

**IN THE HIGH COURT OF JUDICATURE AT PATNA
COMMERCIAL APPEAL No.6 of 2026**

CNR No. BRHC010301142026

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M/s Aneja Constructions (India) Private Limited erstwhile M/s Aneja Constructions (India) lim, a company having its registered office at A-3/22 F/F Janak Puri, Delhi, India- 110058 through its authorized representative, Mr. Rakesh Kumar (M) aged about 48 years, son of Biswanath Ram, resident of Ward No.- 7, Bispiti, P.S.- Bhimpur, Supaul, Bihar- 852130.

... .. Appellant/s

Versus

1. M/S Kanti Bijlee Utpadan Nigam Limited Kanti, District-Muzaffarpur, Through Shri Tufani Ram, The Chief Executive Officer, M/S Kanti Bijlee Utpadan Nigam Limited, P.O and P.S Kanti, District- Muzaffarpur.
2. The General Manager, M/s Kanti Bijlee Utpadan Nigam Limited, Kanti, District- Muzaffarpur.
3. Sri Gautam Santra, the Additional General Manager, M/S Kanti Bijlee Utpadan Nigam Limited, Kanti, District- Muzaffarpur.
4. M/s Tecpro Systems Limited, through Ms C S Satyadevi Alamuri, Liquidator, 23 Lake Area, 3rd Cross Street, Nungambakkam, Chennai, Tamil Nadu- 600034.
5. M/S NTPC Limited, through its Chairman cum Managing Director, NTPC Bhawan, SCOPE Complex, 7 Institutional Area, Lodi Road, New Delhi- 110003

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Nikhil Kumar Agrawal, Advocate. Mrs. Aditi Hansaria, Advocate. Mr. Sidhant Goel, Advocate. Ms. Astha Singhal, Advocate. Ms. Urvashi Singh, Advocate. Ms. Chitra Dwivedi, Advocate.
For the Res. No.4	:	Ms. Sanjana Srivastava, Advocate. Mr. Aditya Raman, Advocate.
For the NTPC	:	Mr. Tuhin Shankar, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and**

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)



Date : 29-09-2026

I.A. No. 1 of 2026

By filing this application, the sole appellant seeks condonation of delay of 27 days in filing of the present appeal.

2. It is stated that the appellant's head office is based at New Delhi. The appellant received oral information about the impugned judgment having been pronounced. After the said information, the appellant sought details from the erstwhile counsel regarding the grounds/ reasoning of the judgment, however, appellant was informed that such details will only be available once a copy of the impugned judgment is made available by the learned Trial Court.

3. It is stated that, though, the judgment was pronounced on 16.12.2025, but due to the onset of the court holidays, the learned counsel for the appellant was unable to apply for a certified copy. Once the court opened after holidays in January, 2026, the application was made for obtaining a certified copy of the impugned judgment. The impugned judgment was made available to the appellant on 24.01.2026. It is submitted that the appellant had to consult at various stages as regards the steps required to be taken in the matter. In the middle of February, 2026



the Board of Directors of the appellant decided to file an appeal. It is in course of these processes, the delay of 27 days has occurred.

4. Relying upon the judgment of Hon'ble Supreme Court in the case of *State of Maharashtra v. Borse Bros. Engineers & Contractors (P) Ltd.*, reported in (2021) 6 SCC 460, learned counsel for the appellant submits that this Court may consider the prayer for condonation of delay as the delay is for a short period only and in the meantime no third party equitable right has been created.

5. The prayer for delay has not been opposed by the respondents.

6. Keeping in view the judgment of Hon'ble Supreme Court in the case of *M/s Borse Brothers (Supra)*, the delay of 27 days in filing of the present appeal is condoned.

7. Accordingly, the I.A. No.1 of 2026 stands allowed.

Re:-COMMERCIAL APPEAL No.6 of 2026

8. We have heard Mr. Nikhil Kumar Agrawal, learned counsel for the appellant, Mr. Tuleep Shankar, learned counsel for the respondent no.1 and Ms. Sanjana Srivastava, learned counsel for the Official Liquidator, Mr. Anil Kohli representing the respondent no.4 company in the National Company Law Tribunal (NCLT), New Delhi.



9. It appears from the records that the appellant is aggrieved by and dissatisfied with the impugned judgment of the learned Principal District Judge – cum – Commercial Court, Muzaffarpur dated 16.12.2025 passed in Commercial Case No.01 of 2019 (M/s Aneja Construction Limited v. M/s Kanti Bijlee Utpadan Nigam Limited & Ors.). In the said suit M/s Kanti Bijlee Utpadan Nigam Limited (KBUL) (now known as ‘NTPC Limited’) was defendant no.1 and M/s Tecpro Systems Limited (the defendant no.4) (under liquidation) was defendant no.4. The plaintiff claimed that it was working as a sub contractor appointed by defendant no.4 to carry on certain works which were subject matter of a contract between the KBUL (defendant no.1) and M/s Tecpro Systems Limited (under liquidation) (defendant no.4).

