NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.285/2026

(IA Nos.803, 804 & 841/2026)

In the matter of:

CA. Mahalingam Suresh Kumar
Liquidator of M/s. Easun Reyrolle Limited
2nd Floor, CODISSIA, G.D.Naidu Towers,
Huzur Road, Coimbatore, Tamilnadu – 641 018. **… Appellant**

V

State Bank of India
Bangalore Main Branch.
Post Bag No. 5310, St. Marks Road,
Bangalore – 560 001.

State Bank of India CAG II
4th and 5th Floor, Redfort Capital,
Parsvanath Towers, Bhai Veer Singh Marg,
New Delhi –110 001.

Bharat Heavy Electricals Limited ((BHEL'),
Integrated Office Complex,
Lodhi Road, New Delhi – 110 003. **… Respondents**

Present :

For Appellant : Mr. AG Sathyanarayana, Advocate

ORDER
(Hybrid Mode)

Oral Judgment: Justice Sharad Kumar Sharma, Member (Judicial):-

22.06.2026:

This Company Appeal dwells upon a set of facts which are quite distinct to any other litigation, which normally come up before this Tribunal in the shape of Company Appeal.

2. In the instant appeal, the Liquidator (Appellant herein), has challenged the impugned order of 02.04.2026, that was passed by the Learned Tribunal in the application IA(IBC)/1203(CHE)/2025 which was filed by him before Ld. NCLT in the company petitions IBA/1045/2019 & IBA/1169/2019. In the said application, the liquidator had prayed for directions (a) to State Bank of India, Respondent-1 to immediately deposit/credit Rs. 84,40,000 pertaining to the Demand Draft No. 734487 into the Liquidation bank account, (b) to declare that the said Demand Draft and its proceeds form part of the liquidation estate of the Corporate Debtor under the IBC, and that the liquidator is entitled to realize it free of any attachment or injunction arising from prior court order, and (c) to restrain State Bank of India from continuing to withhold or divert the funds represented by the Demand Draft in question, and from enforcing any previous court directions that are inconsistent with the moratorium imposed under I&B Code and liquidation provisions. However, by virtue of the impugned order, Ld. NCLT while declining to issue any such direction as prayed for, directed the parties to the proceedings to approach the District Court for revival of the suit and requested the District Court to expedite the hearing of the suit, and further directed the said application to be listed for hearing on 22.05.2026.

3. The Company Appeal is accompanied with a Condone Delay Application, being IA No.804/2026, where the Appellant has sought a condonation of 6 days of delay that, has chanced in preferring the Company Appeal. Having heard the Learned Counsel for the Appellant on the Condone

Delay Application and having considered the grounds that have been taken by him in para 2(b), (c) & (d), and also the fact that the period of delay is falling within the condonable period, we conclude that the delay of 6 days would stand condoned. Accordingly, **IA No.804/2026** would stand allowed.

4. In this Company Appeal, the Appellant has also preferred yet another Interlocutory Application, being IA No.841/2026, where the Appellant has sought a condonation of 2 days of delay that, has chanced in refiling of the Company Appeal. Having considered the arguments extended and the grounds agitated by him in para 2 (b) & (c), and finding the reasons to be satisfactory, we conclude that The **IA No.841/2026** can be allowed. Hence, the 2 days of delay that, has chanced in refiling of the Company Appeal would stand condoned.

Brief facts of the case

5. The Appellant before this Tribunal is the liquidator of M/s. Easun Reyrolle Limited, the Corporate Debtor (CD). The case of the Appellant had been that a bank guarantee bearing number 0999613BG0001261 furnished by BHEL to the CD was invoked by the CD on 16.05.2013 and consequently, a demand draft (DD) bearing no. 734487 was issued by State Bank of India for an amount of Rs. 84,40,000/- on 18.12.2014. However, on 19.12.2014, the operational creditor, BHEL obtained an order of interim from Hon'ble High Court of Delhi in CS(OS) No. 3969/2014 against the invocation of the bank

guarantee. On 24.11.2015, the said case was transferred from Hon’ble High Court of Delhi to Patiala House Courts, New Delhi, and got numbered as CS No. 59171/2016. The case was adjourned sine die on 28.01.2020 in view of the pendency of CIRP proceedings before Ld. NCLT, Chennai Bench. Meanwhile, CIRP was commenced against the CD under section 7 of I & B Code, 2016 on 05.05.2020 and thereafter, upon failure of CIRP, the CD was placed under liquidation by an order passed on 17.02.2022. The Appellant was appointed as the liquidator, and he got published a public announcement fixing the last date for receipt of claims from creditors and other stakeholders. In the process, BHEL (Respondent-3) filed its claim, and it was admitted for an amount of Rs. 10,45,24,737/-. During the process of identifying and securing the assets of the CD, the liquidator discovered the aforesaid DD bearing no. 734487 for an amount of Rs. 84,40,000/- and by a formal communication made on 22.06.2025, requested State Bank of India (Respondent-1) to revalidate and to help encash the same, which was turned down by respondent-2 (SBI) on 07.07.2025 on the ground that BHEL has obtained a stay order from Hon’ble High Court of Delhi on 19.12.2014 and the said interim order continues to operate. In response, the liquidator filed the application for issue of necessary direction to SBI to enable him the encash the DD on which Ld. NCLT has passed the impugned order.

