

**00NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARHBENCH(COURT-II), CHANDIGARH**

**IANo.754/2023**  
**in**  
**CP(IB) No.42/Chd/HP/2019**  
**(Admitted)**

**Under the Section 9 of the Insolvency  
and Bankruptcy Code 2016**

**IN THE MATTER OF:**

M/s Jai Ganesh Trading Company

.....Operational Creditor/ Petitioner

vs.

Addinath Rubbers Private Limited

..... Corporate Debtor/ Respondent

AND

**Under Section 60(5) of the Insolvency  
and Bankruptcy Code, 2016**

**INTHE MATTER OF IANo.754/2023:**

Harsh Kumar,  
S/ o Kishan Lal,  
Resident of Panjhera (51),  
Solan, Himachal Pradesh-174101,  
Aadhar No. 879268612067

.....Applicant

Versus

The Assistant Engineer,  
Electrical Sub Division,  
Himachal Pradesh State Electricity Board Limited,  
Dulehar, Una, Himachal Pradesh-177211

.....Respondent No. 1

The Tehsildar Haroli,  
District Una,  
Government of Himachal Pradesh,  
Una -177220  
email id [tehharoli-hp@nic.in](mailto:tehharoli-hp@nic.in)

.....Respondent No. 2

Sh. Sawinder Singh Chug,  
Liquidator, M/s Addinath Rubbers Private Limited,  
44-B, Jawahar Market, Nangal Dam,  
District Rupnagar, Punjab-140125  
email id cma.sschug@gmail.com

.....Respondent No. 3

**Order delivered on: 14.10.2024**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)**  
**HON'BLE MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

**Present:**

For the Applicant : Mr. Ajay Bhagwati, Advocate  
For the Respondent No.1 : Mr. K. V. Singhal, Advocate  
For the Respondent No.2 : None  
For the Respondent No.3 : Mr. Balwinder Singh Kalsi, Advocate

**Per: SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)**  
**SH.UMESHKUMARSHUKLA, MEMBER (TECHNICAL)**

**ORDER**

This Interlocutory Application (hereinafter referred to as the “**IA**”) has been filed under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**” or “**Code**”) by Sh. Harsh Kumar (hereinafter referred to as the “**Applicant**”) seeking directions against

- (a) The Assistant Engineer, Electrical Sub Division, Himachal Pradesh State Electricity Board Limited, Dulehar, Una, Himachal Pradesh-177211 (hereinafter referred to as the “Respondent No.1”) for lifting of lien on the property so detailed in the sale certificate, so as to facilitate the transfer/ registration of same in the name of the Applicant, who is a successful bidder of the same for which sale certificate already stands issued;
- (b) The Tehsildar Haroli, District Una, Government of Himachal Pradesh, Una-

177220 (hereinafter referred to as the “Respondent No.2”) for taking effective steps for vacation of lien from the revenue records, and transferring/ registering the above captioned property in the name of the Applicant and;

- (c) Sh. Sawinder Singh Chug, Liquidator, M/s Addinath Rubbers Private Limited, 44-B, Jawahar Market, Nangal Dam, District Rupnagar, Punjab-140125 (hereinafter referred to as the “Respondent No.3”) for effecting the transfer of the property so captioned in the sale certificate in the name of the Applicant, who being the successful applicant/ bidder pursuant to e-auction process.

### **FACTS OF THE CASE**

2 The brief facts of the case, as stated by the Applicant in the IA, are as below:

- (i) The Respondent No.3 was appointed the Liquidator of Addinath Rubbers Private Limited having CIN: U25199HP2007PTC030819 (hereinafter referred to as the “Corporate Debtor”) by this Tribunal vide its order dated 06.10.2021 in IA No. 819/2020 [in CP(IB) No. 42/Chd/HP/2019] under the Section 33(2) of the IBC for conducting liquidation process of Corporate Debtor. The copy of the said Order has been annexed as Annexure A-1 with the IA.
- (ii) Pursuant to the public notice published on 21.03.2022 and its addendum issued on 03.04.2022 read along with the e-auction process document dated on 21.03.2022 and its addendum dated 03.04.2022, as amended and supplemented from time to time, bids were invited for conduct of e-auction for sale of various categories of assets of the Corporate Debtor in

accordance with the provisions of the IBC and rules and regulations framed there under.

