NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1663 of 2023

[Arising out of Order dated 14.09.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Court – I), in I.A (IB) No. 1336/KB/2022 in I.A (IB) No. 463/KB/2022 in C.P (IB) No. 213/KB/2019]

IN THE MATTER OF:

Damodar Valley Corporation
A corporation constituted under the
Damodar Valley Corporation Act,
being At No. XIV of 1948.
Having its registered office at
The DVC Towers, VIP Road,
Kolkata-700054, (West Bengal) **...Appellant**

Versus

1. Mackeil Ispat & Forging Ltd.
A Private Limited Company
Having Registered Office At:
Siddha Weston, 9 Weston Street,
2nd Floor, Room No. 203,
Kolkata- 700013 West Bengal. **...Respondent No. 1**

2. Samriddhi Metal Private Limited
A Private Limited Company
Having Registered office at: Unit No- 401,
104, S.P. Mukherjee Road.
Kolkata, West Bengal – 700026. **...Respondent No. 2**

Present:

For Appellant	:	**Ms. Madhumita Bhattacharjee, Advocate.**
For Respondents	:	**Mr. Diwakar Maheshwari, Ms. Pratiksha Mishra and Mr. Karan Bhootra, Advocates for R-1.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by the Appellant has been filed challenging the Order dated 14.09.2023 passed by the (National Company Law Tribunal, Kolkata Bench, Court I) in I.A. No.1336/2022 and I.A. No. 463/2022 in C.P. (IB) No. 213/2019.

2. Brief facts giving rise to the Appeal are as follows:

i. The Corporate Debtor, Mackeil Ispat & Forging Ltd. under Power Purchase Agreement dated 14.12.2009 was receiving supply of electricity from Appellant for industrial purposes.

ii. A Section 7 Application was admitted against the Corporate Debtor on 03.02.2020 on an Application filed by the State Bank of India (SBI).

iii. The Appellant disconnected the electricity on 19.02.2020.

iv. An I.A. No. 692/2020 was filed by the Resolution Professional (RP). On 19.10.2020, Adjudicating Authority directed the Appellant to restore the electricity in the premises within 7 days of payment of all consumption charges pertaining to the Moratorium period.

v. The Appellant on 13.11.2020 has filed its claim to the RP, which was admitted to the extent of ₹ 2,32,13,387/-.

vi. A Resolution Plan was approved by the Committee of Creditors (CoC) on 21.09.2021. As per the Resolution Plan, the Appellant offered to make payment of ₹4,64,003/-. The Resolution Plan was approved by the Adjudicating Authority vide Order dated 21.09.2021. By the Order approving the Resolution Plan, the Adjudicating Authority also granted certain reliefs and concessions.

vii. On 29.10.2021, the Corporate Debtor wrote to the Appellant that Corporate Debtor is ready to pay 4.643 Lakhs to the Appellant as per the Order dated 21.09.2021, on which power supply from the Appellant be restored to the factory. On 03.11.2021, Appellant wrote to the Respondent No.1 to comply with the Order.

viii. On 07.12.2021, Respondent No.1 informed the Appellant that they have made the payment of ₹4,64,300/- on 02.11.2021 and ₹7,55,785/- on 05.11.2021 towards the clearing arrears of electricity bills.

ix. In letter dated 03.11.2021, the Appellant informed that the due amount payable to DVC is ₹1,72,23,024/- as on 31.03.2021.

x. On 07.12.2021, Respondent wrote to the Appellant about payments made on 02.11.2021 and 05.11.2021. It was also stated that Respondent need resumption of power supply on top priority in the week concerned.

xi. On 07.12.2021, the Appellant informed the Respondent for payment of balance amount of ₹1,60,12,774/- Security Deposit of ₹1,35,15,000/- and payment of the connection charges.

xii. Appellant further informed on 05.01.2022, that DVC has granted ten number of instalment for payment of amount.

xiii. A new Power Purchase Agreement 03.01.2022 was entered into between the Parties.

xiv. On 13.05.2022, the Respondent filed an I.A. No. 463/KB/2022, praying for refund of the amount of ₹1,88,02,539/- wrongfully recovered from the R-1 on account of pre-CIRP dues and delayed payment surcharge.

