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IN THE HIGH COURT OF DELHI AT NEW DELHI**BEFORE****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****+ CS (COMM) 648/2021****ABB INDIA.LTD**

COMPANY INCORPORATED UNDER THE PROVISIONS OF
COMPANIES ACT, 1956, HAVING REGISTERED OFFICE AT
DISHA - 3RD FLOOR, PLOT NO. 5 & 6,
2ND STAGE, PEENYA INDUSTRIAL AREA IV,
PEENYA, BENGALURU - 560058, KARNATAKA

...PLAINTIFF

*(Through: Mr. Arvind K. Nigam, Sr. Adv with Mr. Manoj, Ms. Aparna
Sinha and Mr. M. T. Reddy, Advs.)*

versus**POWER FINANCE CORPORATION LIMITED**

COMPANY INCORPORATED UNDER THE PROVISIONS OF
COMPANIES ACT, 1956, HAVING REGISTERED OFFICE AT
'URJANIDHI', 1, BARAKHAMBA LANE,
CONNAUGHT PLACE, NEW DELHI - 110 001

RFC LIMITED

COMPANY INCORPORATED UNDER THE PROVISIONS OF
COMPANIES ACT, 1956, HAVING REGISTERED OFFICE AT
CORE - 4 SCOPE COMPLEX 7, LODHI RD,
NEW DELHI, DELHI 110003

...DEFENDANTS

*(Through: Mr. Balbir Singh, Sr. Adv with Mr. Ramakant Rai, Mr.
Varun Kumar Tikmani, Mr. Naman Tandon and Ms. Shivali Shah,
Adv..)*



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Reserved on: 14.08.2025

Pronounced on: 09.09.2025

JUDGMENT

I.A. No. 31516/2024 (By Plaintiff – for summary judgment under Order XIII A - CPC)

1. The instant application has been preferred by the Plaintiff, seeking a summary judgment based on the documents available on record.
2. The facts of the case hereunder would indicate that the Plaintiff, ABB India Limited, entered into various contracts in the year 2011 with ICI-C&C Mainpuri JV for design, supply, erection, testing, and commissioning of certain transmission works in Uttar Pradesh. Subsequently, by way of novation in 2014, the contracts were assigned to Isolux Corsan and SEUPPTCL, with the total contract value revised to ₹1068 crores.
3. Owing to persistent defaults in payment, the Plaintiff suspended work in March 2016. Thereafter, negotiations were undertaken between the Plaintiff, Defendants, Isolux, and SEUPPTCL to resolve the outstanding disputes and ensure completion of the project.
4. On 29.06.2017, a settlement was recorded in the form of Minutes of Meeting (*hereinafter referred to as “MoM”*), executed, *interalia*, by the Plaintiff and Defendants. Under this MoM, the Plaintiff undertook obligations including energisation of COD-1 and securing the release of Advance Bank Guarantees, while the Defendants and SEUPPTCL agreed to a payment mechanism.
5. As per the MoM, an amount of ₹5.61 crores per month, being one-



third of the Monthly Transmission Charges, was to be disbursed to the Plaintiff from the project revenues routed through a Trust and Retention Account (“TRA”), until the outstanding dues were liquidated.

6. The case of the Plaintiff is that it had complied with its obligations, including energisation of COD-1, and release of Advance Bank Guarantees of ₹37.89 crores. The part payments were made in November 2017 and January 2018 in accordance with the MoM. However, the Defendants, thereafter, allegedly failed to deliver the payments through the TRA, resulting in outstanding dues of approximately ₹193 crores.

7. Alleging breach of the MoM and misappropriation of sums, the Plaintiff instituted the present suit seeking recovery of the aforesaid amount along with interest. By way of the present application under Order XIII-A CPC, the Plaintiff prays for summary judgment on the basis that the liability of the Defendants under the MoM stands admitted and no triable issues arise.

