



Serial No. 02
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC(WPC) No. 261 of 2025 in
 WP(C) No. 383 of 2025

Date of Decision :11.11.2025

Satnam Global Infraprojects Ltd.,

..... **Applicant(s)**

Versus

Meghalaya Power Distribution Corporation Ltd., ... **Respondent(s)**

Coram:

Hon'ble Mr. Justice H.S.Thangkhiew, Judge.

Appearance:

For the Applicant(s)

: Mr. M. Goswami, Sr. Adv. with
 Mr. S.K. Raut, Adv.
 Mr. A. Verma Adv.
 Mr. R. Verma, Adv.
 Mr. S. Purkhayastha, Adv.

For the Respondent(s)

: Mr. A. Kumar, AG with
 Mr. A.H. Kharwanlang, Add. Sr. GA
 Mr. A.S. Pandey, Adv.

i) Whether approved for reporting in
 Law journals etc:

Yes/No

ii) Whether approved for publication
 in press:

Yes/No



JUDGMENT AND ORDER

1. This Misc. application under Article 226 (3) has been filed seeking vacation/recall/modification of the interim order dated 04.09.2025 passed by this Court.

2. The brief background facts are that the NCLT, Guwahati Bench on an application by the applicant (respondent in writ petition), had passed an order dated 04.09.2025, and initiated Corporate Insolvency Resolution Process (CIRP) against the writ petitioner company. The said proceedings before the NCLT, were put to challenge by way of WP(C) No. 383 of 2025, and this Court by the order dated 04.09.2025, which is sought to be vacated/modified by this instant application, ordered for suspension of all proceedings before the learned NCLT Guwahati Bench in CP(IB)/9/GB/2024, IA(IBC)/188, IA (IBC)/41/GB/2025/188 and IA (IBC)/41/GB/2025, including appointment of an Interim Resolution Professional.

3. It is submitted by Mr. M. Goswami, learned Senior counsel assisted by Mr. S.K. Rout, learned counsel for the applicant that the writ petition itself is not maintainable and is to be dismissed at the threshold itself, inasmuch as, there has been suppression of material facts by the petitioner who has not disclosed that it is a government company registered



under the Companies Act, 2013. Further, it is submitted that the petitioner had made a misleading averment by stating that it was a corporate entity. The learned Senior counsel contends that it is not a case where the NCLT lack inherent jurisdiction but on the contrary the NCLT did have a jurisdiction to adjudicate as the respondent corporation is a 'corporate debtor', which will be evident from a bare perusal of Section 3(7), (8), Section 6, 8 & 9 of the Insolvency and Bankruptcy Code, 2016 (IBC 2016) read with Section 2(20) and 2(45) of the Companies Act, 2013. The petitioner he submits, is a government company engaged in the business of distribution of electricity in the State of Meghalaya and it is neither a sovereign entity, nor does it perform any sovereign function as per the tests laid down by the Supreme Court in this regard. The learned Senior counsel on this aspect has placed the following decisions: -

- i) ***Balmer Lawrie & Company Limited & Ors. Vs. Partha Sarathi Sen Roy & Ors. (2013) 9 SCC 345***
- ii) ***Agriculture Produce Market (2000) 8 SCC 61***
- iii) ***Chief Conservator of Forest (1996) 2 SCC 293***

4. The learned Senior counsel then submits that a perusal of paragraphs 8.6 to 8.9 of the judgment of the NCLT dated 04.09.2025, will clearly reveal that the issue pertaining to jurisdiction has been elaborately dealt with and that the judgment relied upon by the petitioner i.e. ***Hindustan***



Construction Company (2020) 17 SCC 324, would have no application as the petitioner corporation is not a creature of a statute but is merely a government company. He then contends that this being a position it would certainly come within the meaning of Section 3(7) & (8) IBC Code, read with Section 2(20) and 2(45) of the Companies Act, 2013.