Direction was also sought to the Appellant to act in a strict compliance of the Order dated 21.09.2021.

xv. In the Application, a Supplementary Affidavit was also filed by the Applicant, bringing on record certain other demands raised by the DVC.

xvi. A Reply was filed by the Appellant to the I.A. Both the Applications were heard by the Adjudicating Authority being I.A.1336/2022 and I.A.463/2022. After hearing the Parties, the Adjudicating Authority allowed both the Applications. Adjudicating Authority directed the DVC to refund the amount received by it which was a pre-CIRP, including the delayed payment charges thereon within one month and further DVC was not to disconnect supply without following due course of law.

xvii. Aggrieved by the aforesaid Order passed by the Adjudicating Authority, this Appeal has been filed.

3. We have heard Learned Counsel Ms. Madhumita Bhattacharjee appearing for the Appellant and Learned Counsel Mr. Divakar Maheshwari appearing for the Respondent No.1.

4. Learned Counsel for the Appellant challenging the Impugned Order submits that after approval of the Resolution Plan on 21.09.2021, the Respondent No.1 of its own entered into new Power Purchase Agreement on 13.05.2022 and had paid the outstanding dues. The Appellants were bound to receive the amount outstanding against the Corporate Debtor before resuming supply of the electricity by virtue of WBERC (Electricity Supply Code Regulations) dated 07.08.2013 and Respondent No.1, having entered into the Agreement and made the payment, it has no authority or jurisdiction to file an Application for refund of the payment. It is submitted that issue which arose out of the fresh contract was beyond the jurisdiction of the Adjudicating Authority. Adjudicating Authority committed error in entertaining the Application filed by the Respondent No.1. Learned Counsel for the Appellant has referred to Regulation 4.6.4 of WBERC Regulations. It is submitted that Resolution Plan having been approved and implemented, the process of IBC comes to an end and after entering into a new Power Purchase Agreement, there was no right in the Respondent to file Applications before the Adjudicating Authority and Adjudicating Authority has committed an error in entertaining the Application and issuing the directions. It is submitted that Respondent entered into new Power Purchase Agreement with his eyes open, and they are now bound by doctrine of estoppel. Under the new Power Purchase Agreement dated 03.01.2022, Respondent No. 1 has agreed to pay all liabilities of Mackeil Ispat & Forging Ltd., which may accrue in light of the new Agreement, therefore, the Appellant is now stopped to raise such claims of refund as payment. Respondents cannot be allowed to approbate and reprobate.

5. Learned Counsel for the Respondent replying the submission of the Appellant submits that Appellant having filed its claim in the CIRP of the Corporate Debtor and having received its amount which was granted under the Resolution Plan, all pre-CIRP dues stand extinguished and after receiving the amount granted under the Resolution Plan approved by the Adjudicating Authority, the insistence of Appellant to pay the outstanding dues payable of pre-CIRP is wholly illegal and unauthorised act on part of the Respondent No.1. It is submitted that Respondent No. 1 has written on 29.10.2021 for resumption of power supply after payment of ₹4.643 Lakhs as per NCLT Order dated 21.09.2021. Respondent asked the Appellant to inform as what else to be required to be done. In reply to the letter dated 29.10.2021, Appellant claimed payment to DVC of ₹1,72,23,024/- which included the pre-CIRP dues, which also stood extinguished in the CIRP process. The Respondent had no option left except to agree to illegal and unwarranted demand of Appellant to pay pre-CIRP dues and thus agreed to pay the instalments. The Adjudicating Authority has ample jurisdiction to entertain the Application filed by the Respondent No.1. The resumption of supply which was in favour of the Corporate Debtor, which has been now taken by the Successful Resolution Applicant (SRA) arose out of Insolvency Resolution Process and the submission of the Appellant that Application was not maintainable before the Adjudicating Authority is incorrect. The act of Appellant demanding the payment which stood extinguished in the CIRP process can very well be examined and entertained by the Adjudicating Authority and the Order passed by the Adjudicating Authority is well within its jurisdiction.

