

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 292 of 2024 & I.A. No. 981, 982 of
2024

IN THE MATTER OF:

Yarn Sales Corporation through Sh. Rajesh ...Appellant
Kumar, partner

Versus

Punjab State Power Corporation Ltd. & Anr.

...Respondents

Present:

For Appellants : Ms. Prachi Johri, Adv.

For Respondent : Mr. Naveen S. Bhardwaj, Mr. Prashant
Kapila, Adv. for R1
Mr. Karanveer Jindal, Mr. Gautam Singh,
Adv. for R2

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is directed against the order dated 01.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench) by which application bearing I.A. No. 962 of 2022 filed in CP (IB) No. 160/Chd/Pb/2018 by the Appellant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') has been dismissed.

2. Brief facts of this case are that Gian Chand & Sons Pvt. Ltd. (Corporate Debtor) was admitted to liquidation on

05.08.2019 and Respondent No. 2 was appointed as the Liquidator.

3. Respondent No. 2 invited claims pending against the Corporate Debtor. Respondent No. 1 submitted its claim of Rs. 34,59,859/-, outstanding electricity dues relating to account no. 3002810493 for its building property located at Bajra Road Village Bajra, Rahon Road, Ludhiana.

4. Respondent No. 2 admitted the claim of Rs. 34,59,859/-. Respondent No. 2 made public announcement for sale of assets of the Corporate Debtor by way of auction on 03.02.2022 and auction took place on 18.02.2022 through the e-auction platform of M/s C1 India Pvt. Ltd. The Appellant was the highest bidder for the Land measuring 5747.50 sq. yards at Bajra Road Village Bajra Rahon Road, Ludhiana alongwith building. Accordingly, the said property was sold to the Appellant and on payment of the entire sale consideration of Rs. 4,30,00,000/-, the sale certificate was issued by Respondent No. 2 to the Appellant on 22.03.2022. The property in question had an electricity connection bearing Account No. 3002810493 with Respondent No. 1 which was disconnected due to the non-payment of electricity dues.

5. The Appellant after purchasing the property, made a representation to Respondent No. 1 on 02.04.2022 for releasing the electricity connection and requested Respondent No. 1 to settle all its pending dues with Respondent No. 2. The Appellant sent an application dated 12.05.2022 for release of fresh electricity connection of 99KW in its name. Respondent No. 1 vide its letter dated 20.05.2022 informed the Appellant that their outstanding dues towards the connection installed at said premises are Rs. 70,17,865/-which has to be cleared before the new connection is given. The Appellant is stated to have replied to the letter dated 20.05.2022 on 20.06.2022 but there was no response.

6. The Appellant filed I.A. No. 962 of 2022 before the Adjudicating Authority for the issuance of necessary direction for the release of new electricity connection in its name and setting aside the outstanding raised by Respondent No. 1 through letter dated 22.05.2022, pending towards Corporate Debtor against its electricity connection at the premises situated on Khata No. 210/215, bearing Khasra No. 51/11/2-12-13 in Hadbast No. 76 situated in village Bazra Tehsil East Ludhiana, Punjab.

7. In this application, Respondent No. 1 filed reply dated 01.02.2023 in which it was stated that the sale conducted by Respondent No. 2 was a simple stand alone asset sale and not a sale of the CD as a going concern. It was also stated that as per the sale certificate, the liquidator is not responsible for any shortfall or defect or shortcoming in the said land or title of the said land and that all past, present and future statutory and other liabilities whether due or overdue by whatever name being called including electricity dues are to borne by the successful bidder. It was also stated that the sale of the land was on 'as is where is basis, as is what is basis, whatever there is basis, no recourse basis'.

8. Respondent No. 2 alleged before the Adjudicating Authority that dues of Respondent No. 1, during the CIRP period have been paid in full and there is a recoverable of Rs. 4,51,293/- by Respondent No. 2 from Respondent No. 1 for which a separate application has already been filed by him bearing I.A No. 1505 of 2022.