5. It is then argued by the learned Senior counsel that when an alternative efficacious remedy is available under Section 61 of the IBC, this Court may not entertain the instant petition and relegate the petitioner to seek redressal of its grievances before a statutory forum that is available in accordance with law. Learned Senior counsel has relied upon the following 2(two) decisions in this regard: -

i) *Embassy Property Developments Private Limited vs. State of Karnataka & Ors. (2020) 13 SCC 308*

ii) *Whirlpool Corporation (1998) 8 SCC*

6. He then prayed that the ex parte interim order dated 04.09.2025 on the grounds as set out, be vacated and the writ petition dismissed.

7. Mr. A. Kumar, learned AG assisted by Mr. A.H. Kharwanlang, learned Add. Sr. GA for the opposite party (writ petitioner) has submitted that firstly, the present case involves pure questions of law to which the petitioner corporation has not yet filed reply to. However, it is submitted the grant or refusal of an interim order is governed by the triple test of prima



facie case, balance of convenience and irreparable damage and that in the instant case all the three parameters are satisfied. Learned AG has submitted that the instant case has huge ramifications, inasmuch as, had no interim protection been given, it would not only have made the writ petition infructuous, but would have also led to a cascading effect on the distribution of power across the State of Meghalaya. As such, he submits the writ petition is an exceptional case which would therefore be maintainable under the writ jurisdiction of this Court.

8. It is submitted that the jurisdiction of the NCLT is not made out as the Schemes executed by the MePDCL, are in the nature of discharge of sovereign function and therefore, there is no debt and due payable under the IBC 2016 in terms of Section 3 (11) and thus, there is no default under Section 3 (12). The MePDCL it is submitted has no functional autonomy to disburse the funds, inasmuch as, the sanction of payments, both the advance and consequent payments are entirely met by the Central or State Government. The MePDCL it is contended is not under any financial distress as is the case of other companies against whom insolvency proceedings are invoked and IRP appointed. The payments in the instant case he submits, was stopped by virtue of the directions passed by the State Government which was executing the Schemes through the MePDCL.



9. It is further submitted that the applicant has incorrectly placed reliance upon Para-17 of the NCLT order dated 04.09.2025 to argue that the appointment of IRP would not affect the functioning of MePDCL. The said averment, the learned AG submits is incorrect as the said provision has been included only to maintain the essential supplies to the corporate debtor, but does not provide any protection of discharge of essential functions by the corporate debtor after the insolvency is invoked and IRP appointed. MePDCL, it is contended is an extended limb of the State of Meghalaya implementing Schemes of the Central Government on behalf of the State Government. In this context, the learned AG has submitted that it is an admitted position that subject contract agreements were executed under the Government of India Saubhagya Schemes, which the applicant was also bound by other governing terms under the said Scheme, and that it had completed both Package-A and Package-B within the stipulated time as per the General conditions of the contract and other terms under the said Scheme. The Letter of Intent issued to the applicant itself he submits, had clarified that the LOI was subject to approval Ministry of Power and approval of State Government for funds and additional sanction.

10. The Guidelines of the Saubhagya Scheme dated 20.10.2017, it is submitted provides that Projects under the Scheme will be implemented through a State Government Agency and the assets to be created under the



Scheme will be owned by the State Government/State owned company and that the grants would be subject to determination by the Monitoring Committee of the Central Government. Further, it is submitted that for the implementation of the Project a tripartite agreement dated 30.11.2016, was also entered into by the Rural Electrification Corporation Limited (RECL) with the State of Meghalaya and MePDCL. The State Government he submits, had sent a Letter of Intent dated 13.04.2018 for participation by the State in the Saubhagya Schemes to REC Ltd. and the Department of Power, State of Meghalaya undertook to comply and abide by the prescribed Guidelines of the Scheme. As such, he submits it is not a case that the writ petitioner had any functional autonomy in the disbursement of payments and as such there is no debt and due payable by it. The finding therefore, by the NCLT he submits that the MePDCL was liable for the debt is incorrect, moreover as it was merely a custodian of the funds and the sanction of the funds was by the Central Government which was disbursed subject to fulfillment of conditions. Learned AG has also referred to certain materials which have been annexed to an application for amendment to substantiate this point, which however are not illustrated or discussed herein.

