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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SANJAY KUMAR; J., K. VINOD CHANDRAN; J.
Civil Appeal Nos. 2216-2217 of 2025; March 23, 2026
Central Transmission Utility of India Limited *versus* **Sumit Binani & Ors.**

Insolvency and Bankruptcy Code, 2016; Section 14 — Moratorium — Appropriation of Security Deposit against pre-CIRP dues — Held: The appropriation of a cash security deposit available with a creditor after the initiation of the Corporate Insolvency Resolution Process (CIRP) towards dues that arose prior to the CIRP is impermissible and contrary to the moratorium imposed under Section 14 of the IBC - Such a deposit remains the property of the Corporate Debtor until a valid adjustment is made - While payments for maintaining the supply of goods and services during the moratorium period (post-CIRP) to keep the Corporate Debtor as a going concern are permissible under Section 14(2A), the recovery of pre-CIRP dues must strictly follow the claim procedure envisaged in the IBC.

Insolvency and Bankruptcy Code, 2016 — Set-off in CIRP — Pari Passu Principle — Held - The principle of insolvency set-off as permitted in liquidation regulations cannot be applied to CIRP - Set-off of dues payable by the Corporate Debtor for a period prior to the commencement of the CIRP cannot be made from dues (or assets) payable to or belonging to the Corporate Debtor post the commencement of the CIRP - Allowing such a set-off would mitigate against the pari passu principle essential to the scheme of the IBC. *[Relied on Bharti Airtel Ltd. v. Aircel Ltd. & Dishnet Wireless Ltd. (Resolution Professional), (2024) 4 SCC 668; Paras 15-25]*

For Appellant(s): Mr. M.G.Ramachandran, Sr. Adv. Ms. Ranjitha Ramachandran, Adv. Mr. Aneesh Bajaj, Adv. Mr. Somesh Chandra Jha, AOR Mr. Yashvardhan Singh, Adv. Mr. Rishit Vimadalal, Adv. Mr. Animesh Rajoriya, Adv. Mr. Anand Kumar Singh, Adv. Mr. Akash Kishore, Adv.

For Respondent(s): Mr. S. S. Shroff, AOR Mr. Navin Pahwa, Sr. Adv. Mr. Vaijayant Paliwal, Adv. Ms. Charu Bansal, Adv. Ms. Kirti Gupta, Adv. Ms. Srideepa Bhattachharyya, Adv. Ms. Neha Shivhare, Adv. Mr. Vikash Kumar Jha, Adv. M/S. Cyril Amarchand Mangaldas Aor, AOR

J U D G M E N T

K. Vinod Chandran, J.

1. The appellant provides an established transmission system for use to power generation units and consumers with whom Transmission Service Agreements (TSA) are entered into. The power generation units along with its users or their nominated purchase entities entered into a Bulk TSA with the appellant's predecessor Power Grid Corporation of India Limited (PGCIL), one of which units; the KSK Mahanadi Power Company Limited (KMPCL) ended up in an insolvency proceeding. KMPCL had also entered into a TSA with the appellant and Power Purchase Agreements with end users. The 2nd respondent is the creditor who initiated the Corporate Insolvency Resolution Process (CIRP) which was admitted by the National Company Law Tribunal (NCLT) on 03.10.2019. The 1st respondent is the Resolution Professional (RP) appointed for the generation unit, the Corporate Debtor ('CD'-'KMPCL' referred to alternatively, post and pre CIRP respectively). The appeal is concerned with a cash deposit of Rs.108.44 crores, KMPCL made with the appellant prior to the CIRP but apportioned and disbursed against the bills raised before and after the CIRP; the controversy in this appeal relates specifically to Rs.85.13 crores which undisputedly are pre-CIRP dues.

2. On the appellant invoking the Payment Security Mechanism (PSM) as against Rs.108.44 crores and issuance of a regulation notice dated 03.06.2020 obligating the reinstatement of the PSM, the RP filed I.A. No.487 of 2020 before NCLT, the Adjudicating Authority, *inter alia* resisting the appropriation of Rs.108.44 crores and seeking its adjustment towards post-CIRP dues. We have to immediately notice that out of Rs.108.44 crores, Rs.23.31 crores were adjusted against post-CIRP dues being the bills raised, one of 04.10.2019 and three of 06.11.2019. Hence essentially the adjustment of the pre-CIRP dues was of Rs.85.13 crores; whether this amount can be apportioned or not against the pre-CIRP dues as claimed by the appellant is the only issue arising before us, despite other issues too having been dealt by the NCLT regarding what transpired in the interregnum after the CIRP commenced on 03.10.2019.