9. The Adjudicating Authority dismissed the application while referring to the provisions in the sale certificate dated

22.03.2022. The relevant extract of the same is reproduced also for a ready reference:-

“WHEREAS the said Land of Lot No. 1 of GCSPL has been sold on "As is where is basis" "As is what is basis". "Whatever there is basis" "No recourse basis in which Liquidator is not responsible for any shortfall or defect or shortcoming in the said Land or title of the said land and that all past, present or future statutory or other liabilities, whether due or overdue, by whatever name being called, including but not limited to taxes / demands/ claims/ maintenance fee / electricity dues / water charges / local authority dues / State Government dues / dues of any agency of State or District, etc., outstanding as on date or yet to fall due in respect of the said land should be ascertained and borne by the successful bidder”.

10. It has been held that the since the assets have been taken over “as is where is basis, as is what is basis, whatever there is basis, no recourse basis”. Therefore, liabilities towards outstanding electricity dues having been waived because of liquidation is not tenable under the law.

11. While assailing the impugned order, Counsel for the Appellant has submitted that pre-CIRP dues cannot be fastened upon the auction purchaser. It is submitted that the concept of clean slate purchase is recognized in the Code. The Appellant only purchased part of the property/assets of the CD and not the company and thus the liabilities of the company do not become

liabilities of the auction purchaser. It is further submitted that Respondent No. 1 had participated in the Insolvency process while submitting its claim in the liquidation process and cannot make recoveries from the auction purchaser de hors the mechanism provided under the Code. In support of her submissions, she has relied upon a decision of this Court rendered in CA (AT) (Ins) No. 1355 of 2022 titled as 'Chinar Steel Segments Centre Pvt. Ltd. Vs. Samir Kumar Agarwal'. It is submitted that once a claim is dealt with under liquidation process, such claim gets extinguished and the creditor cannot be allowed to renew the claim and insist for payment of entire dues. It is submitted that in the case of Chinar Steel Segments Centre Pvt. Ltd. (Supra) it has been held that the arrears of the electricity dues cannot be insisted upon for issuing a new connection. She has further submitted that even if the e-auction notice/sale certificate provides that dues are to be paid by the auction purchaser, the same cannot override the applicable law. In this regard, she has relied upon a decision of this Court rendered in the case of Paschimanchal Vidyut Vitran Nigam Ltd. Vs. HSA Traders through Sole Proprietor & Ors., CA (AT) (Ins) No. 527 of 2023. She has further submitted that in the case of

Paschimanchal (Supra) it has been held that Section 238 of the Code overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non-obstante clauses (Section 173 and 174).

12. On the other hand, Counsel for Respondent No. 1 has submitted that the distribution licensee has a right to recover electricity dues from the auction purchaser under the provisions of the Electricity Act, 2003 and has relied upon a decision of the Hon'ble Supreme Court in the case of K.C Ninan Vs. Kerala State Electricity Board & Ors. 2023 (3) RCR (Civil) 227. He has further submitted that there was outstanding dues of the CD in liquidation and since the property has been sold on "as is where is basis, as is what is basis, whatever there is basis, no recourse basis" and the certificate of sale dated 22.03.2022 categorically provided that all past, present and future property liabilities including electricity dues outstanding as on date shall be borne by the successful bidder, the impugned order does not suffer from any error in which it has been held that the liabilities to pay of the outstanding electricity dues is of the Appellant being the successful bidder. He has also submitted that the judgment

in the case of K.C. (Supra) has not been considered in the case of Paschimanchal Vidyut Vitran Nigam Ltd. (Supra).

13. In rebuttal, Counsel for the Appellant has argued that the only judgment relied upon by Respondent is in the case of K.C. (Supra) which was in respect of a sale under the SARFESAI Act in which it has been held that the Electricity Act would apply whereas it has been held by this Court that the provisions of the Code override the Electricity Act, therefore, it is of no help to Respondent No. 1.

14. We have heard Counsel for the parties and perused the record.

15. The point involved is short and simple as to whether the Appellant being the purchaser of the asset, in liquidation, is liable to pay past dues of the electricity of the CD, for the purpose of obtaining a new electricity connection on payment of statutory dues except for the past dues?

