	Adya oils	

83	87	Adya oils	To be sold (subject matter of present Appeal)
80	84	Shri Sarkar	Government of Gujarat
81	85	Shri Sarkar	Government of Gujarat
82	86	Arjun Singh Solanki	Sold by one deceased Tribal occupant to Arjun Singh Solanki (Tribal)

37. The Adjudicating Authority by an order dated 18.12.2023 passed in I.A. No. 833 of 2022 in CP(IB) No. 2392 of 2019 held that lands which does not belong to the Corporate Debtor cannot be made part of the Liquidation estate, and further that the Liquidator was authorised to sell the assets of the Corporate Debtors in Blocks.

38. Thus, the erstwhile Liquidator published an auction sale notice dated 10.01.2024 for sale of New Block No. 77 and 79 (Old Block No. 81 and 83 respectively) either separately or together. The Subject Property was not part of this E-auction. By an interim order dated 06.02.2024 passed in CA(AT)(Ins.) No. 227-228 of 2024, this Hon'ble Appellate Tribunal permitted the auction to take place but however directed that the auction shall not be confirmed without leave of the Court. Thereafter, the Respondent No.1 has received the bid from the auction purchaser, but the sale has not been concluded in view of the aforesaid interim order. Subsequently, by an order dated 11.07.2024, the auction purchaser has also been impleaded in CA(AT)(Ins.) No. 227-228 of 2024, which is pending.

39. This Hon'ble Appellate Tribunal had posed a query regarding whether the auction was scheduled before or after the access was blocked, and the Respondent No.1 humbly submits that while the access was blocked during the Covid 19 pandemic, the auction notice was published on 10.01.2024 and the auction was conducted on 08.02.2024.

40. The contention of the Appellants that the Corporate Debtor can have access to the Subject Property through New Block No. 77 and 79 (Old Block No. 81 and 83 respectively) is liable to be rejected since:

a. In the Map filed by the Appellants, the numbers written in red ink denotes New Block Number, while the numbers written in blue ink denotes Old Block Number.

b. The New Block No. 82 (Old Block No. 86) which is in-between the Subject Property (New Block No.83 and Old Block No.87) and the New Block No. 77 and 79 (Old Block No. 81 and 83 respectively) belongs to a third party by the name Arjun Solanki. Thus, even if there is access (through the green pathway) to New Block No. 77 and 79 (Old Block No. 81 and 83 respectively) there is a land belonging to a third party, cutting of access in-between, which is not in the control of the Liquidator.

c. Further, the dispute has arisen due to the sudden action post CIRP/liquidation of blocking the access enjoyed by the Corporate Debtor to the Subject Property through New Block No. 90 and 92 (Old Block No. 94 and 96).

41. The Appellant therefore most respectfully prays this Hon'ble Appellate Tribunal may be pleased to dismiss the present Appeal.

Analysis and Evaluation

42. This appeal arises from Interlocutory Application No. 2658 of 2021 which was filed by Liquidator of Adya Oils and Chemicals Ltd. before the Adjudicating Authority seeking various directions which are extracted as below for conveniences:

> a) Grant injunction against the construction undertaken in new block nos. 90 & 92 by Respondents 5 & 6, blocking the right of way of the CD to new block no 83.
>
> b) The status qua to be maintained in the construction by Respondent no 5 & 6 in new block no 90 & 92, pending the removal of obstruction and defining the existing path by Respondent nos 1, 2, 3 & 4.
>
> c) Direct the Respondent nos 1 to 4 to demolish the construction activity that has been undertaken to block the right of way to the CD to new block no 83 through new block nos 88,89,90 & 92.
>
> d) Order Respondent nos 1 to 4 to ensure that the right of way provided by NA order No. N.A.S.R./2/99/99-2000/Land Vashi/1466/99 dated 04.11.1999 is wide enough for the passage of trucks, trailers and dumpers through new block nos 90 & 92.
>
> e) Declare that the CD, being the dominant heritage owner has right to prevent the servient heritage owner from creating any obstruction in the right of way at any time in the future.

f) Direct the local authorities at Karjan Manglej Village, including the Police station at Manglej Village, Karjan to provide the necessary security and support for demolition of the obstructions in the right of way and to take cognizance of any complaint of further obstructions at any point of time in the future;

g) Direct Respondent no 4 to ensure that the right of way to new block no 83 is permanently incorporated in the land records of the Government of Gujarat.

h) Grant any other reliefs as the Hon'ble Tribunal may deem fit and proper.

