

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(APPELLATE JURISDICTION)

Company Appeal (AT) (Insolvency) No. 1258 of 2023

[Arising out of the Impugned Order dated 05.07.2023 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh in IA No. 164/2021 in CP (IB) No. 102/Chd/Chd/2018 (Admitted Matter)]

In the matter of:

Punjab State Power Corporation Limited

(Through its Managing Director)

The Mall, PSEB Head Office,

Patiala, Punjab 147001

...Appellant

Versus

Akums Lifesciences Limited

(Formerly known as Parabolic Drugs Limited)

S.C.O. 186-187, Second Floor,

Sector 8-C, Chandigarh IN-160008

...Respondent

Present :

For Appellant : Ms. Shivani Verma, Advocate.

For Respondents: Mr. Dilip Kumar Niranjana, Mr. Karmveer, Mr. Nikhil Kumar Singh, Advocates.

J U D G M E N T
(Hybrid Mode)

[Per: Ajai Das Mehrotra, Member (Technical)]

The present appeal has been filed by Punjab State Power Corporation Limited ("PSPCL", hereinafter referred as "Appellant") against the order of Ld. NCLT, Chandigarh in IA No. 164/2021 in CP (IB) No. 102/Chd/Chd/2018 (Admitted Matter) dated 05.07.2023 filed under Section 60(5) of the Insolvency

and Bankruptcy Code, 2016 (hereinafter referred as IBC, 2016) by Akums Lifesciences Limited (earlier known as “Parabolic Drugs Limited”, hereinafter referred as “Corporate Debtor” or as “Respondent”), wherein the Ld. NCLT nullified the outstanding dues payable to the Appellant for the period prior to initiation of Corporate Insolvency Resolution Process (hereinafter referred as “CIRP”).

2. The brief facts of this case as recorded in the order of Ld. NCLT are as under:

i. The CIRP was initiated against the Corporate Debtor vide order dated 23.08.2018. The resolution plan was approved on 12.01.2021. The management and control of the company was transferred to Successful Resolution Applicant (hereinafter referred as “SRA”) and the name of the company was changed. The SRA approached the Appellant to restore the electricity connection. However, the Appellant stated that an amount of Rs. 3,87,96,889/- is outstanding on account of non-payment of electricity dues by the Corporate Debtor. The SRA subsequent to approval of the resolution plan had already made payment to the Operational Creditors whose claims were admitted by the Resolution Professional.

ii) In the impugned order in IA No. 164/2021 filed by SRA, the Ld. NCLT held that the resolution plan is already approved by the Adjudicating Authority and the pre-CIRP dues are treated as settled. The Respondent had failed to file its claim before the Resolution Professional and the approved resolution plan clearly states that the amounts provided in the resolution plan for Operational Creditors is in full and final settlement of their claims. It was held that post approval of the resolution plan no claim of the respondent Electricity Company pertaining to the pre-CIRP period subsists. The electricity was already restored and the Ld.

NCLT directed that the outstanding dues of the Corporate Debtor for the period prior to CIRP be nullified.

3. In its oral and written submissions, the Learned Counsel for the Appellant submitted as under:

- i. The Ld. NCLT has no jurisdiction over disputes involved in supply of electricity by PSPCL, which is governed by the provisions of Electricity Act, 2013.
- ii. It was submitted that Ld. NCLT does not have jurisdiction post the completion of the resolution process.
- iii. It was submitted that Ld. NCLT has no authority to grant waiver of outstanding statutory dues and to issue direction to provide electricity connection to an entity and interfere in the right of PSPCL to refuse connection to a premises where amounts were due and not paid in the past.
- iv. It was submitted that these disputes fall under the Electricity Act, 2003, and the Rules made therein, and cannot be dealt with under the provisions of the Companies Act, 2013 or IBC, 2016. The issue before NCLT was essentially relating to reconnection of electricity and the reconnection was ordered on 28.02.2018 against the deposit of amount by the Corporate Debtor, but the Corporate Debtor failed to deposit any amount. Subsequently, the Corporate Debtor paid an amount of Rs. 89,82,000/- (being 25% of the outstanding dues), but the cheque got dishonoured.
- v. It was submitted that subsequently, the Corporate Debtor was admitted into CIRP on 23.08.2018 and the Ld. NCLT on 17.10.2018 directed PSPCL to restore connection to the Corporate Debtor upon deposit of Rs. 1,00,000/-. Since even this amount was not deposited, restoration was not done. On 12.01.2021, the Ld. NCLT approved the resolution plan and the plan did not deal in any