6. Learned Counsel for both the Parties have relied on the Judgments of this Tribunal and Hon'ble Supreme Court, which we shall refer while considering the submissions.

7. From the pleadings of the facts, following facts are undisputed:

i. CIRP against the Corporate Debtor commenced on 03.02.2020. The Corporate Debtor was receiving supply from Appellant as per Power Purchase Agreement, 14.12.2009.

ii. After insolvency commencement on 19.02.2020, the power supply was disconnected which was restored subsequent to the Order dated 19.10.2020 passed by the Adjudicating Authority. The Appellant filed its claim before the RP on 30.11.2020. RP admitted the claim to the extent of ₹2,32,13,387/-. The Resolution Plan was approved by the Adjudicating Authority on 21.09.2021.

iii. As per the Resolution Plan under the distribution mechanism, the Appellant was allocated amount of ₹4,64,003/- against its admitted claim of ₹2,32,13,387/-. The amount approved by the Resolution Plan was paid by the Respondent No.1 on 02.11.2021. The Order of the Adjudicating Authority approving the Resolution Plan also granted certain relief and concession to the SRA.

8. It is useful to notice Paragraph 24 Item No.1 of the Order of Adjudicating Authority dated 21.09.2021 which is relevant for the present case:

> *"24. The Reliefs, Exemptions and Waivers sought by the Resolution Applicant from the Adjudicating Authority are set out below for the successful implementation of the Resolution Plan. The orders thereon are indicated against each.*

Sl. No.	***Relief, concessions and approvals sought***	***Orders thereon***
1.	*All utility suppliers, including but not limited to DVC, shall commit supplies on and from the Effective Date No utility supplier, including but not limited to DVC, should withhold delay supply of*	*Granted in terms of the Ghanashyam Mishra and Sons Pvt Lady Edelweiss Asset Reconstruction Company Ltd, wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating*

	utility on the ground of non-payment of dues prior to the Effective Date. The Resolution Applicant proposes to revive the unit and to resume production facilities to achieve the broader objective of the IB Code. It is not feasible to operate the plant without the support & co-operation of utility suppliers, especially DVC. The Resolution Plan, once approved, will be binding on all stakeholders and all the utility suppliers, including DVC, should consider approval of this Resolution Plan as direction of Adjudicating Authority to supply respective utilities, including Power.	*Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued."*

9. The Adjudicating Authority in the Impugned Order has relied on the Judgment of the Hon'ble Supreme Court in the matter of ***'Ghanshyam Mishra & Sons Private Limited' Vs. 'Edelweiss Asset Reconstruction Company Ltd.'*** reported in ***(2021) 9 SCC 657.*** The law declared by the Hon'ble Supreme Court is well settled that the Resolution Plan is binding on all stakeholders. The claim of Appellant of electricity dues pre-CIRP including the payment of delayed charges regarding pre-CIRP stood dealt with in the Resolution Plan by virtue of allocating amount of ₹4,64,003/-. Hence, DVC was not entitled to claim pre-CIRP dues when the SRA applied for resumption of electricity supply. DVC was entitled to take all necessary charges, including security and reconnection charges, but could not have insisted on payment of pre-CIRP dues outstanding on the Corporate Debtor. The correspondence entered between the Parties after the approval of the Resolution Plan has been brought on record in the Reply filed by the Respondent No.1. It is relevant to notice correspondence between the Parties to consider the issues raised between the Parties. On 29.10.2021, the Corporate Debtor wrote to the Appellant for resumption of power supply. Letter dated 29.10.2021 reads as follows:

> *"MIFL/DVC/21-22/01 Date: 29.10.2021*
>
> *The Chief Engineer (Commercial),*
>
> *Damodar Valley Corporation,*
>
> *1st Floor, DVC Towers, VIP Road,*
>
> *Kolkata – 700 054*
>
> ***Subject: Resumption of Power Supply from DVC to our Factory located at Bamunara Durgapur in respect of Consumer No. 440291***
>
> ***Ref: 1. Our letter dt. 18.10.2021***

Dear Sir,

Further to our letter under reference no. 1. We are pleased to place before you that we are going to re-open the concern factory located at Bamunara, Durgapur.