11. The learned AG further argues that in order to exercise jurisdiction under the IBC 2016, the requirement of law as set out in Section 3(12) is that there has to be default in payment of debt, due and payable, but



as there was an embargo by the Government on any payments to the contractor/supplier and with the MePDCL not possessing any autonomy in the disbursal of funds, the alleged debt was not due and payable by the MePDCL. Payments made in the past he submits were always on account of payments advanced by the Central/State Government and both these entities do not come within the ambit of the IBC 2016, hence the NCLT had no inherent to jurisdiction in relation to the petitioner as far as alleged non-payment of debt arising out of the above contract.

12. The Insolvency proceedings it is contended is also in contravention of Section 131 of the Electricity Act, inasmuch as, any property, rights and liabilities of the State Electricity Board stand vested in the State Government and therefore, there cannot be transfer of such property, rights and liabilities in any manner other than as provided under Section 131. It is also submitted that the MePDCL being constituted in terms of the Meghalaya Power Sector Reforms Transfer Scheme, 2010 under Sections 131 and 133 of the Electricity Act, 2003 is a Government entity and that the regulation and development of all matters concerning electricity is under the control of the Union and the State and the regulation of electricity is an executive function of the State through the Corporation.

13. The learned AG has then referred to the judgment of *Hindustan Construction Company Ltd.*, (supra) and submits that the learned NCLT had



erred in not correctly appreciating the ratio of the judgment, inasmuch as, at Para-76 thereof, the Supreme Court has held in essence that a statutory body which functions as an extended limb of the Central Government and performs governmental functions cannot be taken over by a resolution professional under IBC or any other corporate body and that further in the case referred, the claims against government companies arose out of an arbitration award unlike in the present case, wherein the claims are for projects of the Central/State Government. As such, he submits the instant paragraph is squarely applicable to the present case.

14. On the point of availability of alternative statutory remedy, it is contended by the learned AG that the same does not operate as an absolute bar and one of the exceptions carved out which is applicable in the instant case, is where the order or the proceedings impugned are wholly without jurisdiction. It is the case of the writ petitioner he submits, that the learned NCLT lacks the very competence to exercise and initiate the insolvency proceedings and that the determination of such a pure question of law can only be decided by this Court in exercise of its extra ordinary jurisdiction. The learned AG has referred to the following case in support of his arguments: -

- i) ***Godrej Sara Lee Ltd. vs. Excise and Taxation Authority 2023***
SCC OnLine SC 95



- ii) ***Radha Krishan Industries vs. State of Himachal Pradesh, (2021) 6 SCC 771.***

15. Learned AG has also placed reliance in the case of ***Embassy Property Developments Private Ltd., vs. State of Karnataka (2020) 13 SCC 308***, wherein he submits, it has been held that a decision taken by a Government or statutory authority in relation to a matter which is in the realm of public law cannot by any stretch of imagination be brought in the fold of the phrase ‘arising out or in relation to the insolvency resolution’ appearing in Section 60 (5) (c). It is also submitted that electricity is a fundamental right and a responsibility of the State and in Meghalaya there are no private entities providing this service, and the MePDCL being owned 100% by the State Government discharges a sovereign function. Reference has been made to the following judgments in support of this argument: -

- i) ***Flaming B. Marak vs. State of Meghalaya in PIL 3 of 2023 dated 05.05.2023 and 14.06.2024.***
- ii) ***Chameli Singh & Ors. Vs. State of UP & Anr. (1996) 2 SCC 549***
- iii) ***TM Prakash vs. District Collector, Tiruvannamalai (2013) 6 CTC 849***

16. The learned AG has then proceeded to distinguish the decisions relied upon by the applicant and submits that the writ petitioner has an excellent prima facie case and irreparable injury would be caused if



insolvency proceedings are allowed to be proceeded with, as the same will result in the operation of distribution of electricity in the entire State coming to a standstill, as no resolution professional or private individual can take over the management of MePDCL. It is also submitted that the order of the learned NCLT, also suffers from the violation of the principles of natural justice and that the writ petition will become infructuous if the interim order is vacated. He lastly submits that the respondent has also approached the Prime Minister Office making baseless allegations in order to prejudice the adjudication of this matter and the said communication, however while making such allegations has also acknowledged the fact that funds have been released by REC Ltd./Central Government. This representation in fact to the Hon'ble PMO itself, he submits is a concession that the Schemes concerns the Central Government and the payments become due and payable only with the sanction of the Government. He therefore, prays that the instant application for modification be rejected and the main writ petition be taken up for consideration.