Brief Facts of the Case

10. It is the case of the plaintiff that while the agreement for construction of coal handling system package at Muzaffarpur TPP, Stage-II was going on and the works of construction had been started by defendant no.4, the defendant no.1 terminated the contract. The plaintiff claimed that the defendant no.4 had introduced the plaintiff as an approved sub-contractor of defendant no.4 for civil works of the subject package and the contractor (defendant no.4) had undertaken to bear all responsibilities as per



statutory norms and in accordance with the contract provision. Admittedly, the plaintiff was carrying out work at the facilities of defendant no.1 (Defendant 1st party in the suit) as sub-contractor of the defendant no.4 (Defendant 2nd party in the suit).

11. The plaintiff claimed that some direct payments were also made to the plaintiff by defendant no.1 which was to be adjusted from the running account bill of the subject package. Thus, the direct payment to the plaintiff was made out of the amount due to the contractor.

12. The cause of action arose to the plaintiff when the plaintiff was informed that the defendant 1st party had terminated the contract with the defendant 2nd party. The plaintiff requested defendant 1st party to clear its outstanding dues for the works executed by the plaintiff in the capacity of sub-contractor. The plaintiff claimed that despite several request made to the defendant 1st party and defendant 2nd party to clear its dues, the payments were not made. The defendant 1st party had also seized the gate passes for carrying the machinery, raw materials, equipments etc. of the plaintiff.

13. In the aforementioned facts, the plaintiff filed a title suit giving rise to Title Suit No.330 of 2015 in the Court of learned Sub-Judge 1st, Muzaffarpur. The plaintiff prayed for reliefs *inter-*



alia for specific performance of contract, release of outstanding amount mentioned in schedule I, release of items mentioned at schedule II and permanent injunction. In the relief portion of plaint, the plaintiff prayed as follows:-

“(i) That a decree for specific performance of contract for the release of outstanding amount of money as mentioned in Sch-I and release of items as elaborated in Sch-II be passed in the favour of the plaintiff and against the defendants I party and defendant II party and both these defendants be directed to reimburse the amount mentioned in Sch-I and also be directed to release the items as elaborated in Sch-II and on their failure in doing aforesaid, they shall be directed to deposit the aforesaid amount as mentioned in Sch-I in this Learned Court and that be given to plaintiff by process of law and the defendant no: 01 be also directed to issue gate passes for the release of items as elaborated in Sch-II;

(ii) That by permanent injunction the defendant I party and defendant II party be restrained either from himself or even through any agent or attorney:-

(a) Committing any breach of trust of the contract or causing any injury, harm or prejudice to the plaintiff either from himself or even through any agent or attorney;

(b) Changing in any way the status quo regarding Sch-II items;

(c) Doing anything with a view to and towards any way encumbering or transforming the Sch-I outstanding amount due or Sch-II items or any part thereof or creating any subordinate interest in it in favour of anybody else;



(d) Causing any other injury, harm, loss or prejudice to the plaintiff of any kind in relation to Sch-II items or Sch-I outstanding amount due;

(e) Restraining any others from executing the works by the way of Injunction awarded already to this plaintiff as it has already executed the work awarded to it and it's outstanding amount for executed works aforesaid is due on the part of defendant I party and defendant II party and as defendant I party has been retendering the works awarded to plaintiff with ulterior motive.

(iii) That the cost of the suit be awarded to the plaintiff and against the defendants I party and defendant II party;

(iv) As the items elaborated in Sch-II are lying idle and useless and rent of theirs are being paid and they are without any proper care, so by passing of each day, heavy loss is being incurring day by day to the plaintiff, so this concerned should kindly be taken care of as plaintiff has been suffering by passing of each day.”

14. It is pertinent to note that the Title Suit No.330 of 2015 was transferred to the Court of learned Principal District Judge-cum-Commercial Court, Muzaffarpur on 16.03.2019 and registered as Commercial Case No.01 of 2019.

15. It appears that during the pendency of the title suit, the defendant no.4 company faced an insolvency proceedings. A company petition bearing number (1B-197(PB)/2017) was registered in the National Company Law Tribunal, New Delhi (In short hereinafter ‘NCLT’). In the said insolvency proceeding, a Resolution Professional was appointed but the resolution plan



approved vide order dated 15.05.2019 passed in CA No. 503 (PB)/ 2019 in C.P. No.1B-197(PB)/ 2017 failed. Thereafter, the Resolution Professional filed an application under Section 60(5) read with Section 33 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') and the learned NCLT considered the said application of the Resolution Professional whereupon it was found that there was non compliance in relation to the implementation of resolution plan. The erstwhile Committee of Creditors (CoC) Members asked the Resolution Professional to put it's resolution for Board which was passed with requisite majority of 99.28 % voting shares. This Court is not reproducing the minute of the CoC for sake of brevity. It is evident that after giving appropriate opportunity of hearing to the respondents before the learned NCLT, it was decided to go for liquidation of respondent no.4-company in terms of the provisions of Section 33 (3) of the Code.

16. This Court finds that the order passed by learned NCLT was perhaps not within the knowledge of the plaintiff or the defendant no.1. It is for this reason, the same was not brought to the notice of the learned Principal District Judge-cum-Commercial Court, Muzaffarpur in the pending commercial suit.