43. Liquidator had sought directions against the Appellants herein namely ARC Research and Development Centre Limited and ARC Fintube Technologies Pvt. Ltd. for providing right of way to New Block No. 83, which is essential for maximizing the value of the Corporate Debtor's (CDs) assets during the liquidation process.

44. The Adjudicating Authority had allowed the appeal. Adjudicating Authority has provided the relief with following directions:

"…Findings-

1. In view of the submissions made by the Learned Counsel of both the parties and on the strength of documents and pleadings placed on record, it is evident that the Applicant, being the Liquidator of Adya Oils and Chemicals Ltd., is seeking directions against the Respondents concerning the right of way to New Block No. 83, which is essential for maximizing the value of the Corporate Debtor's assets during the liquidation process.

However, the case of the Respondent is that the instant Application, filed by the Applicant, is not maintainable under Section 60(5)(c) of IBC as the cause of the present Application does not have any nexus to the CIRP of the Corporate Debtor. Furthermore, it is pertinent to note that this Hon'ble Tribunal, vide Order dated 13.02.2024, proceeded ex-parte against Respondent No. 1,2,3, and 4 and forfeited their right to file a reply to the present Application.

2. On perusal of the reply submitted by Respondent No. 5 and 6 and also in view of the arguments advanced, it is evident that the Corporate Debtor has enjoyed uninterrupted access through New Block No. 90 and 92 since 1998/1999, as established by the NA Order dated 04.11.1999 issued by Taluka Panchayat Kacheri. The said NA Order explicitly recognizes and grants the right of way through these blocks for accessing New Block No. 83. Although, an attempt has been made on the part of the Respondents 5 to justify the obstruction of the right of way by clearly stating that "the grant of such right of way to the Corporate Debtor will result in huge infestation of pigs daily on the Respondent's Plot and will also lead to increased chances of robbery in the Respondent herein. To avoid any such untoward instances, a wall was built on the periphery of the Respondent's Plot". However, the same appears to be an afterthought, considering that the said issues could have been addressed without completely blocking access.

3. Further, we must appreciate the following-

a. The NA order clearly defined the access to the road and highway through Block Nos. 90 and 92 of Respondent No. 5, establishing an uninterrupted right of way.

b. The Corporate Debtor's factory operations and regular visits by officials of the Corporate Debtor, IRP, Liquidator, etc. demonstrate continuous use of this access until the recent obstruction. Evidencing that the easement right existed.

c. The factory premises of the Corporate Debtor were utilized for industrial purposes, and such industrial use inherently involves the existence of easement rights.

d. The wall construction occurred after the commencement of CIRP, substantiating a deliberate attempt to impair the value of the Corporate Debtor's assets.

e. Prior attempts by the Respondents to establish alternative rights of way have been unsuccessful, indicating that the prescribed route through Blocks 90 and 92 is the recognized access.

4. Thus, given the above-stated facts, the easement rights of the Corporate Debtor stand established under Section 15 of the Indian Easements Act, 1882, having been enjoyed uninterruptedly for over 20 years until the recent obstruction.

5. Furthermore, this Bench finds merit in the Applicant's contention that <u>any land that is sold is with the existing easement rights attached to it cannot be divorced of such grant of easement</u> by the earlier owner just because the Respondent No. 5 has not

granted any specific easement right to the Applicant. Thus, it is established that Respondent No. 5 stepped into the shoes of the earlier owner, and the Easement right in favour of the Corporate Debtor extend to Respondent No. 5.

6. Moreover, the nexus between the Respondents and the Corporate Debtor's promoters as related parties raises serious concerns about the intention behind the said obstruction. The timing of the wall construction and subsequent attempts to block access suggest a calculated effort to devalue the Corporate Debtor's assets.

7. While the Respondents have raised jurisdictional objections, this Tribunal finds that the <u>matter falls squarely within its jurisdiction under Section 60(5)(c) of the Code</u>. The obstruction directly impacts the liquidation process by:

   a) Impeding the Liquidator's ability to maximize asset value

   b) Interfering with the sale process

   c) Creating artificial barriers to potential buyers

8. Keeping in view the totality of the circumstances of the present case and in view of the fact that there is an established right of way through New Block No. 90 and 92, and the fact that the <u>obstruction appears to be a deliberate attempt to devalue the Corporate Debtor's assets, with the Respondents being close relatives of the Corporate Debtor's promoters</u>, it is a fit case for intervention. Furthermore, this matter falls squarely within the jurisdiction of this Tribunal under Section 60(5)(c) of IBC as it directly impacts the value maximization of the Corporate Debtor's assets and is intrinsically linked to the liquidation process, also

keeping in mind that the alternative route suggested by the Respondents would expose the Applicant to trespass claims and is not recognized in the original NA Order.