The case of the Appellant

6. The Liquidator has submitted that being the Liquidator, he is under the obligation under Sections 35 & 36 of the I & B Code, 2016, to take into custody,

preserve and realize, all the assets, properties, effects and actionable claims of the Corporate Debtor and to form the Liquidation Estate under section 36(1) Of the code, consisting of those assets, which fall under section 36(3) of the code, holding the same as a fiduciary for the benefit of all the creditors.

7. He has further stated that while discharging his duties as described above, he discovered an original Demand Draft bearing No.734487 dated 18.12.2014, issued by State Bank of India, Respondent-1 for a sum of Rs.84,40,000/-, in favour of the Corporate Debtor. The said demand draft was made payable to the CD, pursuant to the invocation of a bank guarantee furnished by Respondent-3 and therefore it will have to be construed to be an asset of the CD as per the provisions of section 36(3)(d) of the code and hence it will form a part of the Liquidation Estate as per Section 36 of the I & B Code, 2016.

8. He has further pleaded that he had approached Respondent Nos.1 & 2, i.e., State Bank of India, seeking revalidation of the Demand Draft, so that he can encash the same and remit the proceeds into the Liquidation Estate. However, the State Bank of India denied to comply with the said request on the ground that there happens to be a stay order issued by Hon’ble High Court of Delhi in CS(OS) No. 3969/2014, that the said civil suit stood initiated by BHEL, Respondent-3 which has been transferred to Patiala House Courts, New Delhi and the same has been directed to be adjourned sine die in view of the CIRP proceedings pending before NCLT, Chennai, and that since the stay is operating,

revalidation and encashment of the Demand Draft cannot be done at the behest of the liquidator/appellant and that, the Liquidator may initiate steps to revive the pending civil suit proceedings and obtain appropriate directions from the competent court to enable SBI to undertake necessary action in accordance with law.

9. The contention of the Appellant has further been that since Respondent-3 has already filed a claim for Rs.10,45,24,737.50/- in the status of being an Operational Creditor and the same has been admitted, the interim order of stay dated 19.12.2014 in the civil suit, issued presumably to protect the interest of the operational creditor BHEL has been rendered otiose as the interest of BHEL in form of the claims it has raised including the claim relating to the invoked bank guarantee will be fully taken care of under the provisions of section 53 of the Code and therefore, revival/continuance of the pending civil proceedings as advised by SBI to settle the issue of the encashment of the DD would be an avoidable procedural burden and will frustrate the objectives of the Code.

10. Owing to the aforesaid circumstances, the Appellant filed the application IA(IBC)/1203(CHE)/2025 on 26.07.2025 in the pending proceedings of IA/887/CHE/2021 in IBA/1045 & 1169/2019, in the matters of Insolvency proceedings in respect of M/s. Easun of Reyrolle Limited. Through this Application, the liquidator sought a direction for Respondent-2 to deposit/credit the amount mentioned in the DD into the liquidation estate, and to restrain it from enforcing any court directions that are inconsistent with the provisions of

I & B Code and the conditions of moratorium. and further to release the attachment or injunction arising from the prior order of the Learned Civil Court. The relevant relief that was sought by the Liquidator in IA, Appellant herein, is extracted hereunder: -

> *"V.* ***RELIEFS SOUGHT FOR:***
>
> *In the aforesaid facts and circumstances, the applicant herein most humbly prays that this Ld. AA may graciously be pleased to pass the following orders as prayed for:*
>
> > *a) To direct the 2nd Respondent to immediately deposit/credit Rs. 84,40,000 Pertaining to the Demand Draft No. 734487, into the Liquidation bank account bearing Account No: 00000039508541515 of the CD,*
> >
> > *b) To declare that the said Demand Draft and its proceeds form part of the liquidation estate of the Corporate Debtor under the IBC, and that the Applicant is entitled to realize it free of any attachment or injunction arising from prior court order,*
> >
> > *c) To restrain 2nd Respondent (or anyone acting on its behalf) from continuing to withhold or divert the funds represented by the Demand Draft in question, and from enforcing any previous court directions that are inconsistent with the IBC moratorium and liquidation provisions,*
> >
> > *d) Pass such orders or further orders, if any as this Ld. AA may deem to be fit and proper in the interest of justice."*

11. In this Application the Applicant / Appellant herein contended that since the I & B Code, is an independent code, having overriding effect over

provisions contained in any other law for the time being in force or any instrument having effect by virtue of any such law, the amount due to the CD on account of invocation of the bank guarantee, which was in the shape of Demand Draft No.734487, for an amount of Rs.84,40,000/-, deserves to be made part of the Liquidation Estate and hence ought to be disbursed immediately and be deposited in the bank account thus maintained. Accordingly, he contended that the impugned order directing the parties to revive the civil suit pending in Patiala House Court would be running contrary to the provisions contained under Sections 35, 36, 60(5) & 238 of the I & B Code, 2016. He has contended further that the directives which have been given in the impugned order dated 02.04.2026, would be contrary to the provisions of the Code, for the reason being that it will only multiply the proceedings and will not achieve the object of maximization of the value of the assets of the Corporate Debtor as contemplated under the Code.