8. Mr. Arvind K. Nigam, learned Senior counsel for the Plaintiff, submits that the present case is a fit case for the exercise of powers under Order XIII-A of the Code of Civil Procedure (hereinafter referred to as “CPC”), as the claim rests upon admitted documents and undisputed facts, thus leaving no room for oral evidence or trial.

9. It is urged that the Minutes of Meeting dated 29.06.2017 (“June 2017 MoM”) constitute a binding and enforceable agreement duly signed by the parties, including the Defendants herein. The MoM recorded a settlement under which the Plaintiff undertook to resume performance of works, energise COD-1, and secure release of Advance Bank Guarantees, while in return, the Defendants undertook to ensure that a fixed sum of ₹5.61 crores



per month, being one-third of the Monthly Transmission Charges, was disbursed to the Plaintiff from the project revenues maintained in the Trust and Retention Account (“TRA”), supervised by Defendant No. 1.

10. Learned senior counsel further submits that the Plaintiff duly acted upon the MoM by energising COD-1 and obtaining release of Advance Bank Guarantees worth ₹37.89 crores. It is submitted that, pursuant thereto, the Defendants themselves effected payments of ₹1 crore in November 2017 and ₹5 crores in January 2018. These payments, according to the Plaintiff, unequivocally establish acknowledgement of the MoM and confirm the Defendants’ obligation to continue the monthly disbursements until the outstanding dues were cleared. According to him, this establishes that the Defendants have acknowledged their obligations towards the Plaintiff by their own conduct and actions.

11. Based on this, learned senior counsel contends that the Defendants were not mere facilitators as sought to be projected, but have in fact, through their own actions, exercised both *de jure* and *de facto* control over the TRA, and have assumed direct responsibility to ensure release of the dues of the Plaintiff. Their failure to continue the payments, despite express commitments, amounts to breach of the MoM and wrongful deprivation of monies lawfully owed to the Plaintiff.

12. On the aspect of stamping, learned senior counsel submits that the MoM is in the nature of a record of oral consensus which has already been reached between the parties, and therefore, does not constitute an instrument exigible to stamp duty under the Indian Stamp Act, 1899. Reliance is placed on the decision of this Court in the case of ***Chief Controlling Revenue***



*Authority v. Satyawati Sood*¹, which was approved by the Supreme Court, to buttress the submission that such a memorandum cannot be excluded from consideration only on account of non-stamping.

13. Learned senior counsel further submits that the present dispute is a “*commercial dispute*” within the meaning of Section 2(c) of the Commercial Courts Act, 2015, being one arising out of an infrastructure project of significant financial value.

14. The plea of jurisdictional bar under the Insolvency and Bankruptcy Code, 2016, is, according to the Plaintiff, wholly misconceived inasmuch as the reliefs sought are directed not against the corporate debtor under CIRP, but against the Defendants in their own capacity as signatories to the MoM.

15. On the strength of these submissions, it is urged that the Defendants have no real prospect of defending the claim, and that there exists no compelling reason for trial.

16. The Plaintiff accordingly prays that a decree be passed in its favour to the tune of ₹193,14,90,933/- along with *pendente lite* interest at 12% per annum, by way of summary judgment under Order XIII-A CPC.

17. *Per contra*, learned senior counsel appearing for the Defendants, Mr. Balbir Singh, opposes the application and submits that the present matter is not amenable to summary adjudication under Order XIII-A CPC, as it involves complex and disputed questions of fact and law, which can only be resolved through a full-fledged trial.

18. It is the principal contention of the Defendants that there exists no privity of contract between them and the Plaintiff. To buttress the same, it is

¹ 1971 SCC OnLine Del 356



submitted that the June 2017 MoM, upon which the Plaintiff's entire case rests, was executed primarily between SEUPPTCL and Isolux on one hand, and the Plaintiff on the other. Learned senior counsel contends that the role of the contesting Defendants herein was solely confined to being a facilitator of the agreement, wherein, as a lead lender and as the financial institution, they have enabled the discussions and oversaw the maintenance of the Trust and Retention Account ("TRA"). Thus, according to him, by virtue of being a mere facilitator, no binding contractual obligation arises between the Defendant and Plaintiff.