9. In view of the settled law laid down in Swiss Ribbons (P) Ltd. v. Union of India [(2019) 4 SCC 17], wherein the Hon'ble Supreme Court has emphasized the importance of value maximization during liquidation proceedings, and considering that the obstruction of right of way significantly impairs the Liquidator's ability to effectively manage and sell the Corporate Debtor's assets, this Tribunal is of the judicious opinion that the present Interlocutory Application deserves to be allowed. Thus, prayers (b) to (h) in IA/2658/2021 are hereby allowed, as prayer (a) has become infructuous, considering the said wall has already been demolished during the pendency of the present IA."

45. Appellant is challenging this order of the adjudicating authority. It brings to our notice that before the Adjudicating Authority it had argued that the application was not maintainable under Section 60(5)(c) of the Code as the cause of present application does not have any nexus to the CIRP of the Corporate Debtor.

46. Appellants' case is that the dispute is a pure civil easement dispute under the Indian Easements Act, 1882, which exists dehors the insolvency: the right of way either exists or it does not, regardless of the CD's solvency. It contends that

Gujarat Urja[1] itself cautions NCLT/NCLAT not to "usurp the legitimate jurisdiction of other courts" where the dispute does not arise solely from or relate to the insolvency, and it further requires the resolution professional to "approach the relevant competent authority" for disputes arising dehors the insolvency. Furthermore the appellant places its reliance on another judgment in **Embassy Property Development (P) Ltd. v. State of Karnataka**[2] which holds that the resolution professional "cannot short-circuit" proceedings in which the CD must assert rights and "bring a claim before NCLT taking advantage of Section 60(5)". The appellant also contends that the summary proceedings cannot try a right that needs evidence.

47. Vehemently opposing the arguments of the appellants, the liquidator claims that the **Gujarat Urja**[1] para 71 supplies the operative logic. In **Gujarat Urja**[1] the PPA was terminated solely because of insolvency, so the dispute arose solely from it. Here in the present case, but for the insolvency the Appellants would not have blocked the access — the wall came only after CIRP/liquidation, from those parties whose shareholders are the promoters' relatives, and this action is timed to depress the auction value so the property returns to the promoters' nominees. Section 60(5)(c) expressly provides for jurisdiction to NCLT to entertain or dispose of any "questions of fact".

[1] Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021) 7 SCC 209, paras 69, 71, 74: NCLT jurisdiction over disputes arising solely from/relating to insolvency; caution against usurping other fora; (para 69); disputes dehors insolvency go to the competent authority (para74).

[2] Embassy Property Development (P) Ltd. v. State of Karnataka, (2020) 13 SCC 308, para 40 : The professional "cannot short-circuit" fora in which the CD must assert rights by invoking s. 60(5).

Respondent contends that the Insolvency and Bankruptcy Code is single-forum design and for this purpose it places its reliance on **Innoventive**[3] (para 13); **ArcelorMittal**[4] (para 84), both quoted in **Gujarat Urja**[1] exists precisely so that value-destroying satellite litigation does not stall liquidation.

Points for determination

48. Having heard learned Counsel for the parties and perusal of the record, including the satellite imagery placed on record vide I.A. No. 6654 of 2025, the following points arise for determination:

I. Whether the application under Section 60(5)(c) of the Code was maintainable before the Adjudicating Authority, or whether the dispute ought to have been relegated to a civil forum;

II. Whether, on facts, the Corporate Debtor had a subsisting right of way over New Block Nos. 90 and 92 as on the date of commencement of CIRP, and whether the Appellants' conduct in obstructing the same has a nexus with the liquidation process; and

III. Whether the impugned order dated 22.01.2025 calls for any interference in appeal.

[3] Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407, para 13 : Single unified umbrella; speed of the insolvency process.

[4] ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1, para 84 : Non-obstante purpose of s. 60(5): NCLT alone for proceedings by/against a CD under the Code.

49. The primary question before us is whether a liquidator's application complaining of post-CIRP obstruction of the recorded access to an asset of the liquidation estate, is a “question of law or fact, arising out of or in relation to the insolvency resolution or liquidation proceedings” within Section 60(5)(c) or not. We note that the liquidator of Adya Oils and Chemicals Ltd. had heavily relied on the judgment of Hon’ble Supreme Court in **Gujarat Urja**[1], wherein it was held that:

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> “**69.** The institutional framework under IBC contemplated **the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. In the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful reorganisation or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner.** Pursuing this theme in Innoventive [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407: (2018) 1 SCC (Civ) 356] this Court observed that: (SCC p. 422, para 13)
>
>> “13. One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process.”