12. However this argument, extended by the Learned Counsel for the Appellant from the perspective of the implication contained under Sections 35 & 36 of the I & B Code, 2016, has be read in the context of the fact that there already happens to be an interim order that has been judicially passed by the Hon'ble High Court of Delhi on 19.12.2016, against invocation of bank guarantee, which has been recorded by the Civil Court in its order dated 28.01.2020 while adjourning the matter sine die in view of insolvency proceedings being carried before Ld. NCLT, Chennai. The said order of Civil

Court reads as under: -

> *"The District Court on 28.01.2020 held as under: -*
>
> *"IN THE COURT OF MS. RAVINDER BEDI:*
> *ADDL. DISTRICT JUDGE-04: PATIALA HOUSE COURTS: NEW DELHI.*
> *Bharat Heavy Electricals Limited Vs. Easun Reyrolle Ltd.*
> *28.01.2020*
> *Present: Sh. Umang Katariya, Counsel for plaintiff. Memo of Appearance filed, same is taken on record.*
> *None for defendant no.1.*
> *D-2 is ex parte.*
>
> *Ld. Counsel has apprised me of the order dated 19.12.2014, as per which stay has been ordered in respect of invocation of Bank Guarantee in question and interim order is still in continuation. Ld. Counsel states that as proceedings in CP/233/(IB)/2018 are pending before Hon'ble NCLT. Division Bench, Chennai against the D-1, wherein application under Section 9 of IBC, 2016 has been filed against D-1. Ld. Counsel requests for adjourning the present matter sine die till the outcome of the said proceedings. Statement of Ld. Counsel for plaintiff recorded separately.*
>
> *In view of the statement of Ld. Counsel for plaintiff, present matter is adjourned sine die with liberty to plaintiff to revive the same, as per rules. File be consigned to record room after due compliance, as per rules.*
>
> *(RAVINDER BEDI)*
> *Additional District Judge-04*
> *Judge code: DL0253*
> *PHC, New Delhi/28.01.2020"".*

13. On the face of the record and undisputedly, the order of 20.01.2016 is still operating. Learned Counsel for the Appellant/Liquidator had tried to press

before Ld. NCLT, Chennai for the encashment of the bank guarantee on the ground that since the claim of the M/s. Bharat Heavy Electricals Limited, has already been admitted in full, the amount due to the CD on account of invocation of the bank guarantee ought to be remitted by SBI / Respondent-1 to the Liquidator to be deposited into the concerned bank account of the CD and it should have not been stayed owing to the fact that the moratorium was in force. But the facts remain that the passing of the interim order by Hon'ble High Court of Delhi was much prior in time to initiation of CIRP proceedings against the CD and it will not be falling within the ambit of an act committed during the moratorium period. Hence the Learned Tribunal, while considering the IA(IBC)/1203(CHE)/2025, as preferred by the Appellant for the relief as extracted above, observed that the relief sought by the Applicant / Liquidator for remittance of the amount on account of encashment of the bank guarantee, is the subject matter of a pending suit, where there operates an injunction order, and that it cannot sit over the an order of injunction passed by Hon'ble High Court owing to judicious propriety, and consequently, issued the following directions: -

> "*Since the issue directly or substantially is connected with the application and the Suit is pending before the District Court and there is a status quo order in respect of the Bank Guarantee,* ***we permit the parties to approach the District Court for revival of the Suit.***
>
> *Since the liquidation process is in the advance stage and the liquidation process under IBC, is a time bound process,* ***we request***

the District Court to expedite the hearing of the Suit.

The steps be taken in a week's time.

*List the application for hearing on **26.05.2026**."*

14. Looking to the directions these has been issued by the impugned order, it is clear that there is no effective adjudication of the IA preferred by the Appellant, in respect of the relief claimed therein for the revalidation of the demand draft and remittance of the amount contained therein. Because the stay order as granted by Hon'ble High Court was still operating, Ld. NCLT could not have considered the relief as prayed by the Appellant in the IA, and that is why the application preferred by the Appellant was **deferred to be considered**, directing the parties to approach to the District Court for revival of the suit for which a request was also made for its expeditious disposal.

15. It is clear that the impugned order, prejudices none; rather, it is an enabling proceeding, which has been resorted to by the Learned Tribunal to resolve the controversy in order to meet out the impediment of the injunction order granted by the Learned Trial Court, because until or unless the same is addressed, the relief sought in the application cannot be considered or granted.

16. Thus, in our view, the stand taken by the Learned Tribunal in the impugned order is only facilitating the adjudication of the IA preferred by the liquidator, and it is not a decision in itself. Hence, issue of directions to the parties including the liquidator, to approach the District Court for revival of the proceedings, does not suffer from any jurisdictional vices which could call for interference by us in the exercise of our Appellate Jurisdiction. Hence, the

Comp App (AT) (CH) (Ins) No.285/2026 fails, and the same is accordingly dismissed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

VG/MS/AK