manner with the electricity connection. On 20.03.2021, the Corporate Debtor deposited the entire default amount with PSPCL and the electricity connection was restored. The Corporate Debtor could not have invoked the jurisdiction of Ld. NCLT to examine transactions that have taken place between the parties post the approval of the resolution plan.

vi. It was submitted that the issue relating to disconnection of electricity began on 04.12.2017, much prior to CIRP proceedings and was within the exclusive jurisdiction of the Punjab State Electricity Regulatory Commission (hereinafter referred as "PSERC"). The waiver of pending dues is not within the power of the Ld. NCLT and reference was made to decision in the case of "*Vikram Sanghvi v. Bank of Baroda and Ors.*, 2021 SSC OnLine NCLT 298, paras 18, 20, 21".

vii. It was submitted that the Corporate Debtor cannot seek refund on the basis of any subsequent order and is estopped from claiming the amount back. Reference in this connection was made to the judgment of Hon'ble Supreme Court in the case of "*Paschimanchal Vidyut Vitran Nigam Limited and Ors. v. DVS Steels and Alloys Private Limited and Ors.*, (2009) 1 SCC 210, para 17".

viii. It was submitted that non-consideration of claims existing in the books of accounts of the Corporate Debtor, in absence of claim filed, can lead to inequitable and unfair resolutions and PSPCL being a government body involved in public utility services, it is not possible for it to practically check if the companies supplied with electricity by it have gone in CIRP or not.

ix. It was submitted that the resolution plan erroneously did not provide for the manner in which electricity connection is to be restored/provided by PSPCL.

The Committee of Creditors (hereinafter referred as “CoC”) should have, in its commercial wisdom, considered this.

x. It was submitted that under Electricity Act, 2003, the Appellant is entitled to seek clearance of pending dues, even that of a previous consumer, in respect of a given premises.

xi. It was submitted that the Respondent can have taken electricity from some other sources like a captive power plant or from a third party. The condition that for any premises, even a new consumer is required to pay the dues of the past owner to have an electricity connection has been reiterated in a number of decisions, including in the recent decision in the case of “*K C Ninan v. Kerala State Electricity Board & Ors., 2023 SCC OnLine SC 663, paras 90 to 94 and 341*”.

xii. It was submitted that PSPCL’s pre-condition to clear previous electricity dues by the Corporate Debtor before restoration of electricity was valid in law.

4. In its oral and written submissions, the Learned Counsel for the Respondent submitted as under:

i. The Respondent is SRA in the CIRP process of Parabolic Drugs Limited (now Akums Lifesciences Limited). The resolution plan was approved by the Ld. NCLT on 12.01.2021 and the Respondent had approached the office of the Appellant for restoration of electricity connection to re-start the production facility. The Appellant stated the amount of Rs. 3,87,96,889/- was outstanding on account of non-payment of electricity bills by the Corporate Debtor. These outstanding dues pertain to the year 2017 and 2018 i.e. period prior to commencement of CIRP.

ii. The Respondent filed an interim application before the Ld. NCLT. The Respondent paid Rs. 3.88 crores to the Appellant on 19.03.2023 *under protest*

to obtain the electricity connection in order to revive the operations and production of the resolved company.

iii. It was submitted that the Ld. NCLT disposed of the IA vide the impugned order dated 07.07.2023 stating that the Appellant had failed to file its claim for pre-CIRP dues before Resolution Professional. It was submitted that the Appellant was aware of the CIRP and had not filed the claim in prescribed form.

iv. It was submitted that there was no dispute that the amount of Rs. 3,87,96,889/- relates to dues of the pre-CIRP period.