The principle was reiterated in Arcelor Mittal [ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1] where this Court held that: (SCC p. 88, para 84)

> "84. … The non obstante clause in Section 60(5) is designed for a different purpose: to ensure that NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings."

Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, **NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor.** However, in doing so, we issue a note of caution to NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the corporate debtor. **The <u>nexus with the insolvency of the corporate debtor</u> must exist**.

…

71. In the present case, PPA was terminated solely on the ground of insolvency, since the event of default contemplated under Article 9.2.1(e) was the commencement of insolvency proceedings against the corporate debtor. **In the absence of the insolvency of the corporate debtor, there would be no ground to terminate PPA.** The termination is not on a ground independent of the insolvency. **The present dispute solely arises out of and relates to the insolvency of the corporate debtor.**"

[Emphasis supplied]

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50. We observe that **Gujarat Urja**[1] is double-edged authority and can assist us in deciding the whole matter. This authority is relied on by both sides. We note that the judgement makes it clear that the Adjudicating Authority (NCLT) is envisioned as a single forum to efficiently deal with disputes with a view to avoid delay by approaching different forums. The test laid down is 'nexus with insolvency of the Corporate Debtor'. In addition, Section 60(5)(c) of Code empowers the Adjudicating Authority to even decides 'questions of facts'.

51. We were also shown a NA[5] order dated 04.11.1999 which allows the industrial activity to be undertaken as per the state government rules. We have gone through the NA - non-agricultural order and find that it clearly defined the access to the road and highway through Block Nos. 90 and 92 of the Appellants, establishing an uninterrupted right of way. This was necessary for access to the Corporate Debtor's factories operations. **Gujarat Urja**[1] judgment makes it very clear that "NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing do, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist." And applying the ratio in this case we notice that Revenue Authorities in the year

2019 through NA order dated 04.11.1999 had granted right to enter Block No. 87 (New number 83), which belongs to Adya Oils and Chemicals Ltd. (now in liquidation) which clearly states:

> "….
>
> (12) Since, the road for the getting entry in the land in question from the National Highway from the Block No.9496 this permission is granted as per the rule and regulation subject to the strict compliance of the undertaking given for the entry by making the Agreement on 20/9/99 on a stamp of Rs.20-00, and, subject to obtaining the permission of the Government as per the rules for the entry in the Government Nel (Narrow way way)."

52. We further note this order was issued on the basis of reports of all concerned who were officially involved in granting NA[5] permission for carrying out construction for the industrial purpose on the said land of the CD. It will be instructive to note that many stakeholders were involved for grant of permission and that could be appreciated from the following list:

> "(1) The demand was made on 27/8/99 by Adya Oils and Chemicals Ltd., Vadodara for N.A. permission for the Industrial purpose (Castor Oil Products) in respect of the land having total area of 12545 sq. meters of Block No.87 of village Manglej, Ta. Karjan, the acknowledgement of which was issued from this office on 31/8/99.
>
> (2) This office letter No. N.A.S.R./2/99-2000/Vashi/Land/1076/99 dated 31/8/99

[5] NA: Non-agricultural

(3) The letter No. CB/1987/99 dated 20/9/99 of the Executive Engineer, National Highway Department, Vadodara.

(4) The letter No. J.S./NYO/U.J./Binkheti/S.R./295/99 dated 9/9/99 of the Special Land Acquisition Officer, Narmada Yojna, Unit-4, Vadodara.

(5) The endorsement No. Valtar/Vashi/2332/99 dated 16/9/99 of the Deputy Collector, Vadodara.

(6) The letter No. Valtar/Vashi/369/99 dated 21/9/99 of the Dy. Collector and, Special Land Acquisition Office, (Unit-1), Vadodara.

(7) The Chief District Health Officer, District Panchayat, Vadodara outward No.DSE/1/Aa. Abhipray/240/99 dated 10/9/99.

(8) Letter No.SAI/Uttar/31/99 dated 2/11/99 of the Circle Inspector, Uttar Taluka Panchayat.

(9) The Certificate under Section 63AA of the Tenancy Act vide letter No. T.N.C./W/S./2323/99 dated 2/11/99 of the Collector, Vadodara.

(10) The letter No. BP/Manglej/Karjan/2368 dated 23/8/99 of the Dy. Town Planner, Vadodara.

(11) The last information given by the Executive Engineer, Narmada Yojna Naher Vibhag-3, Minyagam-Karjan to this office letter No.T.P./Jamin/1324/99 dated 8/10/99 given by the Registered Post.