19. Learned senior counsel further contends that the MoM is an unstamped document and, therefore, inadmissible in evidence in view of Section 35 of the Indian Stamp Act, 1899. It is submitted that the document contains substantive financial commitments and is not a mere record of oral consensus, as alleged. He has placed reliance on various decisions of the Supreme Court to contend that an unstamped or insufficiently stamped instrument cannot be relied upon for any purpose. He submits that on this preliminary ground alone, the case of the Plaintiff is bound to fail.

20. Learned senior counsel argues that the Defendant merely facilitated the agreement, and there are several other parties to it having a more direct connection with the Plaintiff; however, they have not been impleaded in this suit for reasons best known to the Plaintiff. He further contends that the Defendant's relationship with the Plaintiff primarily flows through these other parties, namely SEUPPTCL and Isolux, who are the main obligors under the Memorandum of Meeting (MoM). Their absence from the proceedings amounts to non-joinder of necessary parties, as effective or complete adjudication is not possible without them, and no exclusive



liability could be imposed on the answering Defendants.

21. He further contends that the other parties, being SEUPPTCL itself, disputed the entitlement of the Plaintiff. Reliance is placed on a communication dated 30.06.2020 from SEUPPTCL raising serious allegations regarding deficiencies in the Plaintiff's performance. It is urged that the Plaintiff's claims are not admitted, but in fact contested, and require detailed evidence to be led at trial.

22. In addition, it is submitted that the present proceedings are barred by the provisions of the Insolvency and Bankruptcy Code (hereinafter referred to as "IBC"). SEUPPTCL is undergoing Corporate Insolvency Resolution Process (CIRP), and Sections 63 and 231 of the IBC expressly oust the jurisdiction of civil Courts in respect of matters within the domain of the NCLT. The Plaintiff's claim, insofar as it relates to payments from the revenues of SEUPPTCL deposited in the TRA, amounts to enforcement of a claim against the corporate debtor and, therefore, falls squarely within the bar of the IBC.

23. On the aspect of quantum, it is urged that the Plaintiff's demand for more than ₹193 crores is exorbitant and unsupported by cogent computation.

24. The allegation of "misappropriation of sums" is a bald and unsubstantiated assertion. The determination as to whether any such sums are payable to the Plaintiff, whether there has been any breach of obligations, and whether any damages are due, necessarily requires oral and documentary evidence, including scrutiny of accounts.

25. On the cumulative strength of these submissions, learned senior counsel for the Defendants asserts that the present case raises multiple serious triable issues, including admissibility of the MoM, existence of



privity of contract, non-joinder of indispensable parties, the jurisdictional bar under the IBC, and quantification of damages. In such circumstances, it cannot be said that the Defendants have “no real prospect” of defending the claim. The Plaintiff’s application, it is urged, is misconceived and deserves outright dismissal.

26. I have heard the learned counsel for the parties and carefully examined the record.

27. The issue that is to be adjudicated for the purpose of this application is whether the Plaintiff has succeeded in demonstrating that the Defendants have “no real prospect” of defending the claim, thereby warranting disposal of the suit at the threshold, under Order XIII-A CPC.

28. The scope of summary judgment is well settled. It is an exception to the normal rule that disputes must go to trial. In ***Bright Enterprises Private Ltd. v. MJ Bizcraft LLP***², this Court held that summary adjudication may be granted only where the defence is plainly frivolous or vexatious, and conversely, where the matter requires detailed examination of evidence, the case must proceed to trial. Similarly, the Supreme Court in ***Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP***³, emphasised that while commercial disputes must be resolved expeditiously, Courts must act with circumspection and cannot short-circuit trial where serious triable issues arise.

