

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 777 of 2023**

[Arising out of Order dated 18.04.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Cuttack Bench, in IA(IB) No. 14/CB/2023 arising out of CP(IB) No. 1174/KB/2018 in TP No. 34/CTB/2019]

**IN THE MATTER OF:**

**1. TATA POWER WESTERN ODISHA DISTRIBUTION  
LIMITED (TPWODL)**

Through Chief Executive Officer  
Electrical Division, Rajgangpur, Dist. Sundergarh  
Odisha – 770017  
Telephone:  
Email: [tpwodl@tpwesternodisha.com](mailto:tpwodl@tpwesternodisha.com)

**2. THE EXECUTIVE ENGINEER TATA POWER  
WESTERN ODISHA DISTRIBUTION LIMITED  
(TPWODL)**

Having its Registered Office at: Burla,  
Dist. SAMBALPUR  
Odisha – 768017  
Telephone : 0663-2431984  
Email: [tpwodl@tpwesternodisha.com](mailto:tpwodl@tpwesternodisha.com)

**...Appellants**

**Versus**

**1. JAGANNATH SPONGE PRIVATE LIMITED,**

Through its director Sh. Arun Kumar Gaindhar,  
Having its Registered Office at;  
Panda Colony, Bisra Dahar Road,  
Rourkela, Dist. Sundergarh, Odisha – 770017  
Email: [jagannathspontevtltd@gmail.com](mailto:jagannathspontevtltd@gmail.com)

**...Respondents**

*Cont'd.../*

**Present:**

**For Appellant:** Mr. Anupam Lal Das, Sr. Advocate, Mr. Hasan Murtaza, Ms. Nikita Thapar, Advocates

**For Respondents:** Ms. Ankita Patnaik, Advocate

## **J U D G M E N T**

**ASHOK BHUSHAN, J.**

1. This Appeal has been filed against the Order dated 18<sup>th</sup> April, 2023 passed by National Company Law Tribunal, Cuttack Bench, Cuttack (hereinafter referred to as **“The Adjudicating Authority”**) in IA(IB) No. 14/CB/2023 arising out of CP(IB) No. 1174/KB/2018.

2. Brief facts of the case necessary to be noticed for deciding this Appeal are:-

- i. On an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **“The Code”**) against the Jagannath Sponge Private Limited, Corporate Insolvency Resolution Process (CIRP in short) was initiated vide Order dated 20<sup>th</sup> April, 2019 of the Adjudicating Authority.
- ii. The Resolution Plan was submitted in the CIRP of the Corporate Debtor by one M/s Omkara Asset Reconstruction Company which plan was approved by the Adjudicating Authority vide Order dated 06<sup>th</sup> August, 2021. The Appellant vide Letter dated 19<sup>th</sup> July, 2022 was informed that Resolution Plan has been

approved by the Adjudicating Authority. The Appellant filed C.A.(AT) Insolvency No. 1404 of 2022 challenging the Order dated 06<sup>th</sup> August, 2021 which Appeal was withdrawn by the Appellant on 25<sup>th</sup> November, 2022.

iii. The Respondent vide Letter dated 05<sup>th</sup> August, 2022 requested the Appellant to supply electricity with CD 550KVA to its units. The Appellant informed the Respondent of outstanding arrears of Electricity dues amounting to Rs. 13,46,19,931/-. The Respondent filed an Application before the Adjudicating Authority I.A.(IB) 14/2023 seeking direction to Appellant to provide electricity connection to the two units and set aside the demand of arrears of electricity dues. The Adjudicating Authority heard the parties and framed following two points for consideration:

- “1. Whether letter dated 08.12.2022 of 2<sup>nd</sup> respondent demanding Rs. 13,46,19,931/- against the applicant is valid?*
- 2. Whether the applicant is entitled for service connection?”*

iv. The Adjudicating Authority took the view that Resolution Plan having been approved which is binding, the claim of Appellant against the Successful Resolution Applicant of arrears is not valid. The Adjudicating Authority noted that the Appellant did not file any claim in the Insolvency Resolution Process of the Corporate Debtor. Adjudicating Authority by the Impugned Order issued following directions:

*“1. It is hereby declared that the amount of Rs. 13,46,19,931/- claimed by the respondents in their impugned letter dated 08.12.2022 addressed to applicant is not valid and not enforceable as against the corporate debtor/successful resolution applicant.*

*2. The 2<sup>nd</sup> Respondents is directed to consider the service connection application of the applicant submitted by the successful resolution applicant or any other person on its behalf, in accordance with the code/regulation without insisting to make any payment/arrears in whatever nature payable by the corporate debtor prior to 06.08.2021.”*

v. Aggrieved by the said order, the Appellant has come up in the Appeal.

**3.** Learned Counsel for the Appellant in support of Appeal contends that electricity dues of the Appellant required to be paid before Electricity Connection can be given to the Respondent. It is submitted that electricity was disconnected of the Corporate Debtor in the year 2013 and the two related power supply agreements were terminated with effect from 03.10.2013 and with effect from 01.02.2015. The total arrears of electricity against the Corporate Debtor were Rs. 13,56,19,931/- which is required to be paid. It is submitted that there being no proper publication by the Resolution Professional, Appellant could not file its claim in the CIRP Process.

**4.** Learned Counsel for the Respondent refuting the submission of the Appellant contends that Appellant having not filed its claim, its pre-CIRP

dues has been extinguished and in the Resolution Plan the Adjudicating Authority has already issued direction that electricity distribution company shall not raise any demand for reference to the past dues.

5. We have considered the submissions of Learned Counsel for the parties and have perused the record.

6. The Adjudicating Authority in several paragraphs while dealing with point no. 1 and 2 has extracted the part of the Resolution Plan under the waivers, reliefs and exemptions, Sl. No., which refers as follows:

<i>Sl No.</i>	<i>Waivers, Reliefs and Exemptions sought from NCLT</i>	<i>Orders thereon</i>
	<i>The Hon'ble NCLT be pleased to give or issue necessary directions, instructions to the relevant electricity board to give the exemption to the Corporate Debtor from making payment towards reconnection charges of power.</i>	<i>The electricity distribution companies shall not raise any demand with reference to the past dues. They shall, however, treat the application that shall be filed by the corporate debtor, as a new connection and collect charges as applicable for a new connection, without any coercion or precondition to pay the past dues.</i>

7. There is no dispute to the fact that Appellant did not file any claim of its Pre-CIRP dues of Rs. 13,46,19,931/-. The Adjudicating Authority has rightly relied on Judgment of “**Ghanashyam Mishra and Sons Pvt.**

**Ltd. through the Authorized Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors.”, (2021 SCC OnLine SC 313).** Paragraph 102.3 of the Supreme Court Judgment is as follows:

*“102.3 Consequently all the dues including the statutory dues owed to the Central Government, any State Government 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.”*

**8.** The submission of the Appellant that there was no proper publication of the announcement made by the Resolution Professional has been dealt by the Adjudicating Authority in paragraph 8 of the Order. The Adjudicating Authority has noted the provisions of Regulation and has returned a finding that on the above submission of the Appellant plan approval cannot be held to be vitiated. It is also to be noted that against the plan approval order, Appellant filed an Appeal which was withdrawn by the Appellant themselves. No contention by the Appellant challenging the plan approval can be considered. The Adjudicating Authority while approving the Plan having already issued directions that Electricity Distribution Companies shall not raise any demand with reference to the past dues, we see no error in the direction issued by the Adjudicating Authority by the Impugned Order directing the Appellant to consider the service connection application of the Applicant in accordance with the Code/Regulation without insisting on making any payment of arrears

prior to date of plan approval. No grounds have been made out to interfere with the Impugned Order passed by the Adjudicating Authority. There is no merit in the Appeal, the Appeal is dismissed.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Barun Mitra]**  
**Member (Technical)**

**NEW DELHI**  
**08<sup>th</sup> August , 2023**

*Basant B.*