In achieving the above goal, first of all resumption of power supply from DVC is required.

We had stated in Para 4 of our letter under reference no. 1. Any claims/ dues outstanding against Mackeil Inspat & Forging Ltd. till the date of the order approving the Resolution Plan i.e. 21.09.2021 shall be paid in accordance with the said Approved Resolution Plan and will be considered as full & final settlement of all dues till the said date 21.09.2021 as per Section 31(1) of the Insolvency And Bankruptcy Code, 2016."

Therefore, we are ready to pay a sum of Rs. 4,643/- lacs to DVC as approved by NCLT Order no. CP(IB) NO. 213/KB/2019 Dt. 21.09.2021.

We would therefore, request you to kindly let us know what else is required to be submitted to DVC in order to get resumption of 1700 KVA load immediately.

Thanks & Regards,

For Mackeil Ispat & Forging Ltd."

10. The Appellant on 03.11.2021 wrote to the Corporate Debtor referring to its Clause 6.4.4 of the WBERC Regulation and stating that outstanding amount payable to DVC is ₹1,72,23,024/- as on 31.03.2021. The letter dated 03.11.2021 is as follows:

"Coml/MIFL/2267 3rd November 2021

To Director,

Mackeil Ispat & Forging Ltd.

5A / 1A, Lord Sinha Road

2nd Floor, Amarsudha Building,

Kolkata – 700 071

Re: Your Letter dated 29.10.2021

Sub: Resumption of electricity supply at factory premises of M/s Mackeil Ispat & Forging Ltd. Vill: Bamunara, Durgapur, Dist. Paschim Bardhaman.

Dear Mr Saklecha,

We are in receipt of your letter dated 29.10.2021 wherein you have acknowledged the transfer of the ownership, management and control of the business of M/s Mackeil Inspat & Forging Ltd. in favour of M/s Samriddhi Metals Private Limited by virtue of the order dated 21.09.2021 of the Hon'ble Adjudicating Authority of NCLT at Kolkata.

That in compliance to the said order dated 21.09.2021 passed in CP(IB) No. 213/KB/2019, you are requested to pay the sum of Rs. 4,643 lakhs without any further delay.

This is also to inform you that we are bound by Clause 4.6.4 of WBERC (Electricity Supply Code) Regulation dated 07.08.2013 which states as follows. "Notwithstanding anything contained contrary elsewhere in these regulations were deemed termination of agreement has taken place, then o the basis of application of any consumer, new service connection can only be provided in the same premises if the outstanding dues against the deemed terminated consumer is cleared along with the late payment surcharge." The due amount payable to DVC is Rs. 1,72,23,024/- as on 31.03.2021 along with further delayed payment surcharge as applicable in terms of West Bengal electricity Regulatory Commission (Terms and Conditions of Tariff) Regulation, 2011 till the ate of actual payment.

Without prejudice to the foregoing, we would be able to take action for resumption of power supply in the premises of M/s Mackeil Inspat & Forging Ltd. only after the amount due and payable is paid.

Thanking you

Yours sincerely

Sd/-

Chief Engineer (Commercial)"

11. The Corporate Debtor again wrote letter dated 07.12.2021 to the Appellant (email), which letter provides as follows:

"Tue, Dec 7, 2021 at 2:20 PM

To biswajit.mondal@dvc.gov.in

CC:debashis.dey@dvc.gov.in, manik.rakshit@dvc.gov.in

MIFL/DVC/21-22/02

Date: 07.12.2021

Dear Sir,

We had intimated vide our Letter no. MIFL/DVC/21-22/01 dtd. 29.10.2021 that we will ready to pay the sum of Rs. 4,643/- Lacs to DVC as approved by NCLT Order no. CP(IB) NO. 213/KB/2019 dt. 21.09.2021 towards full & final payment of our outstanding dues so that power supply could be resumed immediately.

