



**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Virtual Hearing)**

PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)

: SHRI SANJAY PURI – MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 20.09.2024 AT 01:00 P.M.

TC/CP. Nos.	IBC Stage	Present stage of the case	Section/Rule	Name of Parties
CP(IB)/130/9/AMR/2022		For Orders	9 of IBC	Southern Power Distribution Company of A.P. Limited Vs. Sudalagunta Sugars Limited

ORDER

Present: Ms. Sarvani Desiraju, Ld.Counsel for the OC

None appears for the CD

Orders Pronounced. CP(IB)/130/9/AMR/2022 is admitted and recorded vide separate sheets.

**SANJAY PURI
MEMBER (TECHNICAL)**

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI

CP (IB) No.130/09/AMR/2022

In the matter of
M/s SUDALAGUNTA SUGARS LIMITED

Between:

M/s Southern Power Distribution Company of
A.P. Limited,
19-13-65/A, Srinivasapuram,
Tiruchanoor Road,
Tirupati - 517 503.

....Operational Creditor

And

M/s Sudalagunta Sugars Limited,
Mayura Nagar, Katur Post,
B.N. Kandriga Mandal,
Andhra Pradesh - 517 644.

....Corporate Debtor

Date of Order: 20.09.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels present:

For Operational Creditor : Ms Saravani Desiraju

For Corporate Debtor : Mr T V L Narasimha Rao

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ORDER
(Per: Sanjay Puri)

Background

1. The Applicant, M/s Southern Power Distribution Company of AP Limited (Operational Creditor or **OC**), a distribution company (DISCOM), and the Respondent, M/s Sudalagunta Sugars Limited (Corporate Debtor or **CD**), which operated an 8 MW bagasse-based power plant, entered into a Power Purchase and Wheeling Agreement (PP&WA)¹ on 29.01.2000. Under this agreement, the OC provided wheeling and banking services for the surplus power generated by the CD. The OC had been raising wheeling and other charges on the CD since FY 2002-2003 as per the tariff orders issued by APERC² from time-to-time w.e.f. FY 2002-2003.
2. These charges were set by an APERC order dated March 24, 2002, which was later challenged in the Andhra Pradesh High Court. While the High Court initially set aside³ the APERC order, the Supreme Court restored⁴ it on 29.11.2019. Following this, an amount of Rs 29,42,38,402 in wheeling and banking charges is stated to have become payable by the CD to the OC.
3. Several notices were sent by the OC demanding payment. When no payments were made, the OC sent a Demand Notice under Section 8 of IBC⁵ on 20.10.2022. As the CD failed to respond, the OC filed this application.

Issue of Limitation:

4. In the counter reply, the CD's first contention is about the demand

¹ Pages 25 to 59 of the application.

² AP Electricity Regulatory Commission


³ Vide order dated 18.04.2003

⁴ Civil Appeal No. 7079 of 2003 (with Batch of Appeals in Civil Appeal No.4569 of 2003)

⁵ Insolvency and Bankruptcy Code, 2016

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of the OC being time barred under Section 56(2) of the Electricity Act 2003. It is claimed that under that section “no sum due from the consumer” can be recovered “after the period of two years from the date when the such sum became first due”.

5. Responding to this argument in their rejoinder, the OC has pointed towards the definition of the term “consumer” in that Act, according to which it means “any person who is supplied with electricity”. It is pointed out that Section 56(2) applies to consumers, which the CD is not, as it received wheeling services rather than a direct electricity supply. It is thus contended that the power generating CD was receiving wheeling services from the DISCOM OC for distribution of surplus power generated was not a “consumer” within the definition of the Electricity Act and therefore section 56(2) does not apply here.
6. We agree with the OC on this issue, that section 56(2) of the Electricity Act⁶ is not applicable in this case. Here, we can draw

⁶ “Section 56 of Electricity Act –

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.”

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support from the decision of Hon'ble Supreme Court in the case of **K.C.Ninan**⁷ where it has been clarified that the period of limitation prescribed under Section 56(2) of the Electricity Act only pertains to the right to disconnect in the event of non-payment of charges for the supply, and it does not take away the right to recover the dues or maintain other proceedings which are independent of the right to disconnect.

7. Under IBC, Section 238A mandates⁸ that the Limitation Act, 1963 applies to these proceedings. Although the dues accumulated since FY 2002-2003, the limitation period began after the Supreme Court's order delivered on 29.11.2019. The application, filed on 28.11.2022, falls within the three-year limitation period prescribed under Article 113 of the Limitation Act. Furthermore, the Suo-Motu order⁹ of the Supreme Court, which excluded the COVID period from 15.03.2020, to 28.02.2022, from the limitation period under "*any general or special laws in respect of all judicial or quasi-judicial proceedings*", supports the timeliness of this application.