3. The NCLT found that there were various agreements entered into between the parties and the CD had outstanding dues to be paid to the appellant and in terms of the directions of the Central Electricity Regulatory Commission (CERC), the KMPCL had made payment of Rs.100 crores and was supposed to maintain its dues below Rs.122 crores in a 45 day period. The deposit of Rs.108.44 crores in cash was *in lieu* of a Letter of Credit (LoC) stipulated in the TSA which deposit was made as ordered by the CERC on a request made by the KMPCL. The PGCIL, the predecessor of the appellant herein, being an Operational Creditor had already submitted a claim before the RP towards operational debt including the dues and admitting the deposit of Rs.108.44 crores made as a security mechanism *in lieu* of LoC. The appropriation of such deposit available with the operational creditor on 28.03.2020 after the initiation of CIRP on 03.10.2019 towards pre-CIRP dues was found impermissible and contrary to the provisions of IBC specifically the moratorium imposed under Section 14 of the Insolvency and Bankruptcy Code, 2016[1]. The invocation of PSM as against Rs.108.44 crores was found to be contrary to law with a consequent direction to the appellant herein to adjust the appropriated security amounts towards post-CIRP dues, finding that sub-section (2A) of Section 14 permits such appropriation only to postCIRP dues.

4. On appeal by the appellant herein, the National Company Law Appellate Tribunal (NCLAT) noticed the provisions of the IBC, specifically Section 5(12) to find the Insolvency Commencement Date in the present case to be 03.10.2019 from which date Section 14 moratorium kicks in. Section 238 of the IBC gives the provisions of the IBC a precedence over the provisions of any other law or any instrument having effect by virtue of such law. It was categorically found that the present case is a security deposit which till an adjustment is duly made remains the property of the entity who made the deposit, herein KMPCL who is now the CD. The security deposit was also not in the nature of a performance guarantee, and it was held merely as a security against default in payment. The scheme of IBC provides that such a moratorium applies till the completion of the CIRP. However, payments for maintaining supply of goods and services arising during the moratorium period; to keep the CD as an ongoing concern, was permissible while the recovery of pre-CIRP dues has to concede to the procedure envisaged in the IBC. The creditor has to file the claim before the RP, which has been done in the present case by the appellant and orders passed admitting the claim to an extent. Finding the adjustment made as against preCIRP dues by the appellant, from the security deposit, to be violative of the scheme of the IBC, the impugned order of the NCLT was affirmed.

[1] 'the IBC'

5. Sri. Shyam Divan, learned Senior Counsel and Ms. Ranjitha Ramachandran learned Counsel ably assisting, contended that adjustment or set-off are permissible even under the scheme of IBC. The facts and circumstances would clearly indicate that the deposit made was *in lieu* of LoC which could have been invoked despite the initiation of CIRP. It is asserted that security deposit was made at the request of KMPCL on the orders of the CERC, an application having been moved at their instance before the CERC which stood withdrawn noticing the deposit made *in lieu* of LoC. We were taken through the terms of the agreement and the Billing Collection and Disbursement Procedure under the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010[2] providing for the LoC and the default clauses enabling enforcement of dues, upon which the defaulter is obliged to recoup the security to the extent enforced.