(12) The original Challan dated 3/11/99 regarding depositing of the Deposit of Rs.1000/- under the Head P.L.A. to T.D.O.

(13) The Resolution No.4 dated 13/10/95 of the General meeting of Taluka Panchayat, Karjan."

53. We also note that grant of such right of way was never challenged by the owners of Block No. 94 & 96 (now 90, 92) and the Corporate Debtor continued to enjoy the easement right till now.

54. The argument which was presented before us was that any land sold is with the existing easement rights, which were attached to it and it cannot be divorced of such grant of easement by the earlier owner just because the new owner i.e. ARC Research and Development Centre Limited has not granted any specific easement rights to the applicant. ARC Research and Development Centre Limited stepped into the shoes of the earlier owner and the easement right in favour of the Corporate Debtor extends to ARC Research and Development Centre Limited.

55. Appellant has also brought to our notice that the Liquidator had approached revenue authorities but till date have not got any relief. Liquidator thereafter, approached Adjudicating Authority. The liquidator has relied on his right of way which was enjoyed by the Corporate Debtor since 1999 as an easement right by prescription and that to without any interruption. The liquidator has relied on relevant provisions of the Indian Easement Act, 1882 to support Corporate Debtor's case. Liquidator also relies on the judgment of the Hon'ble Gujarat High Court in [6]**Gopalbhai Jikabhai Suvagiya,** wherein the seven ingredients of an easement right have

[6] Gopalbhai Jikabhai Suvagiya Vs. Vinubhai Nathabhai Hirani (Civil Application No.1 of 2017)

been laid down and the Liquidator claims that Corporate Debtor fulfils all the said ingredients in the instant case. Section 15 of the Easement Act, 1882 provides a right of way of easement once a person enjoys it for a period of 20 years then the right cannot be restricted and should be available permanently. In this case, right of way by was determined by revenue authority in 1999 and CD continued to enjoy without interpretation till the Corporate Debtor was to be put into liquidation. It is apparent that the attempts of the owners of Block No. 90 and 92 within an ulterior motive are deliberately creating obstructions so that value of the Corporate Debtor get eroded and the liquidator is not able to sell the unit for a good value.

56. Whether it is a deliberate attempt or not is questionable but when it is brought to our notice that the Promoters / Directors of ARC Research and Development Centre Limited and ARC Fintube Technologies Pvt. Ltd. – both Appellants are related parties of the promoters of the Corporate Debtor then it raises serious questions and they could be hauled up under the Code. It is brought to our notice that MCA data as well as the list of shareholders of the Appellants brings to light the uncontested fact that the directors and shareholders of the Appellants herein are related parties to the promoters to the Corporate Debtor currently under liquidation.

57. It is also brought to our notice that the wall construction had occurred after the commencement of CIRP (16.09.2019)- during the Covid-19 period- which substantiates a deliberate attempt to impair the value of the Corporate

Debtor's assets. This was quite evident from the google pictures which were produced before this Tribunal during oral arguments. We also note that the right of way being enjoyed by the Corporate Debtor, was existing at the time of the initiation of the CIRP. Even though the Adjudicating Authority has come to the conclusion that the easement rights of the Corporate Debtor stood established under Section 15 of the Indian Easement Act, 1882, yet we observe that Corporate Debtor has been enjoying it uninterruptedly for over 20 years until the recent construction.

58. It is also noted that while the Appellants purchased New Block No. 90 and 92 (Old Block No. 94 and 96) in 2007, they never raised the wall until after CIRP and Liquidation commenced and during Covid-19 and later also demolished the wall. There is no explanation for the timing of such construction and blockages to access the Subject Property thereafter, except a vague reference to prevent pigs from entering.

59. We had seen "before" and "after" photographs which strongly support the defense of the Liquidator that the Appellants blocked the gate of the Corporate Debtor by constructing a wall during the Covid-19 lockdown. Liquidator had brought these maps as of 2020 and 2025 vide their I.A. No. 6654 of 2025, and the relevant maps are reproduced as below:

60. Another argument canvassed by the appellant that the Corporate Debtor can have access to the Subject Property through New Block No. 77 and 79 (Old Block No. 81 and 83 respectively). It is brought to our notice by the liquidator

that the New Block No. 82 (Old Block No. 86) which is in-between the Subject Property (New Block No.83 and Old Block No.87) and the New Block No. 77 and 79 (Old Block No. 81 and 83 respectively) belongs to a third party by the name Arjun Solanki. Thus, even if there is access (through the green pathway) to New Block No. 77 and 79 (Old Block No. 81 and 83 respectively) there is a land belonging to a third party, cutting of access in-between, which is not in the control of the Liquidator. Further, the liquidator brings to our notice that the dispute has arisen due to the sudden action post CIRP/liquidation of blocking the access enjoyed by the Corporate Debtor to the Subject Property through New Block No. 90 and 92 (Old Block No. 94 and 96).