You had intimated vide your letter no. Coml/MIFL/2267 dt.03.11.2021 that necessary action for the said Power supply will be taken by DVC only receipt of full amount of dues of Rs.1,72,23,024/- all thou you requested us to pay the sum of Rs. 4.63 lakhs in compliance with order dt. 21.09.2021 passed in CP(IB) No.213/kb/2019.

Thereafter we had paid Rs.4,64,300/- on dt. 02/11/2021 vide UTR No. SBIN521306752085 and further Rs.7,55,785.60 on dt.05/11/2021 vide UTR No. SBIN321309860802.

In view of your stand as mention in para-2 above while we need the resumption of power supply on top-priory basis preferably within this week, we have no other option but to agree to your stand on liquidation of arrear dues.

We would thereafter request you to kindly intimate the terms and condition such as security deposit, re-connection charges outstanding dues after payment of Rs.12,20,085.60 by us as mentioned above to get resumption of power supply on top priory basis.

Thanks & Regards,

For Mackeil Ispat & Forging Ltd."

12. In response to the letter dated 07.12.2021, the Appellant wrote on 07.12.2021, the payments which are required to be paid for resumption of supply. Letter dated 07.12.2021 is as follows:

"No. Coml//MIFL/2552 Date: 07.12.2021

To

The Director

Mackeil Ispat & Forging Ltd.

5A/1A, Lord Sinha Road,

Kolkata – 700 071

Sub: Regarding resumption of power supply at factory premises of M/s Mackeil Ispat Forging Ltd. [Old Consumer No. 440291]

Ref: (i) Your Letter No. MIFL/DVC/21-22/02 dtd. 07.12.2021 (received vide email dtd. 07.12.2021)

Dear Sir,

This has reference to your letter dated 07.12.2021 mentioned under ref. (1) above regarding terms and conditions for resumption of power supply to M/s Mackeil Ispat Forging Ltd.

In this regard, it is to inform that power supply to M/s Mackeil Ispat Forging Ltd. May be restored after fulfilment of following commercial terms and conditions at your end.

1. Payment of balance dues (principal) amounting to Rs. 1,60,12,774/- prior to reconnection of power supply. Delay payment surcharge will be charged as per WBERC Regulation (Total principal dues of M/s Mackeil Ispat Forging Ltd. As on 07.12.2021 is Rs. 1,72,32,836/- out of which M/s Mackeil Ispat Forging Ltd. have made payment amounting to Rs. 12,20,062/-

2. Payment of security deposit amounting to Rs. 1,35,15,000/- (commensurate with the CD of 1.7 MVA) prior to reconnection of power supply.

3. Payment of reconnection charge Rs. 1200/-.

Your sincerely

Sd/- B. Mondal (07.12.2021)

Dy. Chief Engineering (Commercial)"

13. On the request of the Respondent No.1 instalment was permitted by letter dated 05.01.2022, which letter is as follows:

"No. Coml/DPS/2021-22/MIFL/2844

Date: 05.01.2022

To

The Director

Mackeil Ispat & Forging Ltd.

5A/1A, Lord Sinha Road,

Kolkata – 700 071

Sub: Regarding resumption of power supply at factory premises of M/s Mackeil Ispat & Forging Ltd. [(fed from Durgapur S/s. Consumer No. 440291]

Ref: (i) Your Letter no. MIFL/DVC/21-22/05 dtd. 13.12.2021 (received vide email dt. 13.12.2021)

(ii) Bill vide no. MFN/202112/440281 dt. 03.01.2022.

Dear Sir,

In reference to your request vide letter dtd. 13.12.2021 under ref. (1) above, for grant of instalments for payment of the DPS amounting to Rs. 55,99527/- as mentioned in the bill under ref (2) above i.r.o. M/s Mackeil Ispat & Forging Ltd. It is to inform that DVC has granted 10 nos. of instalments.