6. The argument of adjustment or set off is urged on the ground that the title to the money deposited is already impeached as on the issuance of a bill which stood defaulted for which reliance is placed on ***Bharti Airtel Ltd. v. Aircel Ltd. & Dishnet Wireless Ltd. (Resolution Professional)***[3]. The definition of 'security interest' under Section 3(31), the prohibition under clause (c) of Section 14(1) and the exception thereat provided by clause (d) of Section 14(3) are specifically relied on to contend that an LoC could have been enforced after the commencement date which in turn would translate as the debt to the entity who provided the LoC; which in effect was the appropriation made of the amounts deposited *in lieu* of LoC. Reliance is placed on ***Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co.*** [4] and ***Standard Chartered Bank v. Heavy Engineering Corporation Limited***[5] to put forth the nature of a Bank Guarantee (BG)/LoC. It is an independent contract between the bank and the beneficiary, unconditional and irrevocable, making it obligatory on the bank to honour it without reference to any disputes between the parties to a contract in pursuance of which the BG/LoC is issued unless there is a ground raised of fraud or irretrievable harm or injury. ***Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd.***[6], ***Vistra ITCL (India) Ltd. v. Dinkar Venkatasubramanian***[7] and ***DBS Bank Limited Singapore v. Ruchi Soya Industries Ltd.***[8]are also relied on.

7. It is pointed out that the appellant is only a nodal agency and the apportionment is made based on the bills issued by the transmission licensees to whom the appellant disbursed the entire amounts, deposited as security. The appellant if asked to deposit the same with the RP, necessarily it would result in an illegal enrichment to the Successful Resolution Applicant (SRA) which is not the intention of the IBC. The amount disbursed to the transmission licensees in any way are reimbursed by the ultimate power user, which can be proceeded with either by the RP or the SRA. The priority of a security creditor as delineated in ***Jaypee Kensington***[6] has not been reckoned by the impugned orders.

8. Sri. Navin Pahwa learned Senior Counsel appearing for the respondent commences his argument pointing out Section 62 which restricts an appeal to the Supreme Court on a question of law which is totally absent in the present case. It is pointed out that the prescription as available from the TSA is of a provision of LoC, BG or any

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[2] Regulation of 2010
[3] (2024) 4 SCC 668
[4] (2007) 8 SCC 110
[5] (2020) 13 SCC 574
[6] (2022) 1 SCC 401
[7] (2023) 7 SCC 324
[8] (2024) 3 SCC 752

other mode of security. The deposit made cannot be said to be *in lieu* of LoC nor can it be equated with a LoC or BG which claim in any event was not raised before the NCLT or NCLAT.

9. The appellant had submitted a claim of Rs.356.41 crores initially before the RP which was admitted to the extent of Rs.96.75 crores. There was no challenge taken by the appellant to the limited admission of debt due, by the RP. The NCLT had approved the resolution plan based on the decision of the Committee of Creditors (CoC) on 13.02.2025 which also has attained finality and stands implemented commencing from 06.03.2025. The appellant cannot take the contention of a third-party surety as excluded under Section 14(3)(b) which is a surety ***to*** the CD and not ***for*** the CD. The reliance placed on ***Bharti Airtel Ltd.***[3] is assailed on a reading of the very same decision. There is no claim of set-off arising hereunder neither on the basis of the contract nor on the grounds of equity. Again, a claim in Form B was submitted by the appellant first for 356.41 crores on 03.01.2020 and then for an amount of Rs. 1.71 crores on 09.07.2021and on the third instance, for Rs. 3.76 crores on 12.10.2020. At no point in either of these claims Rs.108.44 crores deposit was claimed as a security. Reliance is placed on Section 29 of the IBC to point out that the ingredients of the Information Memorandum (IM) cannot be interfered with.

10. The RP also placed before us the balance sheets of the CD and the IM which clearly indicates Rs.108.44 crores having been shown as a deposit and the asset of the CD as on the 'insolvency commencement date'. It is also pointed out that despite the permissible default period having expired, the appellant had not chosen to invoke the PSM and appropriate the amounts immediately after the default period, which would have been before the 'insolvency commencement date'. Even after the commencement of the proceedings when a claim was raised, the deposit was never shown as a security interest and despite the claims raised having not been fully accepted, still without challenging any of the admitted amounts, the appropriation was made with respect to the pre-CIRP dues which stands vitiated as per the scheme of IBC.