16. The aforesaid question has been duly answered by this Court in the case of Chinar Steel Segments Centre Pvt. Ltd. (Supra) in which the following observations have been made:-

“37. The issues raised in the present Appeal are fully covered in favour of the Appellant by a recent judgment of the Hon’ble Supreme Court dated 11.09.2023 in Civil Appeal No.5556 of 2023- “Tata Power Western Odisha

Distribution Limited (TPWODL) & Anr. vs. Jagannath Sponge Private Limited”. Appellant in the above case was also insisting for payment of arrears of electricity dues. The Hon’ble Supreme Court relied on the earlier judgment of the Hon’ble Supreme Court in “Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Limited & Ors.- 2023 SCC Online SC 842” and has also noted the judgment of the Hon’ble Supreme Court in “Embassy Property Developments Pvt. Ltd.” and distinguished the same. It is useful to extract the entire judgment of the Hon’ble Supreme Court dated 11.09.2023, which is to the following effect:-

“In our opinion, the legal issue is covered by the judgment of this Court in “Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Limited and Others”¹ and the order of this Court in “Southern Power Distribution Company of Andhra Pradesh Limited vs. Gavi Siddeswara Steels (India) Pvt. Ltd. and Another.”² The appellant – Tata Power Western Odisha Distribution Limited cannot insist on payment of arrears, which have to be paid in terms of the waterfall mechanism, for grant of an electricity connection. However, the successful resolution applicant will have to comply with the other requirements for grant of electricity connection. The clean slate principle would stand negated if the successful resolution applicant is asked to pay the arrears payable by the corporate debtor for the grant of an electricity connection in her/his name.

In “Embassy Property Developments Private Limited vs. State of Karnataka and Others”³, this Court clarified that a decision by public authority etc. may fall within the jurisdiction of the tribunals constituted under the Code, where the issue relates to or arises out of the dues payable to an operational or financial creditor, by observing:

“37...It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression “operational debt” under Section 5(21), making the Government an “operational creditor” in terms of Section 5(2). The moment the dues to the Government are crystallised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the adjudicating authority, namely, the NCLT.”

The above-quoted observations from Embassy Property Developments Private Limited (supra) would confer jurisdiction on the tribunal constituted under the Code insofar as the appellant – Tata Power Western Odisha Distribution Limited is insisting on payment of the dues of the corporate debtor for restoration/grant of the electricity connection. The dues of the corporate debtor have to be paid in the manner prescribed in the resolution plan, as approved by the adjudicating authority. The resolution plan is approved when it is in accord with the provision of the Code. Thus, the issue of corporate debtor’s dues falls within the fold of the phrase ‘arising out of or in relation to insolvency resolution’ under section 60(5)(c) of the Code.

Therefore, we do not find any good ground and reason to interfere with the impugned judgment(s)/order(s) and hence, the present appeals are dismissed.

Pending application(s), if any, shall stand disposed of.”

38. In view of the law laid down by the Hon’ble Supreme Court in “Tata Power Western Odisha Distribution Limited” (supra), submission advanced on behalf of the Respondent- Damodar Valley Corporation cannot be accepted. The Respondent cannot insist that unless the arrears of the electricity dues which dues

were payable by the Corporate Debtor prior to disconnection are paid by the Appellant only then communication can be issued. The stand taken by the Respondent is contrary to the law laid down by this Tribunal as well as the Hon'ble Supreme Court as noted above.

39. In view of the foregoing discussions, we are satisfied that the Adjudicating Authority committed error in rejecting IA No. 984 of 2021 as not maintainable. We hold that the application is fully maintainable under Section 60(5) for the reasons as indicated above. The Appellant has made out a case for grant of reliefs as claimed in the application. In result, we allow the Appeal in following manner:-

The impugned order dated 01.09.2022 is set aside. IA No.984 of 2021 is allowed. Respondent No.1 to grant fresh connection of electricity after taking all necessary charges for fresh connection except outstanding dues of the Corporate Debtor which stood satisfied and extinguished as per the liquidation proceedings against the Corporate Debtor”