17. In his rejoinder reply, the learned Senior counsel Mr. M. Goswami has reiterated his earlier submissions, and has also placed on record two further judgments that a company/government company would come within the meaning of Section 3(7) & (8) of the IBC, 2016. The judgments are **2021 (4) GLT 693 (Hindustan Paper Corporation)** and **WP**



No. 19785/2021 (Tamil Nadu Generation and Distribution Corporation Ltd.,). Learned Senior counsel has also contended that it is a fallacy to state that the writ petitioner is a statutory authority under the Electricity Act, inasmuch as, it cannot at the same time be a company incorporated under the Companies Act, 2013, and a perusal of Section 131 (1) & (2) read with Section 2 (13) & (31) will make it clear that the writ petitioner is not a statutory authority but merely a company. It is also submitted that language used in the statute being plain and unambiguous, there is no possibility to interpret or to read into Sections 3(7) (8) and (23) of the IBC, 2016 that companies/government company's function as an extended limb of the State and are thus exempted from the purview of IBC, 2016. Reliance has been placed on the case of ***State of UP vs. Dr. Vijay Anand Maharaj 1962 SCC OnLine SC 12 Pr 8 (CB)***. It is submitted that if legislature had intended not to include companies/government companies functioning as an extended limb of the State from the purview of the aforementioned Sections, the same would have been specifically done do by a legislature as done in the case of a ***Financial Service Provider***.

18. The learned Senior counsel further submits that though an argument has been advanced that overnight the State will be in darkness if the IRP is to be appointed, the same is misplaced, inasmuch as, in the final directions of the order of the NCLT, Para-17 thereof, adequately protects



and addresses this issue and the larger public interest has been duly taken care of. Reverting to the *Hindustan Construction Company*, it is submitted that NHPC and NTPC are two monopoly government companies involved in creating infrastructure etc. and also essentially involved in implementing various Schemes of the Union Government and operate as its extended arms, and if such companies are amenable to the IBC 2016, the petitioner cannot claim to be exempted on the purported doctrine of Sovereign Immunity, and the mere fact that there is no other private power distribution company in the State of Meghalaya makes no difference.

19. The learned Senior counsel submits that the issue before this Court, is only in the premise that the NCLT lacks inherent jurisdiction to adjudicate and as such therefore, this Court may not entertain or adjudicate any issue touching upon the merits of the case, such as debt not pertaining to the petitioner and not payable by the petitioner and interpretation of the various contracts/agreements of the Soubhagya Schemes and that these issues lie within the exclusive domain of the NCLAT in its appellate jurisdiction. This apart he submits, the applicant is not a party or signatory to the tripartite agreement dated 30.11.2016, and therefore no reliance can be placed on the same. He concludes his reply by submitting that the writ petition deserves to be dismissed.



20. On hearing the parties, before proceeding to determine the issue i.e. jurisdiction, it would be useful to refer to the following provisions under the IBC 2016, placed against the facts of the present case. Section 3(7) defines “corporate persons” and reads as follows:

“corporate person” means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;”

Section 3 (8) defines “corporate debtor”, 3(11) defines “debt”, 3(12) “default” in non-payment of debts as follows: -

“3. Definitions. —In this Code, unless the context otherwise requires,

(8) “corporate debtor” means a corporate person who owes a debt to any person;

(11) “debt” means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

(12) “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;”

21. A bare perusal of the above noted provisions read with Section 2(45) of the Companies Act, 2013, wherein a government company is defined, no doubt will bring the writ petitioner company within the ambit and jurisdiction under the NCLT. However, over and above the stated



definitions and the nature of the company, what has been urged in this case is that the actions which had brought about the institution of the instant proceedings are beyond the control of the writ petitioner company, inasmuch as, it does not have functional autonomy in the disbursement of payments and therefore there is no debt due and payable. In this context, it has been argued and demonstrated, that the MePDCL is merely a custodian of the funds and as such, has no authority to independently disburse the payments, and that the sanction of the funds by the Central Government and the disbursement thereof, were also subject to fulfillment of certain conditions. Another valid consideration that this Court has to keep in mind is that whether there can be a transfer of property, rights and liabilities in any other manner than that provided under Section 131 of the Electricity Act.