11. Shorn of the details, the brief facts to be noticed are that the KMPCL entered into a Bulk Power Transmission Agreement (BPTA) with PGCIL (later substituted by the appellant) for obtaining long term access to the Inter-State Transmission System. Pursuant to the same, the TSA was executed with the appellant and consequential Power Purchase Agreements were also executed, with which we are not concerned. The PGCIL issued termination notice dated 01.08.2018 on account of the LoC not being opened. The KMPCL then moved an application before the CERC pointing out that Rs.22 crores in cash has been deposited with PGCIL towards PSM and that Rs.108.44 crores relatable to the entire capacity would be deposited by September 2018. A stay of the termination notice dated 01.08.2018 was sought responding to which PGCIL submitted that the outstanding dues for September and October 2018 were undertaken to be paid and in pursuance to that, the regulation of power supply notice issued by PGCIL was kept on hold. However, this was subject to furnishing the requisite LoC failing which termination was the only option. It was also prayed before the CERC that KMPCL may be directed to file an affidavit that the complete outstanding dues are paid within 60 days from the date of default. The CERC granted an interim relief directing PGCIL not to take any coercive measures in terms of notice dated 01.08.2018 subject to the petitioner depositing Rs.108 crores or opening an LoC on or before 20.09.2018 as PSM. Though no LoC was furnished as per the undertaking before the CERC, the deposit of Rs.108.44 crores was made based on

which the CERC closed the petition filed by KMPCL on 08.02.2019. The appellant had also withdrawn the notice of regulation.

12. As for the terms and conditions applicable to the present dispute, the agreement for long-term access as disclosed in Exhibit P1 provided for detailed instructions with respect to payment of transmission charges in addition to the opening of LoC for 105% of the estimated average monthly billing and irrevocable BG equivalent to two months estimated average monthly billing. The security mechanism was to be initially valid for three years and then renewed from time to time; review was also made possible every six months, based on the change in estimated average transmission charges. The default in payment of monthly charges enabled PGCIL to encash or adjust the BG immediately upon which the same had to be replenished or recouped by the long-term transmission customers before the next billing cycle. The furnishing of LoC is in accordance with Billing, Collection and Disbursement (BCD) Procedure under the Regulations of 2010 produced as Annexure A4. Specifically, Clause 3.7 empowers the CTU to proceed under the Regulations of 2010, if any bill raised is outstanding beyond 30 days after the due date or in case the required LoC or any other agreed PSM is not maintained by CERC; in this case the deposit made of Rs.108.44 crores.

13. The dates relevant to the controversy is that the KMPCL had defaulted payments of Bill No. 91106950 dated 04.07.2019 for an amount of Rs.69,83,47,035/-, Bill No.91107010 dated 29.07.2019 for Rs.11,73,70,009/-, Bill No.91107026 dated 09.08.2019 for Rs.8,50,92,594/-, two Bills dated 13.08.2019 bearing Nos. 91107063 & 91107088 respectively of Rs.8,08,72,823/- & Rs.30,41,35,771/- Bill No. 91107161 dated 04.09.2019 for Rs.8,66,76,521/- and Bill No.91107268 dated 06.09.2019 of Rs.5,81,89,205/-; which are pre-CIRP dues. On 03.10.2019, NCLT, the Adjudicating Authority passed an order initiating CIRP against the CD which is the 'Insolvency Commencement Date'. And postCIRP, Bill No. 91107297 dated 04.10.2019 of Rs. 8,39,30,713 and three bills dated 06.11.2019 of respectively Rs.57,33,798/- Rs.28,31,79,190/- & Rs.6,15,95,268/- were raised. There was a regulation notice issued later to that by the appellant which is not germane to the present controversy. The appellant had raised claims under Form 'B' thrice on 03.01.2020, 09.07.2021 and 12.10.2020, a portion of which was admitted by the RP; which limited acceptance was not challenged. The bone of contention is the appropriation made of Rs.108.44 crores by the appellant on 28.03.2020 in satisfaction of the above referred bills of both pre-CIRP and post-CIRP dues. The NCLT and the NCLAT having directed the adjustment of the entire amounts furnished under the PSM as against the post-CIRP dues; limits the controversy to the adjustment of Rs.85.13 crores as against the pre-CIRP dues.

