



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA NO.666/2023 IN CP (IB) NO.55/ALD/2017

(An application under Section 60(5) and Section 53(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)

IN THE MATTER OF:

RDB REALTY & INFRASTRUCTURE LIMITED

Regd. Address:

BIKANER BUILDING, 8/1
LAL BAZAR STREET, IST FLOOR,
KOLKATA-700001

..... Applicant

Versus

1. KANPUR MUNICIPAL CORPORATION

Regd. Address:

KESA HOUSE, 14/71,
CIVIL LINES, KANPUR-U.P.

2. MR. ARUN GUPTA (LIQUIDATOR OF LML LTD.)

Regd. Address:

A-57, SECTOR 30, NOIDA- 201301, U.P.

.....Respondents

AND IN THE MATTER OF:

M/S LML LIMITED

Having Its Registered Office At:

C-3, PANKI INDUSTRIAL ESTATE, KANPUR- 208022

.....Corporate Debtor/Corporate Applicant

Order pronounced on: 12th November, 2024

Coram:

Mr. Praveen Gupta	:	Member (Judicial)
Mr. Ashish Verma	:	Member (Technical)

IA NO.666/2023 IN CP (IB) NO.55/ALD/2017

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ



Appearances:

Ms. Babita Jain, Adv. : For the Applicant

Sh. Shubham Agarwal, Adv. : For the Res. No.2/Liquidator

ORDER

1. This application has been filed by the Successful Bidder i.e. RDB Realty & Infrastructure Limited in the liquidation sale of the assets of the Corporate Debtor i.e., M/s L.M.L Ltd. under Section 32A read with Section 60(5) and Section 53(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "Code") against the arbitrary rejection by the Respondent No. 1 i.e. Kanpur Electricity Supply Company Ltd., for the installation of fresh electricity connection at the subject property. The Applicant is seeking the following relief in the instant matter: -

- a.** *Allow the present application;*
- b.** *Kindly, pass an ad-interim order directing Respondent No.1. Kanpur Electricity Supply Company Limited not to take any coercive steps over the property No. A1, A2, A3, A4, E16A, E30, E30A, 3C-6, C7, C8, C9, C10 situated Site-II Panki Industrial Area Kanpur UP Area 61554.45 Sq. mt. during pendency of instant application;*
- c.** *Kindly pass an interim and final order to the Respondent No.1 Kanpur Electricity Supply Company*



Limited to grant an Electricity Connection to Applicant to avoid the delay in implementation of the Project;

- d. Pass an order declaring that Respondent No.1 Kanpur Electricity Supply Company Limited is. not entitled to claim any dues over the property of the Applicant;*
 - e. Pass an order that in future if any apply the connection of same premises with some other name that also be permitted by the respondents.*
 - f. Pass such other or further order(s) as may be deemed fit and proper the facts and circumstances of the instant case.*
- 2.** This Tribunal, vide its order dated 23.03.2018, passed an order for liquidation of the Corporate Debtor on an application filed by the Resolution Professional under Section 33(1)(a) of the Code and subsequently, appointed Mr. Arun Gupta, as liquidator of the Corporate Debtor vide order dated 09.04.2018. Subsequently, the Liquidator issued a public announcement dated 16.04.2018 for the invitation of claims from the creditors of the Corporate Debtor, wherein the last date of submission of claim was 11.05.2018.
- 3.** Following that, the Liquidator issued an E-auction sale notice and a Process Information Document (PID) for the E-Auction of the assets of the Corporate Debtor on



02.03.2023 along with Corrigendum-1 dated 17.03.2023, pertaining to the property of the Corporate Debtor located at Property No. A1, A2, A3, A4, E16A, E30, E30A, 3C-6, C7, C8, C9, C10 situated at Site-II Panki Industrial Area Kanpur UP Area 61554.45 sq.mt. along with building structures (hereinafter referred to as the “subject property”).

4. The Applicant participated in the E-auction and was declared the Successful Bidder with the highest bid of Rs. 31,40,00,000/- (Rupees Thirty-One Crore Forty Lacs Only). The Applicant subsequently deposited the full sale consideration of Rs. 31.40 crores, along with an additional interest of Rs. 3,81,962/-, with the Liquidator. Further, the possession of the assets was handed over to the Applicant on 18.07.2023. Thereafter, a Sale Certificate dated 07.07.2023 was executed between the Liquidator of the Corporate Debtor and the Applicant.
5. Subsequent to taking possession of the subject property of the Corporate Debtor, the Applicant applied to Respondent No. 1 for a fresh electricity connection for the subject property. However, Respondent No. 1, by letter dated 28.10.2023, informed the Applicant that the issuance of the



fresh electricity connection would be subject to the clearance of outstanding dues amounting to Rs. 13,12,01,634/- owed by the Corporate Debtor, M/s L.M.L. Limited, to the Respondent department.