61. It is also brought to our notice that after filing of police complaint against the said construction, the wall was demolished. However, the area leading to the gate of the Corporate Debtor was filled with mud in such manner that portion outside the gate of the unit was raised leading to difficulties in entry and exit from the gate of the property.

62. The liquidator has also brought to our notice that the Appellants have not shown any objection raised by them at any point of time prior to the CIRP of the Corporate Debtor objecting to the Corporate Debtor's use of the right of way granted by the NA Order dated 04.11.1999. Pertinently, the NA order dated 04.11.1999 was neither challenged by Jord Engineers (earlier owner) or by the Appellants at any point of time in any manner known to law. Further, it is brought to our notice that while the Appellants purchased New Block No. 90 and

92 (Old Block No. 94 and 96) in 2007, they never raised the wall until after CIRP and Liquidation commenced and during Covid-19 and later also demolished the wall. There is no explanation for the timing of such construction and blockages to access the Subject Property thereafter, except a vague reference to prevent pigs from entering. The respondent further brings to our notice that the present case, the very origin of the dispute is to unfairly influence the liquidation proceedings by family members of the Promoters of the Corporate Debtor. The dispute thus arises out of and is in relation to the liquidation proceedings and the actions of the Appellants materially impacts the value of the asset (Subject Property) of the Corporate Debtor thus impinging on the objective of maximization of the value as mandated in the preamble of the Code. The motive of the Appellants was to ensure that the Subject Property is landlocked such that no one comes ahead to purchase the same, and the value is brought down so that the same may be purchased by the erstwhile promoters or their nominees. We also note that but for the insolvency, the Appellants would not have blocked the right of way to access the Subject Property belonging to the Corporate Debtor (at New Block No. 83 (Old Block No. 87)) through their New Block No. 90 and 92 (Old Block No. 94 and 96).

63. The above noted facts also demolish the arguments of the appellants that the Corporate Debtor was never granted the right of way by the Appellants to its plot and thus, there has been no peaceable, open and uninterrupted access for

twenty years in order to invoke Section 15 of the Indian Easements Act, 1882, for grant of Easement rights.

Findings on maintainability under Section 60(5)(c) of the Code

64. The Appellants' principal ground of challenge is jurisdictional. Reliance is placed on **Gujarat Urja**[1], but the ratio of that decision, properly understood, defeats rather than supports the Appellants' case. We note that the Hon'ble Supreme Court did not hold that every dispute bearing civil characteristics is excluded from Section 60(5)(c); it held that NCLT has jurisdiction over disputes which "arise solely from or relate to the insolvency of the corporate debtor," the touchstone being the existence of a nexus with the insolvency/liquidation process. Similarly, in **Embassy Property Developments**[2] **(supra)**, it was clarified that jurisdiction under Section 60(5) is ousted only where the Resolution Professional/Liquidator seeks to exercise, in place of the corporate debtor, a right that must necessarily be agitated before another judicial or quasi-judicial forum having exclusive statutory jurisdiction over the subject matter (e.g., renewal of a mining lease before a State Government). The present case is materially different from **Embassy Property**[2]. No exclusive statutory forum has been shown to exist for adjudication of a right of way that is integral to accessing and realising the value of an asset already forming part of the liquidation estate. The Liquidator did not seek adjudication of a claim independent of insolvency, dehors the CIRP/liquidation, of the kind contemplated in paragraph 74 of **Gujarat Urja Vikas Nigam**[1]. On the contrary, the obstruction complained of arose during the

subsistence of CIRP/liquidation, was directed at the very access without which the subject property cannot be inspected, valued or sold, and thus bears a direct and proximate nexus with the liquidation process — the kind of nexus required by the Gujarat Urja Vikas Nigam test.

65. We further note that Section 60(5)(c) is couched in wide language ("any other question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings") so as to avoid fragmentation of the insolvency process across multiple fora, consistent with the object of a "single window" adjudicatory mechanism recognised in **Innoventive Industries Ltd**[3] and **Arcelor Mittal**[4] . A dispute over access necessary to realise the value of an estate asset, arising in the course of and because of the liquidation, falls squarely within this wide sweep. We thus find no error in the Adjudicating Authority's assumption of jurisdiction.