- (iii) Pursuant to the said public announcement and process document, the Applicant submitted a binding bid with financial proposal of Rs.2,24,00,000/ (Rupees Two Crore and Twenty Four Lakhs Only) for one of assets under category D provided in Annexure-II to the Appendix-1 of the auction process document.
- (iv) Pursuant to the evaluation of the bid by the Respondent No.3, the Applicant was identified as a Qualified bidder and post conduct of the auction process, the Applicant being the highest Bidder was selected as the successful and the Letter of Intent (LoI) was issued subject to the terms and conditions contained therein. The copy of the said LoI dated 09.04.2022 has been annexed as Annexure A-2 with the IA.
- (v) The Respondent No.3 pursuant to e-auction process documents dated 20.04.2022, sold all that part & parcel of the property consisting of Land comprising an area of 5,269 sq. metre, including boundary walls and entrance gates- 8 Blocks of buildings constructed on the land mentioned above having a total built up area of 2,894 sq. metre both, situated at PO Nangal Kalan, Industrial Area, Tahliwala, Tehsil Haroli, Distt UNA, Himachal Pradesh in the name of Corporate Debtor vide Wasika Number 110S/1 dated 05/09/200S on "AS IS WHERE IS BASIS" "AS IS WHAT IS BASIS", "WHATEVER THERE IS BASIS" and "NO RECOURSE BASIS", to the Applicant and also the Plant & Machinery & Fixed Assets lying at village Nangal Kalan, Industrial Area, Tahliwala, Tehsil Haroli, District UNA, Himachal Pradesh, in the name of Corporate Debtor on "AS IS

WHRE IS BASIS\* "AS IS WHAT IS BASIS", "WHATEVER THERE IS BASIS" and "NO RECOURSE BASIS" to the Applicant, pursuant to successful e-bidding under e-auction dated 08.04.2022 pursuant to successful e-auction process documents 02.04.2022 conducted on the platform of Linkstar Infosys Pvt. Ltd. on 08.04.2022 upon declaring successful bidder based on the highest bid of Rs.2,24,00,000 plus GST@18% on Rs.55,81,553/- amounting to Rs.10,04,680/to the Applicant, which has been received under designation liquidation account no. 40795711737 maintained with State Bank of India, Naya Nangal (Punjab). The Respondent no 3 issued the Sale Certificate dated 12.07.2022 to the Applicant, a copy of which has been annexed as Annexure A-3 with the IA.

- (vi) Subsequent to the issuance of the sale certificate, when the Applicant approached the revenue authorities of Una District, for registration of the sale deed of the immovable property as comprised in the Sale Certificate, he was told that the said property is encumbered one and a lien is created on the said property as comprised in the said sale certificate, therefore, till the said lien so created on the said immovable property is not removed/vacated, the revenue authorities will not be able to do the registration of sale deed. The copy of the revenue record pertaining to the said property so obtained from the concerned revenue has been annexed as Annexure A-4 with the IA.

- (vii) Thereafter, the Applicant approached the Respondent No. 3, who facilitated in arranging the NOC cum No objection regarding charge on assets of the Corporate Debtor M/s Addinath Rubbers Pvt. Ltd., from the

Respondent No 1 i.e. Authorities of HPSEBL at Dulehar, Una, HP, which clearly elucidates that the Respondent No. 1 does not have any objection, if the said property is sold to the Applicant, and also made a request therein for settling of their claim with the Respondent No. 3. Thus this fact of clear cut 'No Objection' for registration/ transfer of property in name of the Applicant is explicitly visible and can be made out. But despite the said effect, the Respondent No. 2 has not been able to register/ transfer the assets in the name of the Applicants, as they have shown inability in registering the same in name of the Applicant in the absence of the removal of the lien from the revenue record pertaining to the said property so captioned in the sale certificate. The copy of the 'No Objection regarding charge on assets of Corporate Debtor dated 24.08.2022 has been annexed as AnnexureA-5 with the IA.

