IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 942 OF 2025

EMBASSY COMMERCIAL PROJECTS (WHITEFIELD) PVT. LTD. ..... APPELLANT

VERSUS

PANKAJ SRIVASTAVA, RESOLUTION PROFESSIONAL OF KATERRA INDIA PRIVATE LIMITED AND ANOTHER ..... RESPONDENTS

O R D E R

1. **This appeal, filed under Section 62 of the Insolvency and Bankruptcy Code, 2016[1], arises out of the order dated 06.01.2025 passed by the National Company Law Appellate Tribunal[2], Chennai, in Company Appeal (AT)(CH)(INS) No. 439/2024. On 27.01.2025, while issuing notice in this appeal, this Court observed as under: -**

> **"It is submitted that during the course of a Corporate Insolvency Resolution Process, when proceedings for recovery are initiated, certain kinds of 'set-off', such as equitable and contractual, are permitted. The appellant, Embassy Commercial Projects (Whitefield) Pvt. Ltd., would be entitled to raise the contention of a 'set-off' during the arbitration proceedings……."**

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Reason:

2. **The issue, as aforestated, arises in the context of the**

1 "IBC", for short
2 "NCLAT", for short

corporate insolvency resolution process initiated on 08.09.2023 against Katerra India Private Limited in CP(IB) No. 74/BB/2023 on the file of the National Company Law Tribunal[3], Bengaluru Bench at Bengaluru. Earlier thereto, the appellant, Embassy Commercial Projects (Whitefield) Pvt. Ltd.[4], was appointed as a co-developer along with the corporate debtor to undertake the development, operation and maintenance of a project. Prior to initiation of the corporate insolvency resolution process against the corporate debtor, on 31.01.2023, the appellant, ECPPL, invoked the performance bank guarantees furnished to it and informed the corporate debtor, by way of notice dated 03.04.2023, that it was still entitled to recover a sum of ₹77,17,46,138/- (Rupees seventy seven crore seventeen lakh forty six thousand one hundred thirty eight), after adjustment of the amounts recovered through encashment of the bank guarantees. However, the corporate debtor issued reply notice dated 11.07.2023, wherein it claimed that a sum of ₹160,45,27,775/- (Rupees one hundred sixty crore forty five lakh twenty seven thousand seven hundred and seventy five) was due and payable to it.

3. **It was at this stage that the corporate debtor was subjected to the corporate insolvency resolution process under the IBC. The appellant, ECPPL, submitted its claim in Form-F under Regulation 9A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)**

3 "NCLT", for short
4 "ECPPL", for short

Regulations, 2016, with Pankaj Srivastava, the Resolution Professional (R.P.) of the corporate debtor, on 05.12.2023.

4. **In turn, Pankaj Srivastava, the R.P., issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996, to the appellant, ECPPL, and the principal developer, Vikas Telecom Private Limited, on 01.03.2024, seeking initiation of arbitration proceedings as per the contractual clause. Thereafter, by email dated 11.03.2024, Pankaj Srivastava, the R.P., informed the appellant, ECPPL, that as its claim was disputed and a claim of ₹160,45,27,775/- (Rupees one hundred sixty crore forty five lakh twenty seven thousand seven hundred seventy five) was raised against it, its claim was not being admitted in the corporate insolvency resolution process.**

5. **Thereupon, the appellant, ECPPL, filed I.A. No. 545/2024 in CP(IB) No. 74/BB/2023 before the NCLT seeking a clarification as to whether its claim stood extinguished under the approved resolution plan. This application was dismissed by the NCLT on 20.11.2024, taking note of the fact that the arbitration proceedings had been initiated and the claim of the appellant, ECPPL, was still indeterminate as on that date.**

6. **Aggrieved thereby, the appellant filed Company Appeal (AT)(CH)(INS) No. 439/2024 before the NCLAT.**

7. **This appeal was dismissed by way of the impugned judgment dated 06.01.2025. The NCLAT opined that the appellant, ECPPL, was attempting to get the decision that had already been taken by Pankaj Srivastava, the R.P., on 11.03.2024, reconsidered, and**

as the said decision had not been challenged independently and had attained finality, it was not open to the appellant, ECPPL, to raise the issue again.