22. Another pertinent issue, is the question of sovereign function. In the case *Hindustan Construction Company* (supra), the Supreme Court had clarified and held that in the application of the Code to government owned companies as defined under Section 2(45) of the Companies Act, 2013, and thus included within the definition of Section 3(7) of the IBC, of corporate person, such entities were amenable to the provisions of the IBC, but when the company performs non-delegable sovereign functions, it cannot be put to resolution nor be wound up under the IBC as allowing insolvency proceedings against such entities, would disrupt essential



services or governmental functions. In the instant case, it has been strongly canvassed that the writ petitioner is functioning as an extended limb of the Government and performs governmental functions, which cannot be taken over by a resolution professional under the IBC, or any other corporate body. Strong emphasis has also been made that electricity is a fundamental right, which is the responsibility of the State and that the writ petitioner is the only entity owned 100% by the State Government which provides electricity and discharges a sovereign function. On this point it would be useful to refer to the judgment in the case of ***Balmer Lawrie & Company Limited & Ors. Vs. Partha Sarathi Sen Roy & Ors.*** reported in (2013) 9 SCC 345, wherein at Para-18 & 20 thereof, which is reproduced hereinbelow, it has been held as follows: -

“18. Often, there is confusion when the concept of sovereign functions is extended to include all welfare activities. However, the court must be very conscious whilst taking a decision as regards the said issue, and must take into consideration the nature of the body’s powers and the manner in which they are exercised. What functions have been approved to be sovereign are the defense of the country, the raising the arms forces, making peace or waging war, foreign affairs, the power to acquire and retain territory, etc. and the same are not amenable to the jurisdiction of ordinary civil courts. (Vide N. Nagendra Rao & Co. v. State of A.P. (1994) 6 SCC 205: 1994 SCC (Cri) 1609: AIR 1994 SC 2663 and Chief Conservator of Forest v. Jagannath Maruti Kondhare (1996) 2 SCC 293: 1996 SCC (L&S) 500: AIR 1996 SC 2898)

20. Every governmental function need not be sovereign. State activities are multifarious. Therefore, a scheme or project, sponsoring trading activities may well be among the State’s



essential functions, which contribute towards its welfare activities aimed at the benefit of its subjects, and such activities can also be undertaken by private persons, corporates and companies. Thus, considering the wide ramifications, sovereign functions should be restricted to those functions, which are primarily inalienable, and which can be performed by the State alone. Such functions may include legislative functions, the administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon, etc. Therefore, mere dealing in a subject by the State, or the monopoly of the State in a particular field, would not render an enterprise sovereign in nature. (Vide Agricultural Produce Market Committee v. Ashok Harikuni (2000) 8 SCC 61: AIR 2000 SC 3116, State of U.P. v. Jai Bir Singh (2005) 5 SCC 1: 2005 SCC (L&S) 642, Assam Small Scale Industries Development Corpn. Ltd., v. J.D. Pharmaceuticals (2005) 13 SCC 19: AIR 2006 SC 131 and Haryana State Industrial Development Corpn. V. Hari Om Enterprises (2009) 16 SCC 208: AIR 2009 SC 218)