6. The Applicant, thereafter, met with the Respondent in person to explain the pertinent provisions of the Code. Notwithstanding these efforts, the Respondent maintained its demand for payment of the outstanding dues required for the issuance of a fresh electricity connection.
7. The Applicant asserts that the sale process for the subject property was carried out by the Liquidator in accordance with the Schedule I Mode of Sale as outlined in Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Consequently, the total sale proceeds is required to be distributed in accordance with the waterfall mechanism specified in Section 53(1) of the Code. Furthermore, Section 53(1) contains a non-obstante clause and is applicable to all stakeholders and creditors of the Corporate Debtor, including statutory authorities. The relevant section is reproduced below:



“53. Distribution of assets.

(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period as may be specified, namely: -

(a) The Insolvency resolution process costs and the liquidation costs paid in full;

(b) The following debts which shall rank equally between and among the following:

(i) Workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) Debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

(c) Wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) Financial debts owed to unsecured creditors;

(e) The following dues shall rank equally between and among the following: -

(i) Any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date:

(ii) Debts owed to a secured creditor for any amount unpaid following the enforcement of security interest.

(f) Any remaining debts and dues;

(g) Preference shareholders, if any; and

(h) Equity shareholders or partners, as the case may be.”



8. The Applicant contends that the actions of the Respondent are in contravention of Section 32A of the Code which states as follows: -

“32A. Liability for prior offences, etc.-

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not –

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or (ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation.- For the purposes of this sub-section, it is hereby clarified that,- (i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor; (ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this



Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable. (3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person, who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.”

In light of the aforementioned provision, it is strongly submitted that no action may be taken against the assets of the Corporate Debtor acquired by the Successful Auction Purchaser/Applicant as a result of the asset sale conducted under liquidation. Accordingly, the Applicant has filed the present Application.

9. The Applicant submitted that the claims, if any, should be governed by the provisions of Insolvency and Bankruptcy Code rather than Uttar Pradesh Electricity Supply Code, 2005. Section 238 of the Code provides that the Code's provisions override all other laws, including the Code of Civil Procedure, 1908. Reliance is placed on judgement passed by Hon'ble National Company Law Appellate Tribunal, New Delhi Bench in the matter of *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Private Limited &*



Ors., *Company Appeal (AT) (Ins.) No. 639 of 2018*, wherein it has been held that the provisions of the Insolvency and Bankruptcy Code, 2016 being a subsequent enactment shall override the provisions of the Electricity Act, 2003.

- 10.** Further, the Applicant, with respect to dues of Electricity Department in case of the sale of the assets of the Corporate Debtor during liquidation, relies on the judgement passed by the Hon'ble National Company Law Appellate Tribunal in *Eastern Power Distribution Company of Andhra Pradesh Limited vs Maithan Alloys Limited & Ors.* in *Company Appeal (AT) (Insolvency) No. 961 of 2021*, wherein it was held as under:

“7.... The question to be answered in the present Appeal is:

Whether the Respondent No.1, the Successful Auction Purchaser in the liquidation proceeding of the Corporate Debtor, is liable to pay electricity dues due on the Corporate Debtor both pre-CIRP and during the CIRP?

13.... *When in the IBC proceedings, the Appellant has lodged his claim before the Liquidator pertaining to pre-CIRP dues, the same has to be dealt with as per the provisions of the Code. Pre-CIPR dues of the Appellant have been treated as operational debt and the same required to be paid as per Section 53 of the*



Code. The payment under Section 53 of all debts including operational debt has to be made in accordance with Section 53. Thus, the Appellant is entitled to receive pre-CIRP dues as per provisions of section 53. Hence, the Appellant cannot be heard in contending that he should realize the said amount from the Successful Auction Purchaser. The claim of the Appellant to realize the pre-CIRP dues from Successful Auction Purchaser is clearly in conflict of the statutory scheme as laid down in the Code"

14.... *When the claim of the creditors of a Corporate Debtor which is gone into liquidation are specifically dealt in the Code, the Appellant cannot be heard to say that it shall realize its pre-CIRP dues and post-CIRP dues from the Successful Auction Purchaser. Accepting the said argument of the Appellant will be clear in derogation of the scheme for payment of creditors of the Corporate Debtor as delineated in the Code.*

17.... *In the IBC proceedings, the electricity supplier is also an Operational Creditor who files claim for its operational debt as well as the charges during the CIRP period. IBC deals with the claims and require for payment of the claim of the electricity service provider under Section 53 of the Code in a liquidation proceeding. Regulation formed under Electricity Act, 2003 fastening liability on the Successful Auction Purchaser in the Liquidation Proceedings will be in conflict with the provision of*



the IBC. IBC having been given overriding effect under Section 238, any contrary provision in any other statute under Electricity Act, 2003 shall be overridden. Therefore, it shall not be open for the Appellant to contend that Appellant shall recover the entire pre-CIRP and post-CIRP dues from the Successful Auction Purchaser in pursuance of Regulation 8.4, as noticed above. The Appellant is entitled to recover its dues under the IBC proceedings.