- (viii) The above stated facts have lead the Applicant to approach this Tribunal, seeking relief against the Respondents for taking effective steps for transfer of title/ registration of sale certificate in the name of the Applicant within a reasonable time at the earliest possible time.
- (ix) The Respondent No. 1 be directed to take effective steps in vacation of lien on the said property from the revenue records pertaining to the Corporate Debtor, as it is they themselves who have got the lien registered in the revenue records pertaining to the Corporate Debtor.
- (x) The Applicant has referred to section 36(3)(b) of the IBC and has also relied on the following Judgments:

(a) Hon'ble Supreme Court in ***B. Arvind Kumar vs. Govt. of India and Others, reported in 2007 volume 5 Supreme Court cases 745.***

(b) Hon'ble NCLAT in ***KTC Foods Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 650 of 2020.***

(c) Hon'ble Supreme Court in ***Ghanshyam Mishra & Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Ltd. & Ors., (2021) ibclaw.in 54SC.***

(d) Hon'ble Supreme Court in ***CoC of Essar Steel India Ltd. Vs. Satish Gupta & Ors (2019) ibclaw.in 07 SC.***

3 The Applicant filed the short note vide Diary No. 00755/6 dated 04.09.2024 in compliance of the Order dated 02.09.2024 of this Tribunal, vide which the order was reserved.

#### **REPLY BY THE RESPONDENT NO. 1**

4 The Respondent No.1, in its reply submitted vide Diary No. 00755/5 dated 18.09.2023. In its reply, Respondent No. 1 has submitted that the IA is not maintainable and thus liable to be rejected/ dismissed based on facts mentioned in the reply, which has been summarized below:

- (i) Himachal Pradesh State Electricity Board Limited (hereinafter referred to as the "HPSEBL") is a State Government Undertaking and the functioning of its Board is governed by the Electricity (Supply) Act, 1948. It is a Distribution Licensee under the Electricity Act, 2003 and is authorised to operate and maintain a distribution system for supplying electricity to its consumers in the State of Himachal Pradesh. It was supplying electricity to the factory premises of Corporate Debtor.
- (ii) As per its manual instruction 38.2.4 regarding defaulting customers, it is

provided that

*" .... the amount should, however be carried forward in the consumer's ledger from month to month and surcharge should continue to be levied as required, till date the recovery or permanent disconnection is affected. The field officer may intimate the revenue authorities like District Collector regarding the amount to be paid by the consumer to HPSEBL so that if any transaction regarding sale or purchase of the property takes place, the revenue authorities may not give no dues of the property/ premises.*

*In case the consumer does not clear the outstanding amount within a period of one month, the concerned field units may immediately resort to file civil suit against the defaulting consumer for recovery of outstanding amount before the court of competent jurisdiction and simultaneously seek attachment of the property belonging to the defaulting consumer from the court under the provision of Order XXXVIII, Rule 5 of the civil procedure code. In the mean time, the action for adjustment of security/ encashment of BG in case security is in the shape of BG may be initiated so as to the recover the amount to that extent."*

- (iii) The Corporate Debtor was a regular defaulter as on various occasions, the electricity dues were not paid. The last meter reading taken by the Respondent for consumption of electricity by the Corporate Debtor was on 01.10.2018. Since the Corporate Debtor was not paying the outstanding dues for use/ consumption of electricity in spite of repeated follow-ups, the Respondent No.1 vide its Permanent Disconnection Order dated 10.10.2018 had disconnected the electricity connection to avoid



any further issue of the electricity and adjusted the security amount lying with it.