v. It was submitted that once the plan has been approved, all pre-CIRP expenses/debt got extinguished. The Respondent has already made payment to stakeholders in accordance with the resolution plan. As per Sub-section (1) of Section 31 of the IBC, 2016, an approved resolution plan is binding on all the stakeholders. The judgments in the case of *“Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited, (2021 9 SCC 657”* and in the case of *“M/s Ruchi Soya Industries Limited v. Union of India and Ors.”* were cited in respect of the arguments that the dues of the pre-CIRP get extinguished on approval of the resolution plan.

vi. It was submitted that as per Section 238 of the IBC, 2016, the provisions of the IBC prevail over any other law and the provisions of IBC shall prevail over Electricity Act, 2003 as held by the Hon’ble Supreme Court in *“Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Private Limited, Civil Appeal No. 7976 of 2019”*. This Tribunal had already adhered the supremacy of IBC over Electricity Act, 2003 in the case of *“Eastern Power Distribution Company of Andhra Pradesh*

Limited v. Maithan Alloys Limited & Ors., Company Appeal (AT) (Ins.) No. 961 of 2021”.

vii. It was submitted that the NCLT had jurisdiction to look into matter of Corporate Debtor relating to CIRP even after approval of the resolution plan. Thus, it was submitted that in view of the above submissions, the appeal be dismissed with exemplary cost.

5. We have heard the Learned Counsels for the Appellant and the Respondent and have perused the record including the judgments cited by both sides.

6. The issues for decision before us are as under:

- a) Whether the NCLT has jurisdiction to decide the issue after the approval of the resolution plan?
- b) Whether the dispute regarding the demand for payment of arrears relating to the Corporate Debtor by the Successful Resolution Applicant, after the approval of the resolution plan, can be dealt only under the Electricity Act, 2003, and the Rules made therein, and cannot be adjudicated under the IBC, 2016?
- c) Whether the Successful Resolution Applicant is liable to pay the arrears of electricity dues for the pre-CIRP period of the Corporate Debtor, even though no claim is filed by the electricity company in CIRP and no such provision is made in the resolution plan?

7. (i) On the first issue, the Appellant has relied on the judgement in the case of *Vikram Sanghvi v. Bank of Baroda (2021) SCC OnLine NCLT 298* wherein it is held in para 18 to 21 that reliefs and concessions which do not hinder the proper implementation of resolution plan should be sought from relevant competent authorities. This judgement is not applicable to the facts of this case, as the

electricity supply is essential for resurrecting the corporate debtor and the issue here is altogether different and related to the claim relating to the Pre-CIRP dues.

7. (ii) It will be relevant here to refer to the provisions of the IBC, 2016 as contained in Sub-section 5 of Section 60. The said Sub-section is reproduced below:

“Section 60. Adjudicating Authority for corporate persons.

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

- (a) any application or proceeding by or against the corporate debtor or corporate person;*
- (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and*
- (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.”***

7. (iii) The plain reading of the above provisions of Section 60(5)(c) clearly indicates that the NCLT is empowered to adjudicate any question of priorities or any question of law or facts **arising out of or in relation to the insolvency resolution** of the Corporate Debtor. The Hon’ble Supreme Court in the case of *Gujarat Urja Vikas Nigam Limited vs. Amit Gupta & Company & Ors.*, (2021) 7 SCC 209 has stated as under:

“69. *The institutional framework under IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. In the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debtor would have*

to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful reorganisation or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner. Pursuing this theme in Innoventive this Court observed that: (SCC p. 422, para 13)

"13. One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process"

The principle was reiterated in ArcelorMittal where this Court held that: (SCC p. 88. para 84)

"84.... The non obstante clause in Section 60(5) is designed for a different purpose to ensure that NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings."

Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor. However, in doing so, we issue a note of caution to NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the corporate debtor. The nexus with the insolvency of the corporate debtor must exist."