23. A perusal of the above extract would show that sovereign functions are those functions which are primarily inalienable and which can be performed by the State alone, and as such mere dealing in a subject by the State in a particular field would not render an enterprise sovereign in nature. However, it is noted in this judgment, the question was whether the appellant company which was a government company, would come within the meaning of 'State' as per Article 12 of the Constitution, and the degree of Governmental control such as its objectives, functions, management and control, financial aid received by it, functional and administrative were examined, to determine as to whether it would be amenable to writ jurisdiction. The finding in this case at Para-34 thereof, was that there was



nothing on record to show that the Central Government provided any financial or budgetary support to the company, which met its own working capital requirements which is unlike the present situation where admittedly the Scheme was wholly financed by the Government. As such therefore, in the considered view of this Court, in the realm of sovereign function though every governmental function need not be sovereign, the same has to be examined on the circumstances pertaining to a particular case or situation. In the instant case, as noted earlier, it has been categorically advanced that the alleged debt is not due or payable in terms of the IBC, and that further, the writ petitioner does not exercise functional autonomy or did it possess financial autonomy for disbursal of the funds. This Court notes also a question that remains unanswered, is whether in these circumstances, it can be held that the writ petitioner company was unable to pay the debts due to financial distress, or that the same was not due and payable by the writ petitioner company. Another question that has arisen, is whether the NCLT has jurisdiction on payments which were subject to funds being released by the Central or State Government, which in turn subject to fulfillment of certain terms and conditions. It is noted that a ground has also been taken that the State Government has put an embargo on the payment of dues, which is a question which also has to be gone into as to its veracity.



24. On the question of the availability of alternate remedy, the decision in the case of *Embassy Property Developments Private Limited vs. State of Karnataka & Ors.* reported in (2020) 13 SCC 308, at Para-10 & 11 thereof, which are relevant has held as follows: -

“10. In the backdrop of the facts narrated and in the light of the rival contentions extracted above, the first question that arises for consideration is as to whether the High Court ought to interfere, under Articles 226/227 of the Constitution, with an order (Vasudevan v. State of Karnataka, 2019 SCC OnLine NCLT 681) passed by NCLT in a proceeding under the IBC, 2016 despite the availability of a statutory alternative remedy of appeal to NCLAT.

11. It is beyond of any pale of doubt that the IBC, 2016 is a complete code in itself. As observed by this Court in Innoventive Industries Ltd., v. ICICI Bank (2018) 1 SCC 407: (2018) 1 SCC (Civ) 356: AIR 2017 SC 4084) it is an exhaustive code on the subject-matter of insolvency in relation to corporate entities and others. It is also true that the IBC, 2016 is a single Unified Umbrella Code, covering the entire gamut of the law relating to insolvency resolution of corporate persons and others in a time-bound manner. The Code provides a three-tier mechanism, namely, (i) the NCLT, which is the adjudicating authority, (ii) the NCLAT, which is the appellate authority, and (iii) this Court as the final authority, for dealing with all issues that may arise in relation to the reorganisation and insolvency resolution of corporate persons. Insofar as insolvency resolution of corporate debtors and personal guarantors are concerned, any order passed by the NCLT is appealable to NCLAT under Section 61 of the IBC, 2016 and the orders of the NCLAT are amenable to the appellate jurisdiction of this Court under Section 62. It is in this context that the action of the State of Karnataka in bypassing the remedy of appeal to NCLAT and the act of the High Court in entertaining the writ petition against the order (Vasudevan v. State of Karnataka, 2019 SCC OnLine NCLT 681) of the NCLT are being questioned.”



25. The above quoted judgment leaves no room for doubt as to the IBC being a complete Code in itself, with an in-built mechanism to deal with all issues that may arise in insolvency resolution of corporate debtors. In the instant case however, many questions as observed earlier remain open, and the matter has been primarily deliberated only on the vacation, or recall of the order dated 04.09.2025 passed by this Court. Further, the entire facts including a formal challenge to the impugned order of the NCLT dated 04.09.2025, has yet to be brought on record by an amendment application which though filed, is yet to be allowed. This Court therefore, deems it fit that for a proper and complete adjudication on the question of maintainability, which unquestionably is inextricably linked to, and will decide the main writ petition, to reject the prayer for vacation of the interim order at this stage, leaving the matter to be finally decided on all facts and materials being placed by the parties on the pleadings being completed.

26. Accordingly, for the aforementioned reasons, this Misc. application is not entertained, and is accordingly disposed of.

JUDGE

Meghalaya
11.11.2025
"V. Lyndem- PS"