8. **At this stage, we may note that the corporate insolvency resolution process culminated in a 'Successful Resolution Applicant'[5] taking over the corporate debtor. We deem it appropriate to exercise power under Order I Rule 10(2) of the Code of Civil Procedure, 1908[6], and add the SRA which has now replaced the corporate debtor, that is, Nalwa Steel and Power Limited[7], P.B. No. 7, Gharghoda Road, Taraimal, Raigarh – 496001, Chhattisgarh, as respondent No.2. Necessary amendment shall be carried out in the cause title. In the light of the SRA entering upon the scene, Pankaj Srivastava, the R.P., ceases to have any role to play.**

9. **The above facts demonstrate that, though the appellant, ECPPL, attempted to seek a direction from the NCLT and thereafter, the NCLAT, to the effect that its claim ought not to stand extinguished under the approved resolution plan, that was not the issue that was highlighted before this Court even at the threshold. The only point that was raised was as to whether the appellant, ECPPL, would have a right to claim a set-off in the pending arbitration proceedings only to the extent of raising a defence to the claim put forth on behalf of the corporate debtor, which now stands substituted by NSPL, the SRA.**

5 "SRA", for short
6 "CPC", for short
7 "NSPL", for short

10. **This issue stands squarely covered by the recent decisions of this Court. We may note that this Court had occasion to deal with a similar issue in *Bharti Airtel Limited & Anr. vs. Vijaykumar V. Iyer & Ors.*[8] Therein, it was observed that a statutory set-off in terms of Order VIII Rule 6 of the CPC or an insolvency set-off, as permitted by Regulation 29 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, cannot be applied to corporate insolvency resolution process. However, this Court added the caveat that this would be subject to two exceptions – first, if at all it could be called an exception, was where the party was entitled to a contractual set-off, on the date which is effective before or on the date the corporate insolvency resolution process was put in motion; and the second exception was the case of an 'equitable set-off' when the claim and counter claim in the form of set-off were linked and connected on account of one or more transactions that could be treated as one. It was observed that the set-off should be genuine and clearly established on facts and in law, so as to make it inequitable and unfair that the debtor be asked to pay money, without the adjustment sought, that is fully justified and legal. It was further observed that the amount to be adjusted should be a quantifiable and unquestionable monetary claim, as corporate insolvency resolution process is a time-bound summary procedure. This Court, therefore, concluded that a set-off of this nature should not require a legal proceeding and such set-**

8 2024 INSC 15

off of money should be given against money only and would not apply to assets. Lastly, this Court opined that, as it was an equitable right, it could be denied when grant of the relief would defeat equity and justice.

11. **More recently, in *Ujaas Energy Ltd. vs. West Bengal Power Development Corporation Ltd.*[9], this Court was concerned with a resolution plan which contained a clause that specifically barred payments and settlements other than those covered thereby and categorically stated that no other payments or settlements of any kind would have to be made to any other person in respect of the claims of any person or Governmental authority against the corporate debtor, whether or not filed or admitted by the Resolution Professional, and all such claims including counter claims in pending arbitration proceedings would stand irrevocably and unconditionally abated, discharged, settled and extinguished. Noting the aforestated clause in the resolution plan, this Court observed that that the said clause would not expressly, or even impliedly, exclude the plea of set-off as a defence, as the same merely barred any claim for the purpose of payment or settlement, and defensive use of the claim of set-off had not been expressly covered. This Court, accordingly, held that the respondent in that case would not be entitled to independently pursue its claim by way of a counter claim post the approval of the resolution plan, but it could be permitted to raise plea of set-off, at least by way of defence. Ordering so, this Court clarified as follows: -**

9 2026 INSC 268

> **"27. a. In the event the amount claimed in the counterclaim of the respondent, or any part of it, is found to be due and payable to the respondent by the appellant and such amount exceeds the amount awarded to the appellant, the surplus amount shall not be recoverable by the respondent.**
>
> **b. Conversely, if any amount remains payable to the appellant after adjustment of the respondent's defence plea, the same shall be recoverable by the appellant and the Tribunal may order accordingly.**
>
> **c. Further, if the arbitration proceedings initiated by the appellant are withdrawn, the counterclaim of the respondent shall also fail, as the same is permitted only for the limited purpose of defence."**