14. The claim of set-off raised by the appellant is primarily based on the decision in ***Bharti Airtel Ltd***[3], the facts and law declared in which will have to be looked into at the outset. Therein two groups termed as *'Airtel entities'* and *'Aircel entities'* entered into eight spectrum purchase agreements by which the former agreed to purchase the right to use the spectrum allocated to the later. The agreements were contingent on the approval of the Department of Telecom (DoT) to whom the Aircel entities were obligated to submit BG of approximately Rs.453.73 crores. Since, Aircel entities did not have the means to furnish the BG, Airtel agreed to submit the BG on behalf of Aircel to DoT and the consideration of the spectrum agreements were reduced based on the furnishing of BG, which further obligated Airtel to pay a definite sum, on cancellation of the BG. Aircel finally succeeded before the Telecom Disputes Settlement and Appellate Tribunal (for short, the Tribunal) and eventually the BG furnished by Airtel on behalf of Aircel to the DoT was cancelled.

Airtel entities, as per the understanding, paid certain amounts to Aircel but after setting off the amounts due to it as interconnect usage charges. The payment after set-off was made on 10.01.2019 prior to which CIRP was initiated against Aircel entities by orders dated 12.03.2018 and 19.03.2018. The RP appointed for Aircel entities protested to the adjustment of an amount of Rs.112.87 crores which the Airtel entities objected to and claimed as set-off. The NCLT allowed the claim while the NCLAT reversed it and found the set-off to be violative of the basic principles and protection afforded under the insolvency law to the CD, finding set-off to be antithetical to the very objective of the IBC.

15. The meaning of set-off, various types and principles involved were elaborately considered in ***Bharti Airtel Ltd.***[3] It was held that, "*Set-off in a generic sense recognises the right of a debtor to adjust the smaller claim owed to him against the larger claim payable to his creditor*" *(sic para 15)*. Immediately, we have to notice that therein amounts were due from Airtel to Aircel and *vice versa* based on which the set-off was attempted; part of which alone was eventually held justified, denying such set-off on the additional amounts due on cancellation. Herein, there were no debts due to the CD from which a set-off could have been made by the appellant of the dues arising on default of payment of monthly bills. Bills were raised by the CTUIL, the appellant herein which were remaining due as on the insolvency commencement date, The amount of Rs.108.44 crores is deposited with the appellant *in lieu* of a LoC, which is a security for due payment of the bills raised by the appellant during the validity period of the TSA. As long as the TSA continued if the bills are paid regularly, KMPCL could not have sought for refund of the money so deposited. On the other hand, in the event of default, the appellant had the authority to apportion the due amounts to the extent of satisfaction of such amounts due on the bills raised. The amounts apportioned also related to pre-CIRP and postCIRP bills. The mutual dues, arising from a distinct contract, found in ***Bharti Airtel Ltd.***[3] justifying a set-off does not arise in this case. On the contrary the deposit herein made *in lieu* of LoC is similar to the additional amounts due on cancellation of BG, from Airtel to Aircel as found in ***Bharti Airtel Ltd.***[3]; remaining with one as the asset of the other not subjected to any set-off contractually, equitably, statutorily or in common law.

16. Coming back to the decision in ***Bharti Airtel Ltd.***[3] five different meanings were ascribed to set-off viz., (a) statutory or legal set-off; (b) common law set-off; (c) equitable set-off; (d) contractual set-off; and (e) insolvency set-off, of which, common law and equitable set-off were found to have always flown together. Looking at the IBC, it was found that statutory set-off in terms of Order VIII Rule 6 of CPC or insolvency set-off as permitted by Regulation 29 of the Liquidation Regulations cannot be applied to CIRP. The exception being only of the contractual set-off being permitted before or on the date CIRP is put in motion or commenced, since pre-moratorium the terms of the contract are binding and are not altered or modified. It was categorically held in para 39 that: *"Set-off of the dues payable by the Corporate Debtor for a period prior to the commencement of the CIRP cannot be made and is not permitted in law from the dues payable to the Corporate Debtor post the commencement of the CIRP" (sic para 39)*.