The schedule of payment of instalments is mentioned in the table below:

Instalment No.	*Instalment Amount*	*Due Date*
1	*Rs.5,59,953*	*11.01.2022*
2	*Rs.5,59,953*	*11.02.2022*
3	*Rs.5,59,953*	*11.03.2022*
4	*Rs.5,59,953*	*11.04.2022*
5	*Rs.5,59,953*	*11.05.2022*
6	*Rs.5,59,953*	*11.06.2022*
7	*Rs.5,59,953*	*11.07.2022*
8	*Rs.5,59,953*	*11.08.2022*
9	*Rs.5,59,953*	*11.09.2022*
10	*Rs.5,59,950*	*11.10.2022*

This is further to inform that in case of non receipt of instalments in any month within due date, DVC will take action accordingly.

Yours sincerely

Sd.

B. Mondal (05.01.2022)

Dy. Chief Engineer (Commercial)"

14. A new Power Purchase Agreement was also entered between the Parties on 05.01.2022. By Order dated 14.09.2023, two IAs filed by the Respondent have been allowed being I.A.1336/KB/2022 and I.A.463/2022. I.A.463/2022 has been brought on the record as (Annexure A-15) to the Appeal which Application was filed on 13.05.2022, where following reliefs were made:

> *"a) To direct the Respondent to refund the sum of Rs.1,88,02,539/- wrongfully recovered by the Respondent from the Applicant No.1 on account of pre-CIRP dues and "Delayed Payment Surcharge" thereon, in excess of the amount apportioned and approved under the Resolution Plan of the Applicant No.2, alongwith interest thereon @ 12% per annum from the date when such excess payments were made to the Respondent, until recovery;*
>
> *b) To direct the Respondent to act in strict compliance of the order of this Tribunal dated September 21, 2021 passed in IA(IB) No. 398/KB/2021 in CP(IB) No.213/KB/2019 together with the Resolution Plan of the Applicant No.2;*
>
> *c) To restrain/injunct the Respondent from adjusting or claiming any further amounts in terms of its demand dated January 5, 2022 towards "Delayed Payment Surcharge" till the final adjudication of the present Application by this Hon'ble Tribunal*
>
> *d) Ad-interim orders in terms of prayers (b) and (c) above.*
>
> *e) Costs;*
>
> *f) Such further orders and/or directions be passed a this Hon'ble Tribunal deems fit and proper."*

15. Another Application which has been filed by the Respondent is I.A.1336/2022, in which Application following prayers were made:

> *"a) Order restraining the Respondent from taking any coercive steps or actions against the Applicants, including but not limited to disconnection notice dated October 18, 2022;*

b) Order restraining the Respondent from taking any steps or further steps to recover any demand from the Applicants relating to the period prior to September 21, 2021.

c) Order staying the effect of the wrongful demand made by the Respondent against the Applicants on June 1, 2022 to the extent of Rs. 14,37,503/-relating to the period prior to September 31, 2021, till the final adjudication of the Said Application;

d) Order restraining the Respondent from raising further wrongful demands against the Applicants for any alleged dues or claims relating to the period prior to September 21,2021;

e) Order quashing the wrongful demand of the Respondent dated June 1, 2022, December 7, 2021 and November 3, 2021 in so far as it relates to the pre-CIRP dues i.e. prior to September 21, 2021;

f) Order quashing the disconnection notice of the Respondent dated October 18, 2022;

e) Ad-interim orders in terms of prayers (a) to (d) above;

h) Costs;

i) Such further orders and/or directions be passed as this Hon'ble Tribunal deems fit and proper."