29. In the present case, the Plaintiff’s claim rests largely on the Minutes of Meeting dated 29.06.2017 (“MoM”). Based on the said MoM, the Plaintiff is seeking summary adjudication. However, against the same, the

² 2017 SCC OnLine Del 6394



Defendants have advanced various submissions, including, but not limited to, the non-binding effect of the said agreement on the contesting Defendant, absence of privity of contract between the contesting parties as per the underlying agreement, and inadmissibility of the said document for any purpose in view of insufficient stamping.

30. These objections cannot be brushed aside lightly. The Supreme Court in *Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re*⁴, while clarifying *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd*⁵, categorically held that an instrument which is required to be stamped, but is unstamped, is not *void ab initio* but is merely inadmissible in evidence until the defect is cured by paying the requisite stamp duty and penalty. The contention of the Plaintiff as to whether the MoM is only a mere recital or memorandum of the consensus already arrived at between the parties, or whether the same is a contract under which substantive obligations have arisen, raises a substantive issue which involves questions of both fact and law, and therefore, the same cannot be decided summarily.

31. The Plaintiff asserts that the Defendants, by signing the MoM and releasing part-payments, assumed direct contractual liability. The Defendant, however, maintains that it was acting only in its capacity as lender and facilitator, without assuming joint or several liability. The determination of whether the Defendant acted as a contracting party with positive financial obligations, or merely as financial supervisors of the TRA,

³ (2020) 15 SCC 585

⁴ (2024) 6 SCC 1

⁵ (2023) 7 SCC 1



is a matter of interpretation and evidence.

32. The plea of non-joinder of necessary parties further strengthens the case for trial. Both SEUPPTCL and Isolux were signatories to the MoM and, on the Defendants' showing, were the primary obligors. Their absence raises a serious question as to whether any effective decree can be passed in their absence. The law on necessary parties is well settled by the Supreme Court in *Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd*⁶, wherein it was held that no effective decree can be passed in the absence of necessary parties. The enforcement of any right or liability as per the MoM, wherein both SEUPPTCL and Isolux were admittedly parties, may require them to alter their position and to give effect to certain obligations. Thus, it needs to be examined whether the enforcement of the decree, which may be passed, would require their participation, thereby lending credibility to the ground of non-joinder of necessary parties.

33. The question of jurisdiction raised under IBC is also a triable issue. SEUPPTCL is presently under the Corporate Insolvency Resolution Process (CIRP). Sections 63 and 231 of the IBC expressly bar the jurisdiction of Civil Courts in respect of matters which fall within the exclusive domain of the NCLT. In *Embassy Property Developments (P) Ltd. v. State of Karnataka*⁷, the Supreme Court reiterated that once CIRP is initiated, all claims against the corporate debtor must be routed through the insolvency process. Whether the Plaintiff's claim is independent against the Defendants or is inextricably linked to the insolvency of SEUPPTCL is not a matter that can be decided in a summary proceeding.

⁶ (2010) 7 SCC 417



34. The quantum of claim also raises serious contested issues. The Plaintiff seeks recovery of more than ₹193 crores, alleging breach and misappropriation of sums, whereas the Defendants deny both the Plaintiff's performance and entitlement. However, it is seen that the direct parties to the agreement have already disputed the said amount. Furthermore, the Defendants have also denied the allegation of misappropriation of the amount and have termed the same as vague, unsubstantiated, and bereft of material particulars. This Court, in *Christian Louboutin Sas v. Abubaker*⁸, while dealing with a trademark dispute, held that the provisions relating to summary judgment, which enable Courts to decide claims pertaining to commercial disputes without recording oral evidence, are exceptional in nature and out of the ordinary course that a normal suit has to follow. Thus, if it appears, on the basis of rival contentions, that the case involves a serious contest, it must be tried on the strength of evidence and cannot be disposed of summarily.

35. A perusal of the Minutes of Meeting (MoM) indicates that PFC, ABB, SEUPPTCL, and Isolux agreed upon a payment security mechanism, whereby the Advance Bank Guarantees furnished by ABB were to be released, while the liability of Isolux to pay ABB under the COD-2 Contract was to continue. The MoM was directed towards resolving the payment and project-related issues under the transmission contract executed in November 2011, particularly in relation to the COD-2 works.