17. ***Bharti Airtel Ltd.***[3] categorically found that the plea of set-off based on Section 30(2)(b) is fallacious since (i) it does not make Chapter III Part II ie: Section 36(4)(e) or Regulation 29 of the Liquidation Regulations applicable to CIRP under Chapter II Part II IBC, (ii) sub clause (ii) of Section 30(2)(b) deals with amounts payable to creditors and not by the creditors to CD, (ii) the provision has application when the resolution plan is considered for approval and (iv) the specific legislative mandate of IBC, all of which does not recognize the principle of insolvency set-off in CIRP. The set-off of Rs.64 crores which

was due and payable by Aircel entities under the operational services agreement as allowed by the RP was found to be perfectly justified since it was on the aspect of mutual dealings and also equity. The adjustment of interconnect charges were under a separate and distinct agreement, distinct from the purchase of the right to use the spectrum which was found to be entirely different and unconnected transaction. Hence, when the telephone service providers used each other's facilities, the adjustment of set-off were made on the basis of the contractual set-off, justified also on the ground of equitable set-off. The adjustment insofar as the amounts payable by Airtel entities to the CD, on return/cancellation of BGs, post commencement of CIRP was not amenable to a set-off, was the clear finding.

18. As we noticed, in the present case the amounts were deposited as security for due payment of the bills raised. The payment of a bill was to be made within 30 days and there is an extended time of another 30 days within which the default can be satisfied. As far as the pre-CIRP dues, the bills were issued on 04.07.2019, 29.07.2019, 09.08.2019, 13.08.2019, 04.09.2019 and the last on 06.09.2019, all prior to the commencement date; 03.10.2019. If the due amounts were apportioned prior to the commencement date then there could be no dispute raised. Pertinently, after the commencement of the insolvency proceedings, a claim was submitted in Form B on 03.01.2020 for Rs.356.41 crores of which Rs.96.70 crores was admitted by the RP. The claim submitted included in Part A, Rs. 354,37,76,489/- and in Part B, Rs. 2,04,05,539/- which are stated to be the claim amount as on date and the future monthly transmission charges estimated on the average of last three months billing was asserted to be Rs. 57.40 crores. Part A of the claim was also described as arising from the unpaid invoices raised towards transmission charges as per Bulk TSA & CEC Regulations, the invoices having been produced therein as Annexure-2. Part B arose from the unpaid invoices raised on the strength respectively of the agreements dated 16.12.2010 and 05.02.2014 as also the MOU dated 20.10.2016; the breakup relating to each of such agreements and the MoU, given at Column No. 7 with invoices produced as Annexures 6, 8 &10. Obviously, the claim raised included the bills pending as due and defaulted till the date of filing of Form B. The amounts now apportioned to pre-CIRP dues hence was claimed before the RP. Form B was again filed twice on 09.07.2021 and 12.10.2020, after the apportionment on 18.03.2020.

19. In fact the second Form B filed explained the downward revision from Rs. 356,41,82,028/- to Rs. 1,71,94,716/- as due to three reasons the second of which was as below:

2. Subsequent to raising of the above adjustment bill, the LC amount of Rs.108.44 Cr (submitted on 24.08.2018, 28.08.2018 & 18.09.2018 as per Record of Proceeding of CERC dated 30.08.2018) available in cash with CTU even prior to CIRP date, was also adjusted against the outstanding dues on FIFO basis during Mar'20 as per BCD procedure of CERC Sharing Regulation 2010 and the same was communicated to KSK vide our mail dated 28.03.2020.

On the filing of Form B which included the pre-CIRP dues, the claims were admitted to an extent which order of the RP was not challenged by the appellant, Subsequently the apportionment was made unilaterally of pre-CIRP dues from the deposit clearly violating the moratorium.

20. ***Himadri Chemicals Industries Ltd.***[4] dealt with injunctions restraining encashment of BG and LoC which were held to be permissible only in two exceptional cases of, fraud or irretrievable harm or injury. ***Standard Chartered Bank***[5] found that when a beneficiary seeks enforcement of a BG, it is obligatory, unconditional and irrevocable. The dispute between the parties to a contract, pursuant to which the BG was issued, cannot result in

the bank refusing encashment especially since on issuance of the BG, it is an independent contract between the bank and the beneficiary. In the present case, we cannot but notice that there is no BG or LoC issued. Though, the deposit is said to be *in lieu* of an LoC, the fact remains that even if it was an LoC after the 'insolvency commencement date' as per Section 5(12) of the IBC, there could not have been an encashment through or enforcement of the LoC by reason of the moratorium under Section 14 of the IBC. Section 14(2)(b) speaks of a 'contract of guarantee to a Corporate Debtor', which can be enforced to make payment dues to the CD and not from the CD.