22.... We, thus, are fully satisfied that the submission of the Appellant that they are entitled to recover the entire pre-CIRP and post-CIRP dues from the Successful Auction Purchaser i.e., Respondent No. 1 cannot be accepted.”

In light to the aforementioned judgment, the Applicant further submits that the same legal position was upheld by this Tribunal in its order dated 31.05.2023, in a matter involving an application vide IA no. 99 of 2023 filed by another successful auction purchaser of M/s L.M.L Limited.

- 11.** The Respondent No. 2 i.e., the Liquidator of the Corporate Debtor filed its reply on 05.02.2024 vide diary no. 370 on 07.02.2024, stating the following averments: -



- a.** The liquidator, after its appointment vide order dated 09.04.2018, issued a public announcement on 16.04.2018 in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, wherein the last date for submission of the claim was 11.05.2018.
- b.** Pursuant to the above announcement, a claim from Respondent No. 1 was submitted before the liquidator for an amount of Rs. 9,93,16,362/-. Upon verification, the liquidator admitted the claim of Respondent No.1 for an amount of Rs. 2,74,89,995/-. The Liquidator, in compliance with the order dated 17.02.2023, updated and modified the list of stakeholders wherein the claim of Respondent No. 1 was mentioned at "Anx-D List of Operational Creditor version 5" at Claim No. O-308.
- c.** The Liquidator had previously intimated the Respondent No.1 that payment to the category of the Operational Creditors shall be in accordance with section 53(1)(f) of the Code.
- d.** Further, the liquidator issued an E-auction sale notice on 02.03.2023 for the sale of the subject property belonging to the Corporate Debtor and the auction took place on 06.04.2023, with the Applicant being declared the successful bidder. Thereafter, the subject property of the Corporate Debtor was strictly sold on the basis of "As is where is basis", "As is what is basis", "Whatever there is basis" and "No recourse basis". The Applicant was fully aware of the asset's condition and, prior to purchasing the property, conducted thorough due diligence to



ascertain both the physical condition of the asset and any associated dues.

- e. The possession of the subject property was handed over to the Applicant on 18.07.2023. Further, the Liquidator had distributed the sale proceeds totaling to Rs. 166 crores in accordance with the provisions of the Code, and the distribution of the remaining balance is under process.
- f. It is submitted on behalf of the Liquidator that all allegations in the Applicant's application are directed solely towards Respondent No. 1. The issue at hand pertains exclusively to the Applicant and Respondent No. 1, with no involvement of Respondent No. 2 in the matter. Respondent No. 2 has admitted the claim of the Respondent No. 1 for Rs. 2,74,89,995/- and further submitted to make payments in accordance with Section 53 of the Code from the proceeds of the liquidation assets. As no relief is sought against Respondent No. 2 and he has been included merely as a pro forma party, it is requested by Respondent No. 2 to remove his name from the list of respondents.

- 12.** During the hearing on 13.08.2024, this Tribunal was informed that Respondent No. 1 wishes to present its submission orally, highlighting the terms and conditions outlined in the auction letter. The pertinent section of the letter (Page No. 29, Para 6) specifies that the sale of the asset is conducted on an "as is where is," "whatever there



is," and "no recourse" basis. Consequently, the Applicant is obligated to settle the outstanding dues of the Corporate Debtor.

- 13.** It is to be noted that the present application was initially heard on 13.08.2024, during which a detailed order was recorded, and after hearing the parties, the matter was reserved. However, as noted in the order dated 29.08.2024, the matter was relisted to address clarifications regarding certain annexures that were incorrectly attached to the application. In compliance with the order dated 29.08.2024, the Resolution Professional submitted a supplementary affidavit filing all supporting documents by mentioning correct annexures, which was filed under Diary No. 1880 on 18.09.2024, and the same was taken up on 05.11.2024, to bring on record the clarifications sought.
- 14.** We have heard the learned Counsel for the parties and perused the record. The undisputed facts in this case are that the Applicant being the Successful Bidder/Auction Purchaser has acquired Property No. A1, A2, A3, A4, E16A, E30, E30A, 3C-6, C7, C8, C9, C10 situated at Site-II Panki Industrial Area Kanpur UP Area 61554.45 sq.mt. along with building structures, which earlier belonged to the



Corporate Debtor, in pursuance of the E-Auction Process conducted by the Liquidator of the Corporate Debtor on 06.04.2023. A Sale Certificate has also been executed between the Applicant and the Liquidator on 07.07.2023 in this regard.