17. Similarly, in the case of Paschimanchal Vidyut Vitram Nigam Ltd. (Supra), this Court has reiterated its view that the past dues cannot be claimed for the purpose of grant of new electricity connection. In this regard, the following observations have been made which read as under:-

“17. The Hon'ble Supreme Court in “Tata Power” (Supra) clearly held that Tata Power cannot insist on payment of arrears for granting electricity connection. This Tribunal in “Chinar Steel Segments Centre Pvt. Ltd.” after noticing the judgment of Hon'ble Supreme Court and this Tribunal has ultimately allowed the appeal and

issued directions in Para 39 of the judgment, which are to the following effect:

“39. In view of the foregoing discussions, we are satisfied that the Adjudicating Authority committed error in rejecting IA No. 984 of 2021 as not maintainable. We hold that the application is fully maintainable under Section 60(5) for the reasons as indicated above. The Appellant has made out a case for grant of reliefs as claimed in the application. In result, we allow the Appeal in following manner:- The impugned order dated 01.09.2022 is set aside. IA No.984 of 2021 is allowed. Respondent No.1 to grant fresh connection of electricity after taking all necessary charges for fresh connection except outstanding dues of the Corporate Debtor which stood satisfied and extinguished as per the liquidation proceedings against the Corporate Debtor”.

18. We, thus, are of the view that submission raised by learned counsel for the Appellant that Successful Auction Purchaser was liable to pay the arrears of electricity dues which were dues of the erstwhile Corporate Debtor and without payment of said dues electricity connection cannot be granted are not in accord with the statutory scheme of IBC. The Adjudicating Authority did not commit any error in issuing direction in Para 16 of the impugned order, as extracted above, to energise the electricity connection without insisting on the payment of pre-CIRP dues. It is made clear that the Successful Auction Purchaser shall be liable to pay all dues for getting the new connection except the arrears of the electricity dues of Rs.39,15,625/- as was being claimed by the Appellant.”

18. It is pertinent to mention that this Court in the case of Paschimanchal (Supra) has also made a reference to the same clause of due diligence which is there in the sale certificate

issued to the Appellant because in that also the property was sold on 'as is where is, as is what is, whatever there is and without recourse basis' and framed the question that "electricity dues of the CD who underwent insolvency resolution process/liquidation process can still be insisted against the Successful Resolution Applicant/Successful Auction Purchaser is not res integra?". The decision in the case of Telangana State Southern Power Distribution Company Ltd. & Anr. Vs. Srigdhaa Beverages, (2020) 6 SCC 404, has also been distinguished in this case and also observed that:-

"15. In the case of "Chinar Steel Segments Centre Pvt. Ltd. vs. Samir Kumar Agarwal" (Supra), this Tribunal has noticed the judgment of Hon'ble Supreme Court in "Telangana State Southern Power Distribution Company Ltd. & Anr. vs. Srigdhaa Beverages" as well as "Eastern Power Distribution Company of Andhra Pradesh Limited vs. Maithan Alloys Limited & Ors.- Company Appeal (AT) (Ins.) No.961 of 2021" of this Tribunal which judgment has also been relied by the Adjudicating Authority in the impugned order. The Judgment of this Tribunal in "Shiv Shakti Inter Globe Exports Pvt. Ltd. vs. KTC Foods Pvt. Ltd. & Anr., Company Appeal (AT) (Ins.) No. 650 of 2020" decided on 25.02.2022 also support the submission made by learned counsel for the Respondent. This Tribunal took view that when the Corporate Debtor is sold in the liquidation proceeding, Corporate Debtor cannot be burdened by any past or remaining unpaid outstanding liabilities."

19. The Judgment relied upon by Respondent in the case of K.C. (Supra) is not applicable because it has not dealt with Section 238 of the Code which has the overriding effect.

20. Thus, in view of the aforesaid discussion, we are of the considered opinion that there is a patent error in the approach of the Adjudicating Authority in dismissing the application of the Appellant, therefore, the present appeal succeeds and the impugned order is hereby set aside though without any order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Indevar Pandey]
Member (Technical)

New Delhi

02nd July, 2024

Sheetal