66. As to the submission that the Adjudicating Authority impermissibly "granted" a fresh easement, we are unable to agree. The Adjudicating Authority did not create a new right; it recorded and gave effect to a pre-existing right of way traceable to the NA Order of 1999, continuously exercised for over two decades and interrupted only after the commencement of CIRP. Declaring and protecting a right that already subsists, for the limited purpose of enabling a Liquidator to discharge the statutory duty of asset maximization, is qualitatively different from adjudicating a disputed civil title dispute between two private

strangers unconnected with any insolvency. We thus find no jurisdictional infirmity in the impugned order.

<u>Findings on subsistence of the right of way and nexus with liquidation</u>

67. Basis facts, the material placed on record amply supports the finding of the Adjudicating Authority. The NA Order dated 04.11.1999 was not an informal or unilateral document; as noted by us here earlier, it was issued by the competent revenue authority after obtaining reports and no-objections from thirteen separate government departments/officers, including the Executive Engineer, National Highway Department, the Special Land Acquisition Officer (Narmada Yojna), the Deputy Collector, the Collector (under Section 63AA of the Tenancy Act) and the Deputy Town Planner. It records, in terms, that entry to the land in question was to be secured from the National Highway through the adjoining block, subject to compliance of an undertaking executed on stamp paper. This is a solemn statutory permission, not a private arrangement capable of being disowned by a subsequent purchaser who took the servient land with full constructive notice of the recorded user.

68. Furthermore, the Appellants have not been able to point to a single instance, between 1999 and the initiation of CIRP in 2019 — a period of about twenty years prescribed under Section 15 of the Indian Easements Act, 1882 — in which the Corporate Debtor's use of the access through Block Nos. 90/92 was objected to, obstructed, or otherwise disturbed. Even after the Appellants' own purchase of the servient blocks in 2007, the access continued unhindered for

over a decade. Continuous, open, peaceable enjoyment as of right, without interruption, for the statutory period, coupled with the complete absence of any protest by the servient owners (including the Appellants themselves for twelve years after their purchase), satisfies the essential ingredients of an easement acquired by prescription under Section 15 of the Easements Act, as also the tests summarized by the Hon'ble Gujarat High Court in **Gopalbhai Jikabhai Suvagiya**[6].

69. We further find that the satellite images filed as Annexure-B to I.A. No. 6654 of 2025, which we have carefully examined, lend independent, contemporaneous and objective corroboration to this finding. The image of the year 2020, referable to the identified coordinates of Block No. 83, clearly depicts two marked road approaches leading to the Corporate Debtor's block through the Appellants' adjoining land. The image of the year 2025, taken from the very same vantage point and coordinates, shows both approaches captioned as "not accessible," one "closed by factory" construction that has since come up on the Appellants' land. This visual which is a time comparison is difficult to reconcile with the Appellants' plea that no right of way ever existed, and instead corroborates the Liquidator's case that access which subsisted as recently as 2020 was deliberately extinguished thereafter, during the pendency of these very proceedings.

70. Furthermore, we are also unable to accept the plea of an available alternative route through New Block Nos. 77 and 79 (Old Block Nos. 81 and 83).

The intervening New Block No. 82 (Old Block No. 86) is owned by an unconnected third party. An access that necessarily passes through land over which neither the Corporate Debtor nor the Liquidator possesses any right would expose the Liquidator (and any prospective purchaser at auction) to a fresh cause of action for trespass, and cannot, in law or in commercial reality, be regarded as a legally secure or adequate alternative so as to defeat an established prescriptive easement over Block Nos. 90/92.

71. We further note that the closure of the Liquidator's police complaint dated 09.06.2021 does not assist the Appellants. A closure report in a criminal complaint reflects only the insufficiency of material to proceed criminally; it has no bearing on, and creates no estoppel in respect of, a civil/statutory claim of prescriptive easement founded on twenty years of user, which rests on an altogether different standard and body of proof. The submission of estoppel is accordingly rejected.

72. Finally, the timing and surrounding circumstances of the obstruction cannot be viewed in isolation. It is undisputed that: (a) the wall blocking access was raised only after commencement of CIRP, during the Covid-19 period; (b) even after its demolition pursuant to the police complaint, the approach to the gate was filled and raised so as to substantially impair, if not completely deny, practical access; (c) this occurred shortly before the scheduled e-auction of the Corporate Debtor's other blocks; and (d) the promoters/directors of both Appellant companies are, on the Liquidator's uncontroverted averment based on

MCA records, related parties of the erstwhile promoters of the Corporate Debtor. Taken cumulatively, these facts justify the inference drawn by the Adjudicating Authority, and reiterated before us, that the obstruction was not a bona fide exercise of proprietary rights but a calculated attempt to render the Subject Property landlocked, depress its market value, deter genuine bidders, and facilitate its eventual acquisition by or on behalf of the erstwhile promoters at a suppressed price — conduct squarely inimical to the value-maximization objective that lies at the heart of the Code, as emphasized in **Swiss Ribbons**[7] **Pvt. Ltd**. This establishes, without doubt, the requisite nexus between the impugned obstruction and the liquidation process.