15. The Applicant deposited the entire sale consideration of Rs.31.40 Crores along with interest amounting to Rs.3,81,962/-to the Liquidator. The Applicant took possession of the assets on 18.07.2023 and subsequently requested for a fresh electricity connection from the Respondent No.1. However, on 28.10.2023, Respondent No.1 informed the Applicant that the connection would only be granted upon payment of Rs.13,12,01,634/- in outstanding dues owed by M/s L.M.L Limited. This outstanding dues of the Corporate Debtor as levied by the Respondent No. 1 pertained to the period before starting of its CIRP, and hence would be payable to Respondent No. 1 as per the provisions of section 53 of the Code and the same cannot be recovered from the Successful Auction Purchaser of the assets of the Corporate Debtor, who purchased them under liquidation. Despite the Applicant's explanations regarding applicable provisions of the code in this respect,



the Respondent No. 1 continued to demand payment of the dues as a condition for providing the fresh connection.

- 16.** It is clearly established that Section 32A was inserted in the Code with respect to the liability of the Corporate Debtor for liability pertaining to period prior to commencement of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The intent and purpose of insertion of Section 32A in the Code is to provide certainty and to protect the Successful Resolution Applicant/ Successful Auction Purchaser (Applicant herein) as the case may be of the Corporate Debtor in its acquisition process, that the assets of the Corporate Debtor as represented to him and for which he proposes to pay value/ consideration in terms of the approved Resolution Plan/ Sale of the Assets of the Corporate Debtor undergoing liquidation process.
- 17.** The purpose of Section 32A is to provide immunity to the Successful Resolution Applicant/ Successful Auction Purchaser (Applicant) as the case may be of the Corporate Debtor from any offense and commission prior to commencement of CIRP and further to achieve the very object of the Code. Therefore, in view of Section 32A of the Code, the actions of the Respondent No. 1 with respect to



the Corporate Debtor as per the letter dated 22.02.2023 and 28.10.2023 is in violation and clearly inconsistent with the provisions of the Code.

- 18.** It is also pertinent to note that Section 238 of the Code provides overriding effect to the provisions of the Code over all other laws in the country including Electricity Act, 2003. The provisions of Section 238 of the Code are reproduced herein for ready reference:

“Section 238. The provisions of this code shall have effect, notwithstanding anything inconsistent contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

It is significant to mention that in *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Private Ltd. and Ors. (being Civil Appeal No.7976 of 2019)*, the Hon'ble Supreme Court has held that Section 238 of the Insolvency and Bankruptcy Code, 2016 (“IBC/Code”) takes precedence over the provisions of the Electricity Act, 2003, even though the Electricity Act includes Sections 173 and 174, which are designed to have an overriding effect over other laws.

We further place our reliance on the order dated 12.07.2022 of *Hon'ble High Court of Calcutta in the case of West Bengal State Electricity Vs. Sri Vasavi Industries*



Limited (MAT 646 of 2022) where it has been held that the right of the electricity supplying company to recover the amount which was due prior to the resolution plan, had extinguished on the approval of the resolution plan and the electricity supplying company is now required to provide the electricity connection to the Respondent being Successful Resolution Applicant in terms of Electricity Act, 2003. A similar issue was dealt in the order of Hon'ble NCLAT in the matter of *Eastern Power Distribution Company of Andhra Pradesh Ltd. Vs. Maithan Alloys Ltd. (Supra)* wherein the Hon'ble NCLAT upheld the decision of NCLT Kolkata bench directing to provide the electricity connection to Successful Auction Purchaser without paying the pre-CIRP electricity dues.

- 19.** Relying on the judicial pronouncements as discussed in the above para as well as the clearly stated provisions of the Code in this regard, we hold that the Respondent's right to recover outstanding dues from the Pre-CIRP period has been extinguished due to the completion of the CIRP process and the liquidation of the Corporate Debtor. Consequently, no pre-CIRP electricity dues can be collected



from the Applicant, who is the Successful Auction Purchaser.

- 20.** As decided above, we set aside the letter bearing No. 1466/N.V.V.KH/2023 dated 22.02.2023 and letter dated 28.10.2023 passed by the Respondent No. 1 against the Corporate Debtor raising a demand of Rs. 13,12,01,634/- pertaining to Pre-CIRP dues of the Corporate Debtor and further direct that Respondent No.1 is not entitled to claim any dues over the subject property of the Applicant.
- 21.** Ordered accordingly.

-Sd-

(Ashish Verma)
Member (Technical)

Date: 12th November, 2024

-Sd-

(Praveen Gupta)
Member (Judicial)