36. The MoM records that the dues payable to ABB, as detailed in Annexure-D thereto, were unequivocally acknowledged as binding and

⁷ (2020) 13 SCC 308



payable by Isolux and SEUPPTCL. It was further agreed that in the event of delay, ABB would be entitled to interest at the rate of 12.15% on the said amounts until realisation.

37. It is seen that both Isolux and SEUPPTCL, on behalf of the project, confirmed their joint and several commitment to discharge the said dues of ABB, and the obligation was expressly extended to their successors and assignees. The payment obligations under the MoM were unconditional and not contingent on any further certification or performance by ABB.

38. It was further agreed that upon energisation of COD-1, ABB would receive a fixed sum of ₹5.61 crores per month from the Project TRA Account, such payments to commence within three months of COD-1 becoming operational and to continue until liquidation of ABB's acknowledged dues.

39. The MoM described this as an interim security arrangement, not to be altered except by mutual written consent, making Isolux and SEUPPTCL jointly and severally liable for amounts due, and further provided that it would operate as a contractual amendment under Clause 2.7 of the General Conditions of Contract, to prevail over any inconsistent terms.

40. However, it remains clear that PFC, as Lead Lender, acted as a facilitator and controller of the payment mechanism *via* the TRA account. Thus, in interpreting the MoM, the following possible interpretations may arise:-

- a. PFC is seen only as a mediator and administrator of the TRA (a standard escrow-like account in project finance to prioritize

⁸ 2018 SCC OnLine Del 9185



debt repayment). The MoM states that payments are “from TRA account of the Project (out of project revenues),” and lenders “agreed” internally to allocate Rs. 5.61 crores/month. Liability for dues remains solely with Isolux/SEUPPTCL (jointly and severally). The exposure of PFC is limited to operational duties (e.g., releasing BGs after adjustments and routing funds). If payments fail due to insufficient revenues or borrower default, PFC incurs no financial penalty and does not guarantee the full Rs. 139 crores; or

- b. As a signatory and controller of the TRA (where 95% debt is held jointly with REC), PFC has an implied duty to implement the mechanism faithfully. The MoM’s irrevocability clause (*“shall not be suspended... except by mutual written agreement of all the parties hereto”*) binds PFC to ensure monthly payments are made “directly from TRA” starting from 3 months post-energisation, regardless of disputes or new investors. If PFC delays the release or withholds funds, it could be liable for damages or interest under breach provisions. This interpretation sees PFC as having “joint” operational liability for the mechanism’s execution, potentially exposing it to claims from ABB if revenues are available but not disbursed (e.g., Rs. 5.61 crores/month as “made available”); or
- c. A broader reading could extend “joint and several” liability (explicitly for Isolux/SEUPPTCL toward ABB) to PFC by implication, as the MoM is “binding on all the parties” and PFC is a key signatory who *“confirmed the following mechanism...*



agreed to by ABB and SEUPPTCL and Isolux.” The emphasis on lender support for security creation (assigning 20% of cash flows) and the automatic interest from TRA (without borrower certification) suggests PFC shares risk to prevent project collapse. If the interim mechanism fails, PFC may be jointly liable for the balance (Rs. 139 crores minus payments), especially since PFC “agreed” to make funds “available” and release BGs. The good-faith clause and precedence over the original contract reinforce this, potentially making PFC liable for damages if it benefits from project continuation; or

- d. The MoM ties full settlement to “additional equity infusion... along with pro-rata debt disbursement,” where PFC (as lender) controls disbursements. If PFC withholds debt release pending equity (delaying payments to ABB), it could be interpreted as liable for the resulting delays, including 12% interest on deferred amounts. The clause that the mechanism “*will last until the whole amount... has been received by ABB*” implies PFC’s ongoing role in monitoring and enforcing equity infusion.