16. Both the above Applications were contested by the Appellant. Adjudicating Authority relying on the Judgment of the Hon'ble Supreme Court in ***'Ghanshyam Mishra & Sons Private Limited' (Supra)*** took the view that on the date of approval of the Plan, all claims which are not a part of Resolution Plan shall stand extinguished. It was further held by the Adjudicating Authority that the Respondent acceded to the demand made by DVC for purpose of restoration of the electricity. Adjudicating Authority further held that DVC has sought for claim that were due before CIRP period and during CIRP period as well. In Paragraph 10 of the Judgment of the Adjudicating Authority, following has been held:

"10. In the present case, the Applicant No. 2 gave in to the demands made by DVC in order to ensure

> *restoration of the electricity which was essential for the business operations of the Applicant No. 1. DVC has sought for claims that were due before the CIRP period and during the CIRP period as well."*

17. Adjudicating Authority, ultimately in Paragraphs 13 to 16 directions have been issued and both the IAs have been allowed:

> *"13. Thus, in view of the above relief granted, all the claims of DVC were extinguished, and DVC was bound by the same. The demands of DVC with respect to Pre-CIRP and CIRP period dues of DVC at this stage is in contravention to the Code and principles laid down with respect to the Code in terms of the above referred judgment.*
>
> *14. In view of the above, we direct DVC to refund the amount received by it which was of Pre-CIRP including the Delayed payment surcharge thereon within one month from the date of this order. Further, DVC shall not disconnect the supply of electricity without following the due course of law.*
>
> *15. The above directions shall not be construed as any manner, a relaxation of any fees or charges payable by the Applicant to DVC with respect to the new connection and concurrent charges.*
>
> *16. In view of the above directions, **I.A. (IB) No. 1336/KB/2022 and I.A. (IB) No. 463/KB/2022 in C.P. (IB) No. 213/KB/2019** are allowed and disposed to the extent as directed above."*

18. The first submission which has been raised by the Counsel for the Appellant is that Adjudicating Authority has no jurisdiction to entertain the Application and the Adjudicating Authority had become *quorum non-judice.* We have already noticed above the approval of the Resolution Plan by the Adjudicating Authority dated 21.09.2021 and the claim which was filed by the Appellant in the CIRP. The correspondence entered between the Parties as noticed above was in reference to the approval of the Resolution Plan and payment of the amount which was due to the Appellant as per the Resolution Plan with a prayer to resumption of supply.

19. Section 60(5) which gives jurisdiction to Adjudicating Authority is as follows:

> ***"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."*

20. The above provision clearly indicates that under Section 60(5)(c) any question arising out of or in relation to the Insolvency Resolution or Liquidation proceeding of the Corporate Debtor is covered by the said definition. When we look into the reliefs and the concessions granted by the Order dated 21.09.2021, and the letter given by the Corporate Debtor on 29.10.2021, offering to make payment under the Resolution Plan and seeking restoration of supply, the said request clearly fell within Section 60(5)(c).

21. We, thus are of the view that Adjudicating Authority shall have jurisdiction with regard to consideration of prayer which is in reference to Order dated 21.09.2021 and the reliefs and concessions granted therein. Corporate Debtor/SRA was requesting to implement the Order to the DVC.

22. Now we come to the reliefs claimed in both the Applications. A perusal of the Order of Adjudicating Authority indicates that consideration of

Adjudicating Authority is in the Impugned Order is only confined to the I.A.463/2022 by which the refund was claimed and the basis of the refund claim was that the DVC cannot claim any pre-CIRP dues which has been extinguished by approval of the Resolution Plan.

23. The law is well settled that by approval of the Resolution Plan, all dues and claims of pre-CIRP stand extinguished. In the present case, the DVC has filed its claim in the CIRP of ₹2,32,13,387/- for which an amount of ₹4,64,003/- was allocated for the Resolution Plan. Judgment of this Tribunal relied by the Respondent in the matter of ***'Damodar Valley Corporation' Vs. 'Kharkia Steels Pvt. Ltd. & Ors.'*** reported in ***(2022) SCC OnLine NCLAT 2282,*** as well as the Judgment of the Hon'ble Supreme Court in ***'Paschimanchal Vidyut Vitran Nigam Ltd.' Vs. 'Raman Ispat Pvt. Ltd. & Ors.'*** reported in ***(2023) 10 SCC 60*** as well as the Judgment of the Hon'ble Supreme Court in ***'Ghanshyam Mishra & Sons Pvt. Ltd.' (Supra)*** clearly lays down that all claims after approval of the Plan stands extinguished.

