

LEGAL UPDATES

SC CONTRACTUAL DISPUTES UNRELATED TO THE INSOLVENCY OF A CORPORATE DEBTOR ARE NOT SUBJECT TO NCLT's JURISDICTION

A Division bench of Justice D Y. Chandrachud and Justice A.S. Bopanna, while hearing an appeal set aside NCLAT ruling upholding the NCLT interim order delaying notice of termination sent by TCS Ltd. (the "Appellant") to the Corporate Debtor terminating a Facilities Agreement between the parties after the CIRP was initiated, and maintained that *"NCLT does not have any residuary jurisdiction to entertain the present contractual dispute which has arisen dehors the insolvency of the Corporate Debtor. In the absence of jurisdiction over the dispute, the NCLT could not have imposed an ad-interim stay on the termination notice."*

The Hon'ble Apex Court criticised unnecessary interference with a party's legal right to cancel a contract. Addressing to both NCLT and NCLAT, and it said, *"Even if the contractual dispute arises about the insolvency, a party can be restrained from terminating the contract only if it is central to the success of the CIRP. Crucially, the termination of the contract should result in the corporate death of the Corporate Debtor."*

The top Court maintained that *"the residuary jurisdiction of the NCLT cannot be invoked if the termination of a contract is based on grounds unrelated to the insolvency of the Corporate Debtor."*, and underlined that the NCLT and NCLAT must keep in mind the specific exemption created by this Court in Gujarat Urja matter, which states that a party may only be prevented from terminating a contract if doing so is essential to the accomplishment of CIRP.

The Hon'ble Bench remarked that *"NCLAT, in its impugned judgment, has averred that the decision of the NCLT preserves the 'going concern' status of the Corporate Debtor but there is no factual analysis on how the termination of the Facilities Agreement would put the survival of the Corporate Debtor in jeopardy."*

The court allowed the appeal while maintaining that *"this Court has clarified the law on the present subject matter in Gujarat Urja...after the pronouncements of the NCLT and NCLAT."*

Going forward, the exercise of the NCLT's residuary powers should be governed by the above decision."