17. Being unaware of the order dated 16.01.2020 passed by the learned NCLT by which liquidation proceeding had started, the learned Principal District Judge-cum-Commercial Court, Muzaffarpur proceeded to pass the impugned judgment after considering the suit on its own merit.

18. In course of hearing of the present appeal, these aspects of the matter could surface and this Court noticed in its order dated 27.08.2026 that in paragraph '6' of the memorandum of appeal itself it is stated that respondent no.4 was a company which was under liquidation proceeding and has presently been struck off as a company. This Court having sensed some issues arising out of those statements in paragraph '6' of the memorandum of appeal, while issuing notice to respondent no.4 directed the appellant to provide clarity to the statements.

19. At this stage, learned counsel representing the authorities have confirmed that during pendency of the commercial suit, the order dated 16.01.2020 was passed and the liquidation process had started.

Consideration

20. Having regard to the aforesaid admitted position, this Court would extract Section 278 and 279 of the Companies Act, 2013 as amended up-to-date hereunder for a ready reference:-



“278. Effect of Winding Up Order-

The order for the winding up of a company shall operate in favour of all the creditors and all contributories of the company as if it had been made out on the joint petition of creditors and contributories.

279. Stay of Suits, etc., on Winding up Order-

(1) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose:

Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

(2) Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.”

21. The insolvency and Bankruptcy Code, 2016 came into existence w.e.f. 28.05.2016. The objective of this Code is to consolidate and amend the laws relating to re-organization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such person and to promote entrepreneurship, etc. The Code sought to provide for designating the NCLT and Debt Recovery Tribunal (In short ‘DRT’) as the adjudicating authorities for corporate persons, firms and individuals respectively for



resolution of insolvency, liquidation and bankruptcy. This was thought of as a single law to deal with insolvency and bankruptcy.

22. Chapter III of the Code of 2016 provides for the provisions relating to the liquidation process. Section 33 to Section 54 would deal with the various stages between the initiation of liquidation and dissolution of the corporate debtor. For purpose of the present case, it would be appropriate to extract Section 33 of the Code of 2016 hereunder :-

“33. Initiation of liquidation-

(1) Where the Adjudicating Authority, -

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall-

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [approved by not less than sixty-six per cent. of the voting share] [Inserted by Act No. 26 of 2018, dated 17.8.2018.] to liquidate



the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1). [Explanation. [Inserted by Act No. 26 of 2019, dated 5.8.2019.] - For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (7) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

(3) Where the resolution plan approved by the Adjudicating Authority [under section 31 or under sub-section (1) of section 54L,] [Inserted by Act No. 26 of 2021.] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor: Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate



debtor is continued during the liquidation process by the liquidator.”

23. It is evident on a conjoint reading of Section 278 and 279 of the Companies Act, 2013 together with sub-Section (5) of Section 33 of the Code of 2016 that once a winding up order is passed, no suit or other legal proceedings shall be commenced or if pending at the date of the winding up order, shall be proceeded with, by or against the company except with the leave of the Tribunal and subject to such terms that the Tribunal may impose.

24. In the present case, therefore, the commercial suit which was pending before the learned Commercial Court, Muzaffarpur could not have proceeded without the leave of the Tribunal. Fact remains that in the Commercial Court defendant no.4 was not represented as no notice was served upon the liquidator.

25. At one point of time, Mr. Agrawal, learned counsel for the plaintiff-appellant made an effort to submit that the suit could have proceeded against defendant no.1, if at all there was any impediment in proceeding against defendant no.4.

26. In our considered opinion, the plaintiff being an agent of defendant no.4 having prayed for the reliefs as extracted hereinabove, cannot be allowed to contend that the suit could have proceeded against defendant no.1 alone. The reliefs prayed in suit



are against defendant no.1 and defendant no.4 both jointly. Challenge to the judgment of the learned Commercial Court before this Court cannot be allowed to be carried on by taking off the defendant no.4 from the array of parties.

27. In our opinion, by deleting defendant no.4 in suit, the plaintiff cannot maintain the suit for the reliefs prayed therein. There would be no question of maintaining the present appeal by deleting the defendant no.4 (under liquidation).

28. In view of the aforementioned discussions, we set aside the impugned judgment dated 16.12.2025 passed by the learned Principal District Judge – cum – Commercial Court, Muzaffarpur in Commercial Case No.01 of 2019 and remit the matter to the learned Commercial Court, where the learned Commercial Court may proceed to consider the suit afresh, if the NCLT, New Delhi grants leave to the plaintiff to proceed with the suit.

29. Learned counsel for the Official Liquidator has also submitted that if the plaintiff applies for that leave before the NCLT, the NCLT may perhaps be in a position to consider and take an appropriate view of the matter. We do not make any observation on this issue, leaving it open for the parties to make



submissions, as may be advised to them, before different forums,
in accordance with law.

30. In result, this appeal is allowed to the extent
indicated hereinabove.

(Rajeev Ranjan Prasad, J)

(Sunil Dutta Mishra, J)

ritik/-utkarsh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	01.10.2026
Transmission Date	

