

LEGAL UPDATES

NCLAT: RP CAN NOT APPLY NCLT WHEN A CONTRACTUAL DISPUTE DOES NOT REFER TO A CORPORATE DEBTOR'S INSOLVENCY

The NCLAT determined that the NCLT cannot use Section 60(5) of the IBC to exercise its jurisdiction over the contractual dispute between the Appellant (Corporation) and the Corporate Debtor, and it observed that if a contract is terminated for reasons unrelated to the corporate debtor's insolvency, the adjudicating authority's jurisdiction cannot be used.

The Appellate Tribunal citing the Hon'ble Apex Courts decision in Gujarat Urja Vikas and the TCS instances reiterated that "RP can approach the NCLT for adjudication of disputes which pertain to the Insolvency Resolution Process".

It further maintained that, if the issue is unrelated to the Corporate Debtor's insolvency, the RP must contact the appropriate responsible body.

Dealing with the facts of the application The Hon'ble National Company Law Appellate concluded that:-

- (i) the Corporate Debtor was given two work contracts;
- (ii) prior to the start of the CIRP, the Appellant had informed the Corporate Debtor that its work was moving too slowly and that several extensions had been given to the Corporate Debtor for completion of the work; and
- (iii) even with the additional time of almost two years, the Corporate Debtor was unable to complete the work; Noting that there is no connection between work orders and the insolvency.

The Hon'ble Tribunal also reiterated that "In the absence of jurisdiction over the dispute, the Adjudicating Authority could not have held that the termination of work orders are inconsistent with Section 20 of IBC, are invalid and prohibited under Section 238 of IBC."

It was further concluded that there was no factual analysis on how the termination of work orders would jeopardise the Corporate Debtor's ability to survive and even if the contractual dispute arises in relation to the Insolvency, a party can be restrained from terminating the contract only if it's central to the success of the CIRP.