21. ***Jaypee Kensington***[6] is with respect to *'the entitlement of a dissenting financial creditor who is also a secured creditor to receive the amount payable by allowing enforcement of a security interest to the extent of the value receivable by him and in the order of priority available to him'*. The appellant herein is neither a financial creditor nor can be deemed to be a secured creditor. ***Vistra ITCL***[7] dealt with a pledge of shares held by the CD in another company to the financier for disbursing loan to two other entities, the end benefit of which inured to the CD itself. It was found that pledge is distinguishable from a guarantee insofar as it limits the liability of the CD to the value of the pledged shares. The appellant therein was held to be neither a financial creditor nor an operational creditor and in its status as a secured creditor, being denied of the benefits available to a financial or an operational creditor in terms of Sections 52 and 53, the appellant was allowed to retain the security interest on the pledge of shares made by the CD.

22. ***DBS Bank Limited Singapore***[8], clarified that ***Jaypee Kensington***[6] only held that the dissenting financial creditor, if the occasion arises, is entitled to receive the extent of value in money equal to the security interest held by him. The security interest gets converted from the asset to the value of the asset, which is to be paid in the form of money. It is pertinent that the specific finding was with respect to a dissenting financial creditor in whom was created a security interest of the immovable properties of the CD. In the present case, there is no security interest created through pledge or otherwise by the CD to the appellant. The deposit made even if treated as a guarantee for the default in dues remains the property of the CD till it is adjusted towards the defaulted dues and if so adjusted after the moratorium kicks in towards pre-CIRP dues, the adjustment would be rendered illegal. The deposit made is not a debt due to KMPCL, the CD.

23. The NCLT approved the Resolution Plan and the same is implemented, which was not challenged by the appellant as was argued by the learned Senior Counsel for the respondent. The very claim of set-off was not raised before the NCLT or the NCLAT and there was no contention raised by the appellant that they had the status of a secured creditor. The appellant has the status of an operational creditor and the apportionment of the defaulted bills remained defaulted for long till 18.03.2020, long after the commencement of the CIRP. The apportionment was objected to by the RP by filing an appropriate application before the NCLT which has resulted in the present proceedings.

24. We have also been shown the IM as prepared by the RP which discloses Rs.108.44 crores in the balance sheet under the assets and liabilities of the CD as an asset and later, after information as to its apportionment, as a disputed issue pending before the NCLT. The Resolution Plans were submitted out of which one has turned successful, reckoning Rs.108.44 crores as an asset of the CD. The appellant ought not to have apportioned the claim once the CIRP proceedings commenced. As has been found in ***Bharti Airtel Ltd.***[3] set-off would mitigate against the *pari passu* principle which is apparent from the scheme of the IBC.

25. The NCLT and the NCLAT has rightly found the apportionment made by the appellant to be violative of the provisions of the IBC and in derogation of the moratorium under Section 14. The direction of the NCLT is also to apportion the entire amounts to the post-CIRP dues, a portion of which by the apportionment itself is to post-CIRP dues. An argument was raised on behalf of the appellant that the amounts apportioned have been disbursed to the ISTS licensees in payment of their defaulted bills and hence, the appellant would be liable to make good the amounts from its own funds. We have no reason to accept the above contention since even the ISTS licensees would be hit by the moratorium under Section 14. On the directions issued by the NCLT as confirmed by the NCLAT, book adjustments alone would have to be carried out, especially since the CD is a running concern. The pre-CIRP dues, whether it be to the appellant or the ISTS licensees, will have to be subjected to the RPs decision first made, on submission of Form B dated 03.01.2020. The CD is continuing its operations during the CIRP period and book adjustments would reverse the apportionment made to pre-CIRP dues so as to satisfy the post-CIRP dues, the pre-CIRP dues being satisfied through the claim allowed by the RP with respect to that. This would apply equally to the appellant and the ISTS licensees.

26. We hence, affirm the impugned orders and reject the appeals.

27. Pending applications, if any, shall stand disposed of.