- (iv) The last bill for outstanding dues of electricity as payable by the Corporate Debtor after adjustment of security amount and issue of permanent disconnection order was issued by the Sub-Division- Dulehar of HPSEBL on 10.01.2019, according to which the total outstanding amount payable by the Corporate Debtor was Rs.6,87,815/- as per the Consumer's ledger account, a copy of which has been annexed as Annexure 1 with the reply.
- (v) Even after the commencement of the CIRP an amount of Rs.6,87,815/- is outstanding and payable to the Respondent No.1 along with interest and penalty. As provided under the sales manual instruction number 38.2.4, regarding defaulted customers, the Respondent No.1 on 23.09.2019 intimated the Naib Tehsildar of District Una, Himachal Pradesh that the Corporate Debtor is a permanent defaulter of the HPSEBL and requested to create a charge on the property located at Khasra No. 54/ (0-52=69 kita). Accordingly, the Naib Tehsildar recorded the fact in revenue records, pursuant to which the land cannot be transferred to anyone. The copy of the letter issued to Naib Tehsildar has been annexed as Annexure 2 with the reply.
- (vi) As provided under the sales manual instruction number 38.2.4, regarding defaulted customers, the Respondent No.1 had also filed a civil suit bearing no. 284/2021 before Judicial Magistrate, UNA, District Una, Himachal Pradesh, which is still pending. The copy of the civil suit has been annexed as Annexure 3 with the reply.
- (vii) The Respondent No.1 had filed its claim of outstanding dues in Form C

on 24.03.2022, a copy of which along with covering letter has been annexed as Annexure 4 with the reply.

- (viii) The Respondent No.3 vide its letter dated 02.08.2022 intimated the admission of claim under section 40(2) of the IBC read with regulation 30 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as the "Liquidation Process Regulations") in respect of the claims submitted towards Corporate Debtor, a copy of which has been annexed as Annexure 5 with the reply.
- (ix) The Respondent No.3 vide its email dated 16.08.2022 requested that since the property land records maintained by the Land Registrar in Tehsil Haroli, Una, Himachal Pradesh mention that certain asset (property) was pledged with Respondent No.1 at some point of time due to which the land register require NOC from Respondent No.1 and accordingly asked the Respondent No.1 to issue NOC in favour of transferee for the assets, so that the assets can be transferred and the money can be realised. A copy of the above email has been annexed as Annexure 6 with the reply.
- (x) In response to the above mentioned email, the Respondent No.1 vide its letter no. HPSEBL/DES/casefile/2022-960-61 dated 24.08.2022 has given the NOC to sell the property of the Corporate Debtor to the new buyer and requested to settle the claim on priority at the earliest as per the provisions of Insolvency law. No objection Certificate was a conditional one, whereby it has been asked to the liquidator to clear the outstanding dues as per the claim of the Respondent No.1 on priority basis. But till date the claim for outstanding dues towards the electricity charges have not been cleared. A copy of the above NOC has been

annexed as Annexure 7 with the reply.

- (xi) The HPSEBL has no authority to waive off the outstanding dues, which involves public money by issue of NOC and NOC was issued just to support the Respondent No.3 to complete his process and it was made understood that once the sale is completed and consideration received the outstanding dues of HPSEBL will be cleared. But the outstanding dues of electricity charges, which will go to government exchequer, are still due and payable.
- (xii) The Applicant is not entitled for any relief and should clear the outstanding dues of electricity charges of HPSEBL in view of the recent Judgment of 19.05.2023 of the ***Hon'ble Supreme Court in K.C. Ninan vs. Kerla State Electricity Board & Ors.***, wherein it has been decided that "*a condition of supply under section 49 of the 1948 Act requiring the new owner of the premises to clear the electricity arrears of the previous owner as a precondition to availing electricity supply will have a statutory character*". Accordingly, the Applicant being new owner of the premises, which has been purchased by him, shall pay the outstanding dues of the previous owner.
- (xiii) The fact that the property has been encumbered and lien is created on the property has been agreed by the Applicant and on the basis of this encumbrance/ lien, the HPSEB become the security holder qua the outstanding dues and should be treated as a secured creditor.
- (xiv) All the judgement referred by the Applicant are applicable in the

circumstances, when the Corporate Debtor has been taken over as a going concern and the assets are not sold in liquidation and thus do not apply in the instant case.