7. (iv) The Hon'ble Supreme Court in the case of *Arcelormittal India Pvt. Ltd. v. Satish Kumar Gupta & Ors.* (2019) 2 SCC 1, para 84, has held as under:

"84. *If, on the other hand, a resolution plan has been approved by the Committee of Creditors, and has passed muster*

before the adjudicating authority, this determination can be challenged before the appellate authority under Section 61, and may further be challenged before the Supreme Court under Section 62, if there is a question of law arising out of such order, within the time specified in Section 62. Section 64 also makes it clear that the timelines that are to be adhered to by the NCLT and NCLAT are of great importance, and that reasons must be recorded by either the NCLT or NCLAT if the matter is not disposed of within the time-limit specified. Section 60(5), when it speaks of the NCLT having jurisdiction to entertain or dispose of any application or proceeding by or against the corporate debtor or corporate person, does not invest the NCLT with the jurisdiction to interfere at an applicant's behest at a stage before the quasi-judicial determination made by the adjudicating authority. The non obstante clause in Section 60(5) is designed for a different purpose: to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings.”

7. (v) The Hon’ble Supreme Court in Gujarat Urja Vikas Nigam Limited (*supra*) had held that NCLT has jurisdiction to adjudicate disputes which arise solely from or which relate to insolvency of the Corporate Debtor. However, the Hon’ble Supreme Court cautioned that there should be a clear nexus with the insolvency of the Corporate Debtor for NCLT and NCLAT to exercise jurisdiction under Section 60(5)(c).

7. (vi) In the present case, the dispute is regarding payment of arrears of pre-CIRP period, by the SRA after the approval of the resolution plan.

7. (vii) Once the resolution plan is approved its binding on the Corporate Debtor, its employees, members, creditors including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under a law for a time being in force, such authorities to whom statutory

dues are owned, guarantors and other stakeholders involved in the resolution plan as per provisions of Sub-section (1) of Section 31 of IBC, 2016. The said provisions of Section (1) of Section 31 are reproduced below for ready reference:

“Section 31: Approval of resolution plan.

31. (1). If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.”

7. (viii) Whether the SRA is liable to pay past electricity dues of pre-CIRP period of the Corporate Debtor, even after approval of the resolution plan and taking over of the Corporate Debtor, is an issue directly arising from approval of the resolution plan and its successful implementation. The NCLT has jurisdiction to entertain or dispose of any application or proceeding by or against the Corporate Debtor arising out of or in relation to the insolvency resolution. This position has been reiterated in recent judgment of this Tribunal in the case of *Damodar Valley Corporation Vs. Mackeill Ispat & Forging Ltd. & Anr., Company Appeal (AT) (Insolvency) No. 1663 of 2023 dated 06.02.2025*. We hold that NCLT has jurisdiction to decide the issue relating to pre-CIRP outstanding electricity dues.

8. (i) On the second issue, whether the disputes relating to supply of electricity and arrears of electricity dues can be adjudicated only under the Electricity Act,

2003, or can be adjudicated under the IBC, 2016, when the issue relates to resolution of insolvency of the Corporate Debtor, it will be relevant here to refer to Section 238 of IBC, 2016 which reads as under:

“Section 238: Provisions of this Code to override other laws.

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

8. (ii) This Tribunal in the case of *Madhya Gujarat Vij Company Ltd. v. Kalptaru Alloys Pvt. Ltd.*, (2018) SCC NCLAT 550 decided on September 24, 2018 has held that in view of Section 238 of the IBC, 2016, the provisions of Gujarat Electricity Regulatory Commission (Electricity Supply Code and related matters) Regulations, 2015 cannot override the provisions of IBC, 2016. The relevant portion of the judgement is reproduced below:

“3. *It was next contended that under the provisions of 'Gujarat Electricity Regulatory Commission (Electricity Supply Code and related matters) Regulations, 2015', no electrical connection can be restored in favour of the 'Corporate Debtor' till the total amount due to the Electricity Company (appellant herein) is paid. However, such submission cannot be accepted in view of the provisions of Section 31 of the I&B Code, which reads as follows:*

"31. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements

referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under subsection (1),-
(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and
(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.”

From the aforesaid provision, it is clear that the 'Resolution Plan' is binding on the 'Corporate Debtors', 'Financial Creditors', 'Operational Creditors' and all other 'stakeholders' including 'guarantors'. The provision of Section 31 being binding on the appellant 'Operational Creditor', in view of Section 238 of the I&B Code, the provisions of 'Gujarat Electricity Regulatory Commission (Electricity Supply Code and related matters) Regulations, 2015', cannot override the same.