<u>Findings on whether interference is warranted</u>

73. For the reasons set out above, we find that the Adjudicating Authority correctly assumed jurisdiction under Section 60(5)(c) of the Code, and that its findings on the subsistence of the Corporate Debtor's prescriptive right of way over New Block Nos. 90 and 92, and on the deliberate and mala fide nature of the obstruction, are well founded on the material on record and stand further corroborated by the satellite imagery placed before this Tribunal. The impugned order does not suffer from any jurisdictional error, perversity, or error of law warranting interference in appeal.

[7] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17

Conclusions

74. Thus, we find that the dispute arises solely from or relates to the insolvency/liquidation of the corporate debtor and therefore, as provided in Section 60(5)(c), there is a close nexus and the adjudicating authority was well within its jurisdiction to pass the necessary directions as have been done by it in the impugned order. Moreover, we find that the adjudicating authority has not determined the rights as per the Easement Act and has merely reiterated the prior position existing and in turn ensured that the value maximization of the CD happens. Thus, we find that the nexus is established - as but for the insolvency the related party won't have obstructed the right of way post-CIRP, which was aimed malafide at the auction of the Corporate debtor. Further, we find that recognition of a right already recorded in an unchallenged 1999 public orders is very much covered in section 60(5)(c) of the code as 'questions of fact'. Furthermore, NA Order term 12 along with two decades of operational use, unrebutted by any contemporaneous objection, satisfies Section 15. The arguments of the pig-infestation justification is an afterthought and thus the reliefs merely operationalise the recognised right. The AA did not create a right; it recognised one already recorded in a 1999 public order that no one — not Jord Engineers, not the Appellants ever challenged. Relegation to a civil suit is itself a mischief as it "will significantly delay and prejudice the auction sale" and reward the obstructor. The route via Blocks 77/79 as suggested by the Appellants is cut by third-party Block 82 (Arjun Singh Solanki), so its use "would

expose the Applicant to trespass claims" and "is not recognized in the original NA Order".

75. Thus we conclude that the application filed by Respondent No.1/Liquidator under Section 60(5)(c) of the Code was maintainable, the obstruction of the right of way was having a direct nexus with the liquidation of the Corporate Debtor and the Liquidator's duty to maximise asset value. Further, the Corporate Debtor is found to possess a subsisting right of way. The obstruction created by the Appellants on a subsisting right of way traceable to the N.A. Order dated 04.11.1999 is found to be a deliberate and mala fide attempt, timed to coincide with the CIRP/liquidation of the Corporate Debtor and its scheduled asset sale, to devalue the Subject Property to the detriment of the creditors and stakeholders of the Corporate Debtor. Thus, the impugned order dated 22.01.2025 passed by the Adjudicating Authority in I.A. No.2658 of 2021 in C.P.(IB) No.2392/MB/2019 does not warrant any interference and is hereby affirmed.

76. Furthermore, we have strong reasons to come to the conclusion that the appellants have been acting in a malafide manner to ensure that the subject property becomes landlocked and its value is depressed and thereafter they can buy it through their nominees. Even though Appellants have raised jurisdictional issues contending that this issue does not fall within the jurisdiction under Section 60(5)(c) of the Code but we find that such an obstruction directly impacts

the liquidation process by impeding the liquidator's ability to maximize the asset value and also interfering with the sale process by creating artificial barriers for potential buyers. In such background we need to impose a cost on such litigants who create hurdles in the administration of justice.

Orders

77. Based on the above analysis Appeal is accordingly dismissed. The Respondents/Liquidator shall be at liberty to take all consequential steps, including seeking assistance of the local administration/police, to ensure that the right of way through New Block Nos. 90 and 92 remains free, unobstructed, and of adequate width for movement of vehicles and machinery necessary for the Corporate Debtor's operations and for facilitating inspection by, and sale to, prospective bidders. All related IAs are also disposed of. Both Appellants are imposed costs of ₹5 lakhs each for creating hurdles in the administration of justice, to be deposited in Prime Minister's National Relief Fund.

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

New Delhi.
July 29, 2026.

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Later on,

The appeal, in terms of the majority judgment (2:1), is dismissed.

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

New Delhi.
July 29, 2026.

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