12. **Though the aforestated judgment ended with the observation that it had been rendered considering the terms of a particular paragraph of the resolution plan and was thus limited to the facts and circumstances of that case, the principles culled out as above are of guidance presently.**

13. **Thereafter, in *Modern Asset vs. KNK Construction Private Limited*[10], this Court referred to *Ujaas Energy Ltd.* (supra) and observed that, on facts, the appellant in that case also had a right to raise the defence of set-off. It was opined that, just as in the decision in *Ujaas Energy Ltd.* (supra), the appellant should be permitted to raise a counter claim for the sole purpose of claiming set-off but the appellant would not derive any positive or affirmative relief of recovery on the basis of that counter claim. While disposing of the appeal, it was**

10 2026 INSC 1103

affirmed that the appellant would be entitled to raise the counter claim only for the purpose of set-off, and if any amount was found due to be paid by the appellant to the respondent, then there shall be set-off to the extent of the entire counter claim, as put forth by the appellant. In the extreme event of the claim of the respondent being found untenable in toto, this Court observed that the appellant could not seek any payment on the basis of such award since its claim stood extinguished as against the corporate debtor and the SRA, within the contours of the IBC.

14. **In the light of the aforesaid settled legal position, the learned senior counsel appearing for the appellant fairly states that the appellant, ECPPL, would also seek identical treatment in the pending arbitral proceedings initiated by the corporate debtor, which now fall to the lot of NSPL, the SRA.**

15. **We, therefore, make it clear that the appellant, ECPPL, on grounds of equity and fairness, shall be entitled to raise the defence of set-off only against the claim put forth by the corporate debtor/SRA in the arbitral proceedings. In the event of such claim being allowed and also the set-off claim by the appellant, ECPPL, being allowed, the appellant would be entitled to adjust the amount claimed by it, by way of set-off. In the event the corporate debtor/SRA fails to substantiate its claim, the appellant, ECPPL, even if it succeeds in establishing its counter claim, raised by way of a set-off, would not be entitled to any payment.**

16. **Making this position clear, the appeal is allowed to the extent indicated above. Parties shall bear their own costs.**

Pending application(s) shall stand disposed of.

.....J.
(SANJAY KUMAR)

.....J.
(SANJEEV SACHDEVA)

NEW DELHI;
NOVEMBER 20, 2026.

ITEM NO.37 COURT NO.7 SECTION XVII-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 942 OF 2025

EMBASSY COMMERCIAL PROJECTS (WHITEFIELD) PVT. LTD. ..... APPELLANT

VERSUS

PANKAJ SRIVASTAVA, RESOLUTION PROFESSIONAL OF KATERRA INDIA PRIVATE LIMITED AND ANOTHER ..... RESPONDENTS

(IA No. 181653/2025 - APPLICATION FOR PERMISSION and IA No. 20222/2025 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 20-11-2026 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SANJAY KUMAR
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

For Appellant(s) :
Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Krishnendu Datta, Sr. Adv.
Mr. Siddharth Ranade, Adv.
Mr. Deepak Joshi, Adv.
Ms. Nishi Bhankharia, Adv.
Mr. Varun Tyagi, Adv.
Mr. Toshiv Goyal, Adv.
Ms. Alina Mathew, Adv.
Mr. Mohd Shahid Khan, Adv.
Ms. Trisha Garimala, Adv.
Mr. Anmol Agarwal, Adv.
Mr. Gaurav Jain, Adv.
M/s. Trilegal Advocates on Record, AOR

For Respondent(s) :
Mr. Gopal Jain, Sr. Adv.
Mr. Manish Kharbanda, Adv.
Ms. Neha Maniktala, Adv.
Mr. Shivanshu Kumar, Adv.
Mr. Adeel Ahmed- 2734, AOR
Mr. Farhan Ahmad Qazi, Adv.
Mr. Syed M. UL Haq, Adv.
Mr. Taqdeer F., Adv.
Mr. Ramesh Kiran, Adv.
Mr. Bibhas Kittur, Adv.

UPON hearing the counsel, the Court made the following

O R D E R

The appeal is allowed to the extent indicated in the signed order.

Pending application(s) shall stand disposed of.

(DEEPAK GUGLANI)
DEPUTY REGISTRAR

(PREETI SAXENA)
COURT MASTER (NSH)

(signed order is placed on the file)