4. *As per the approved Resolution Plan' a sum of Rs. 80.80 Lakhs is payable to the appellant (Operational Creditor). The said amount having paid by the successful 'Resolution Applicant', the appellant in its turn is required to restore the electricity connection of the 'Corporate Debtor'. We find no merit in this appeal. It is accordingly dismissed. No cost.”*

(Emphasis Supplied)

8. (iii) The Hon'ble Supreme Court in the case of *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Private Limited & Ors. in Civil Appel Nos. 7976 of 2019* has held that the provisions of IBC, 2016 override the provisions of the Electricity Act, 2003. The relevant portion of the judgment is reproduced below:

“52. The views expressed by the present judgment finds support in the decision reported as Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs. In that case, Section 142A of the Customs Act 1962 was in issue – authorities had submitted that dues payable to it were to be treated as ‘first charge’ on the property of the assessee concerned.

In the resolution process, it was argued that the Customs Act, 1962 acquired primacy and had to be given effect to. This court, after noticing the overriding effect of Section 238 of the IBC, held as follows:

“55. For the sake of clarity following questions, may be answered as under: (a) Whether the provisions of the IBC would prevail over the Customs Act, and ifso, to what extent? The IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act. (b) Whether the respondent could claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated? Answered in negative. 56. On the basis of the above discussions, following are our conclusions: (i) Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act. (ii) After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority. (iii) In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC.”

Similarly, in Duncans Industries Ltd. v. AJ Agrochem, Section 16G of the Tea Act, 1953 which required prior consent of the Central Government (for initiation of winding up proceedings) was held to be overridden by the IBC. In a similar manner, it is held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non-obstante clauses (i.e., Section 173 and 174). The position of law with respect to primacy of the IBC, is identical with the position discussed in Sundaresh Bhatt and Duncan Industries (supra) [refer also: Innoventive Industries (supra), CIT

v. Monnet Ispat & Energy Ltd., Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., and Jagmohan Bajaj v. Shivam Fragrances Private Limited].”

(Emphasis Supplied)

8. (iv) On the issue whether PSERC has exclusive jurisdiction over the Electricity dues, being statutory in nature under Electricity Act, we would also like to refer to the judgment of Meghalaya High Court in *Reliance Infratel Ltd. and Anr. v. State of Meghalaya and Ors [WP(C) No. 238 of 2023]* wherein the Court has affirmed the overriding nature of IBC Code, 2016 over the Electricity Act, 2003 and has held that IBC would prevail over Electricity Act. The relevant part of the judgment is reproduced below:

“15. In this backdrop, what unfolded thereafter, was on the application of the petitioner No. 1, for a permanent power connection before the respondent No. 2, the same was declined vide letter dated 29.03.2023, on account of pending dues of the petitioner No. 1, i.e. formally Reliance Telecom, and the petitioner was called upon to clear all dues in order to acquire any new connection. At this juncture, it would be useful to refer to Section 238 of the I&B Code, which provides that this Code shall override other laws. The same is reproduced hereinbelow:-

"238. Provisions of this Code to override other laws.- The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

*16. This provision is crucial, as a ground had been set up by the respondent No. 2 that electricity dues being statutory in character under the Electricity Act 2003, the same cannot be waived in view of Section 56 of the said Act. However, though electricity dues admittedly, and as held by the Supreme Court in the case *Telangana State Southern Power Distribution Company Ltd. & Anr. vs. Srigdhaa Beverages (supra)* are statutory in character and cannot be waived, the interplay of Sections 31 and 238 of the*

I&B Code and the circumstances surrounding the case, have to be given due consideration. This observation has been made in view of the fact that the respondent No. 2, did not participate in the resolution process and as such, as per Section 31 is bound by the same. The dues claimed by the respondent No. 1, are for the periods prior to the effective date i.e. 22.12.2022, which on the approval of the Resolution Plan, on no claim being made by the respondent No. 2, would therefore stand extinguished. In the considered view of this Court, Section 56 of the Electricity Act will not be attracted, as it is not a case where the petitioner No. 1, after the effective date, has neglected to pay any charge of electricity, or that any amount is due. For easy reference Section 56 of the Electricity Act, 2003 is reproduced hereinbelow:-

"56. Disconnection of supply in default of payment: --

(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-

*(a) an amount equal to the sum claimed from him, or
(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.*

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such

sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

As such, the dues not attributable to the petitioner No. 1 after the effective date, and no claim having been made against the Corporate Debtor, and further Section 238 having an overriding effect on all other laws, the stand of the respondent No. 1 that the petitioners are liable to pay in terms of Section 56 of the Electricity Act is therefore, unsustainable."