Pre-existing Disputes:

8. The CD also claimed that there were pre-existing disputes regarding wheeling charges, wheeling services, and the definition of "consumer" between 2002 and 2019. However, these disputes were conclusively resolved by the Supreme Court in its 2019 judgment. Any prior disputes are now irrelevant, as the Apex Court has laid them to rest.

⁷ K.C.Ninan vs Kerala State Electricity Board and Others - 2023 SCC online SC 663.

⁸ "Section 238A of IBC –

Limitation : The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be."

⁹ In Re: Cognizance for extension of limitation, Suo Moto Writ Petition (C) No 3 of 2020 date 10.01.2022

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Inconsistent Claims:

9. The CD raised concerns about inconsistencies in the amounts claimed by the OC in different notices. While the initial Form-A notice¹⁰ dated 29.03.2022, issued under AP Electricity Board (Recovery of Dues Act 1984, claimed Rs. 47,24,22,301, the amount was later revised to Rs. 29,42,38,402 in the Demand Notice (under IBC) dated 20.10.2022. Another notice¹¹ in Form-A dated 26.08.2023, claimed Rs. 83,14,63,250. It is argued that, the OC's stand on the amounts due has been erratic and inconsistent.
10. We are not persuaded by this argument either. In these proceedings under Section 9 of IBC, the material amount of operational debt claim, is the one which is mentioned in Form-3 issued under Section 8 of IBC r/w Rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016. The amount of operational debt that has been demanded in that Form is Rs 29,42,38,402/-, which remained unpaid.

Interest Claim:

11. The OC's claim of 18% interest per annum was also disputed by the CD, which argued that there was no contractual agreement for such a rate. Furthermore, the CD referred to Section 6 of the A.P. Electricity Board (Recovery of Dues) Act, 1984, which does not specify any interest rate interest in relation to the unpaid 'wheeling and banking' charges.
12. We find merit in the CD's argument. Under Article 2.4 of the PP&WA, the compensation for provision of wheeling service was to be deducted from the tariff payable for the energy delivered by the CD. There is no provision for any interest in relation to the unpaid

¹⁰ Page 9 of reply affidavit.

¹¹ Page 13 of written submissions filed after the arguments were heard.

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'wheeling and banking' charges. This is in contrast to Article 7.3 of PP&WA, where a provision of 14% p.a. interest on delayed payments by the OC has been made.

13. However, even excluding the interest claim, the unpaid operational debt of Rs. 29,42,38,402 far exceeds the threshold required under the IBC, and with the cessation of the CD's factory operations¹² since June 2018, financial distress is evident. Given the facts and circumstances, we allow this application and admits M/s Sudalagunta Sugars Limited into the Corporate Insolvency Resolution Process (CIRP) under IBC.

ORDER

- I. The present company petition (**CP (IB)/130/9/AMR/2022**) stands **ADMITTED** and the CIRP is hereby initiated against the **M/s Sudalagunta Sugars Limited, (CIN:U15424AP1994PLC018279)** and the moratorium is declared in terms of Section 14 of the Code. The necessary consequence of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) shall come into force.
- II. The Applicant has not proposed the name of the Interim Resolution Professional. Therefore, this Adjudicating Authority appoints **Mr.Chaitanya Kiran Immaneni¹³**, as an Interim Resolution Professional (IRP) of the Corporate Debtor from the available list of panel of Resolution Professionals as maintained by the IBBI. Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate

¹² Averments made in IA No.1 of 2023 seeking setting aside of *ex-parte* order for initiating CIRP in this case on 10.04.2023.

¹³ Registration number IBBI/IPA-002/IP-NO1257/2023-2024/14280, at 40-26-22, Mohiddin Street, Opp. BSNL Exchange, Labbipeta, MG Road, Vijayawada, NTR District, AP-520010; email: cimmaneni@outlook.com




within 3 days of the pronouncement of this order. Accordingly, **Mr. Chaitanya Kiran Immaneni**, is appointed as IRP.

- III. We direct the Applicant/OC to deposit a sum of Rs.**2,00,000/-** with the Interim Resolution Professional to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of the CIRP, Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor.
- IV. In pursuance of Section 13(2) of the Insolvency and Bankruptcy Code 2016, we direct the IRP to make a public announcement immediately about the admission of this application under Section 9 of the Code. The expression immediately means within three days from the date of appointment as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- V. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.
- VI. In case there is any violation committed by the suspended management or any tainted/illegal transaction by suspended

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directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

- VII. The IRP or the RP as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the Corporate Insolvency Resolution Process in respect of the Corporate Debtor.
- VIII. In terms of the Insolvency and Bankruptcy Code 2016, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP, the Registrar of Companies, Vijayawada, AP and IBBI by Speed Post and by email, at the earliest but not later than seven days from today. Applicant is also directed to provide a copy of the complete paper book to the IRP. The Registrar of Companies, Vijayawada, AP shall update its website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified and the RoC, AP shall send compliance report to the Registrar, NCLT Amaravati Bench.



(SANJAY PURI)
MEMBER (TECHNICAL)



(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)