41. The possible interpretations mentioned hereinabove are not exhaustive, and are only based on a preliminary reading of the Minutes of Meeting (MoM). The final determination of the intent of the parties and their corresponding liability requires examining other documents, conduct, and evidence. Nonetheless, the possible interpretations are only illustrative of the fact that the document sought to be enforced herein is susceptible to various meanings which could significantly define the nature and extent of the



respective liabilities of the parties.

42. Furthermore, another inherent aspect that requires adjudication is the applicability of the doctrine of privity, which generally limits the enforcement of contractual rights and obligations to the contracting parties, excluding third parties, save in exceptional cases. Being a party to a contract means participation in mutual assent to its terms and obligations, while privity defines who can enforce or be bound by the contract. In this case, the key issue is whether the Defendants, by signing the MoM and disbursing funds, became contracting party or acted only as facilitators/confirming party. This requires a detailed examination of the MoM and related evidence, which cannot be decided in a summary proceeding.

43. Thus, issue(s) necessitates a careful examination of the Minutes of Meeting, the surrounding correspondence, and evidence, and such an inquiry, being inherently fact-intensive, is ill-suited for resolution in a summary proceeding.

44. On a holistic assessment, this Court finds that the issues of:-

- (i) admissibility of the MoM;
- (ii) nature of liabilities undertaken by the parties as per the MoM;
- (iii) privity of contract between the parties;
- (iv) non-joinder of SEUPPTCL and Isolux;
- (v) the jurisdictional bar under the IBC; and
- (vi) quantification of the claim;

all constitute serious triable issues. It cannot be said that the Defendants have “no real prospect” of defending the suit. On the contrary, the defences raised are *bonafide* and substantial, and the matter must proceed to trial.

45. Before parting, it would be apposite to note that the remedy under



Order XIII-A of CPC is certainly an exceptional remedy which permits the Court to decide a claim without recording oral evidence.

46. It contemplates a deviation from the standard rule, which ordinarily permits the parties to lead both oral and documentary evidence to prove the case. Whereas, the legislative intent behind the Order is well understood, i.e., to adjudicate the rights and liabilities of the parties with expedition, where no real dispute exists between the parties and documents are sufficient to adjudicate.

47. However, the Order is couched with ample preconditions and safeguards to ensure that summary adjudication does not turn into reckless adjudication.

48. Order XIII-A of CPC, *inter alia*, is meant to deal with cases where there is no necessity for leading oral evidence. The documents relied upon by the parties are sufficient to bring out the real dispute between them. It requires both parties to enlist the documents sought to be relied upon, as well as to place them on record, so as to arrive at a final assessment of the issues. If, on an examination of the documents sought to be relied upon by the parties, the Court finds that the contesting party has ‘*no real prospect*’ of defending the claim, it may dispense with the oral evidence and proceed to pass a summary judgment on the basis of documents.

49. However, if the documents relied upon by the parties are susceptible to conflicting interpretations and require judicial construction, it would not be prudent to decide the claim on the basis of such documents. For, in such cases, oral evidence, possibly of the executing parties of the said documents, would certainly come to the aid of the Court as well as of the parties in determining the real purport of the documents.



50. Experience has been the life of law, and in cases involving equivocal, ambiguous, and conflicting documents, experience dictates that the truth of the matter could only be brought out by resorting to explanatory oral evidence and cross-examination of the parties associated with the transaction.

51. For these reasons, the present application under Order XIII-A CPC is found to be without merit and is accordingly dismissed. The factual controversy involved herein renders it wholly undesirable to pass a summary judgment under Order XIII-A of CPC.

52. The observations made herein are confined solely to the adjudication of this application and shall not prejudice the merits of the case at trial.

53. No costs.

CS (COMM) 648/2021

Let the matter, along with the pending applications, be listed before the concerned Joint Registrar on 11.11.2025 for further steps, in accordance with law.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 09, 2025

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