24. Learned Counsel for the Appellant sought to contend that R-1 has with open eyes entered into new Power Purchase Agreement and offer to make payment and by doctrine of estoppel it is disentitled to claim any refund of the amount. Learned Counsel for the Appellant has also referred to following part of the Power Purchase Agreement dated 03.01.2022:

> *"AND WHEREAS the Consumer agreed to accept the liabilities of M/s. MACKEIL ISPAT & FORGING LTD. which might accrue due to the execution of this Agreement for supply of power unless otherwise specified in the terms and conditions of this Agreement."*

25. In so far as the above clause of Power Purchase Agreement is concerned, the said clause can only be read to as accepting the liability of the Corporate Debtor, which might accrue due to execution of this Agreement for supply of power, unless otherwise as filed in the terms and conditions of the Agreement. The said clause clearly binds the Respondent to take liability which accrue due to the execution of the Agreement. The said clause cannot be read to mean that by Agreement, Respondent No.1 has taken liability which stood extinguished by approval of the Resolution Plan. The correspondence entered between the Parties as noticed above also clearly indicates that Respondent No.1 has offered to make the payment which was due as per the Plan. However, the Respondent itself has asked the Appellant to give the details of the payment which are required to be paid. Vide letter dated 07.12.2021 in response to which communication dated 07.12.2021 was issued.

26. The submission of the Appellant that Respondent is estopped from raising the issue that no amount was liable to be paid by the Respondent pertaining to pre-CIRP period after having entered into Agreement and after having paid the amount cannot be accepted. Appellant which is a statutory authority distributing the electricity supply cannot benefit from its own wrong. The law laid down by the Hon'ble Supreme Court in ***'Ghanshyam Mishra & Sons Pvt. Ltd.' (Supra)*** that all claims stand extinguished by approval of the Resolution Plan is binding on the Appellant and it can neither act or take any stand contrary to the law declared by the Hon'ble Supreme Court. Any amount demanded by the Appellant prior to pre-CIRP period was clearly illegal and contrary to the law laid down by the Hon'ble Supreme Court and any such amount which has been obtained by the Appellant from the Respondent cannot be allowed to be retained by the Appellant.

27. As noted above, the Order of the Adjudicating Authority, Paragraph 10 itself indicates that Appellant has sought for claims that were due before the CIRP period and during the CIRP period as well. No issue can be raised regarding any claim prior to CIRP period since, the claim said after approval of the Resolution Plan and payment of amount under the Plan to the Appellant stood extinguished. It is however relevant to notice that no bifurcation and details have been given as to what was the claim prior to CIRP period and what was the claim subsequent to the CIRP period as was communicated by the Appellant vide letter dated 07.12.2021. On the record, there are also no details to come to the conclusion that how much amount as communicated in letter dated 07.12.2021 was during the CIRP period and what was the amount prior to CIRP period. The Impugned Order passed by the Adjudicating Authority cannot be faulted insofar as is directed for refund of the amount which was claimed by the Appellant of pre-CIRP period. However, the Order passed by the Adjudicating Authority as noted above itself having noticed that the amount demanded was due before the CIRP period and during the CIRP period, as well, the Appellant is to refund the amount as claimed in I.A.463/2022 which was claimed pertaining to pre-CIRP period only. Appellant is not obliged to refund any amount as directed by Adjudicating Authority which may pertain to the post CIRP period.

28. Order of the Adjudicating Authority passed in I.A.463/2022 is modified to the above extent.

29. We, thus dispose of this Appeal with following directions:

i. It is held that Appellant is not entitled for recovering any dues from the Respondent which relate to pre-CIRP period with regard to which claim was filed by the Appellant and was dealt in the Resolution Plan approved on 21.09.2021.

ii. The Order of the Adjudicating Authority passed in I.A.463/2022, directing for refund of the amount is confined to the amount demanded by the Appellant of pre-CIRP period only.

iii. Any amount which pertain to dues during the CIRP period is not liable to be refunded.

iv. The Appellant to make refund as directed above within 30 days from today.

The Appeal is disposed of accordingly.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

06th February, 2025

himanshu