(Emphasis Supplied)

8. (v) In view of the provisions of Section 238 of IBC, 2016 and the guidelines given in the judicial decisions discussed above, we hold that provisions of the IBC, 2016 over ride the provisions of Electricity Act, 2003, and the issue of payment of pre-CIRP electricity dues of corporate debtor by the SRA is an issue which can be decided by the NCLT u/s 60(5)(c) of IBC, 2016

9. (i) Regarding the third issue, we find that the Successful Resolution Applicant has taken over the Corporate Debtor and its commitment made in the resolution plan does not include any payment towards the electricity dues of the Corporate Debtor. As per scheme of IBC, 2016 the creditors relating to pre-CIRP period are required to file claim before the Resolution Professional (RP) regarding the debt payable by the Corporate Debtor. In the present case, no claim was filed by the Appellant electricity company and there was no commitment in the resolution plan to pay any amount towards pre-CIRP electricity dues.

9. (ii) The Appellant has cited decision of Hon'ble Supreme Court in "*K C Ninan v. Kerala State Electricity Board & Ors.*, 2023 SCC OnLine SC 663" in his favour, which recognises the authority of electricity company to seek payment of electricity arrears relating to a premises from successor owner of the premisses.

However, the said judgement does not deal with the resolution under IBC, 2016 wherein on approval of resolution plan all pre-existing debts, for which no claim is filed, are extinguished. Further, section 238 of IBC, 2016 specifically gives overriding effect to IBC, 2016 over other laws.

9. (iii) Once the resolution plan has been approved, the SRA cannot be foisted with any additional liability of the pre-CIRP period. In the judgments in the case of (a) *Tata Power Western Odisha Distribution Ltd. (TPWODL) & Anr. Vs. Jagannath Sponage Pvt. Ltd., Civil Appeal No. 5556 of 2023* and (b) *Southern Power Distribution Company of Andhra Pradesh Ltd. vs. Gavi Siddeswara Steels (India) Pvt. Ltd. and Another in Civil Appeal No. 5716-5717 of 2023*, the Hon'ble Supreme Court has held that power distribution company cannot insist on the payment of arrears for the purpose of the restoration of the electricity connection and such a matter would fall within the ambit of Section 60(5)(c) of the IBC, 2016.

9. (iv) This Tribunal, in the case of *Yarn Sales Corporation Vs. Punjab State Power Corporation Ltd.* in Company Appeal (AT) (Ins.) No. 292 of 2024 has held that power distribution company cannot insist on payment of past dues to restore electricity. A similar view was taken by this Tribunal in the case of *Twentyone Sugars Limited vs. Maharashtra State Electricity Distribution Co. Ltd. in Company Appeal (AT) (Ins.) No. 487 of 2023*.

9. (v) In the present case the Appellant had not even filed its claim before the RP and it cannot be permitted to benefit from of its failure to file the claim and yet be paid pre-CIRP dues for restoring the electricity. The SRA had made payment under protest only under the compulsion to get the electricity restored and to make the Corporate Debtor to restart its business, which is one of the

primary aim of the IBC, 2016. The Appellant is barred from seeking arrears of the amount that stands extinguished by operation of law as pre-condition to restoring the electricity connection.

10. We find that the impugned order nullifying the outstanding dues of electricity for the period prior to CIRP is correct in law and calls for no interference. We find no merit in the present appeal and the same is dismissed. All connected pending applications, if any, are disposed of. No order as to costs.

[Justice Yogesh Khanna]
Member (Judicial)

[Mr. Ajai Das Mehrotra]
Member (Technical)

Place: New Delhi

Dated: 25.02.2025

Ram N.