(xv) HPSEBL is a secured creditor by virtue of lien created in its favour by virtue of a statutory enactment of the State of Himachal Pradesh as admitted by the Applicant and the outstanding electricity dues be cleared before lifting the lien and allowing the Applicant to get the immovable property of the Corporate Debtor registered in its favour.

(xvi) If any transaction regarding sale or purchase of the property takes place, the HPSEBL will not get its outstanding dues and the public money will go down drain and therefore the Applicant is not entitled for any relief and shall clear the outstanding dues of electricity charges.

### **REPLY BY THE RESPONDENT NO. 2**

5 No reply has been filed by the Respondent No.2.

### **REPLY BY THE RESPONDENT NO. 3**

6 The Respondent No. 3 submitted the reply vide Diary No. 00755/2 dated 15.06.2023, which was taken of record vide Order dated 19.07.2023 of this Tribunal. In its reply, Respondent No. 3 has submitted that the Application is not maintainable and is liable to be dismissed qua the Respondent No. 3 as he had performed his part of duties as per the Code for transfer of assets of the Corporate Debtor in favour of the Applicant/ successful bidder: The contents of the reply has been summarized below:

(i) The Applicant had been declared as a successful bidder for the assets

(i.e. Land & Building and Plant & Machinery) of the Corporate Debtor in the auction conducted by the Respondent No. 3. After receipt of the sale consideration, the Sale Certificate was issued to the Applicant on 12.07.2022.

- (ii) The electricity department had intimated to the Tehsildar about their pending dues towards the Corporate Debtor and requested him not to transfer the property of the Corporate Debtor, due to which, the Tehsildar is not transferring the property of the Corporate Debtor in favour of the Applicant.
- (iii) The Respondent No. 3 had approached the electricity department for issue of the No Objection Certificate (NOC) for transfer of the assets of the Corporate Debtor vide emails dated 26.07.2022 and 16.08.2022. After continuous follow up, the electricity department (HPSEBL) had issued the NOC for transfer of property of the Corporate Debtor in favour of the successful bidder/ Applicant vide letter dated 24.08.2022. The copies of the above emails sent by the Respondent No. 3 and NOC issued by the Respondent No.1 have been annexed as Annexure R-3/1, Annexure R-3/2 and Annexure R-3/3 with the reply.
- (iv) The Respondent No. 3 had also requested the Applicant on numerous occasions to get the registration of the sale deed of the assets of the Corporate Debtor in his favour, which has been annexed as Annexure R-3/4 with the reply.
- (v) The Respondent No. 3 had been continuously following up with the Respondent No. 1, Respondent No. 2 and the Applicant for the transfer

of the assets of the Corporate Debtor in favour of the Applicant and performed his part of the duties as per the Code for the transfer of the assets of the Corporate Debtor in favour of the Applicant.

- (vi) The lien created on the property in revenue records does not hold valid as per the provisions of the Code, because a secured creditor while filing a claim for its pending dues under the Code has to prove the security interest held by it. Further, as per Regulation 21 of the Liquidation Process Regulations, the existence of a security interest may be proved by a secured creditor on the basis of (a) the records available in an information utility, if any; (b) Certificate of registration of charge issued by the Registrar of Companies; or (c) Proof of registration of charge with the Central Registry of Securitisation Assets Reconstruction and Security Interest of India. The existence of the security interest is not registered with any of the above mentioned offices/ entities.
- (vii) The security interest held by HPSEBL does not hold valid as per Regulation 21A of the Liquidation Process Regulations, because a secured creditor shall inform the Liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II, which was never informed within 30 days by the HPSEBL to the Liquidator and the details of security were never mentioned in the claim Form filed by the HPSEBL. The copy of the claim form filed by the HPSEBL has been annexed as Annexure R-3/5 with the reply.
- (viii) The said regulation provides that where a secured creditor does not

intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estates. As Respondent No.1 has not intimated to the Liquidator the charge created in the said property in the revenue records, due to which the security interest stood relinquished by virtue of the Regulation 21A of the Liquidation Process Regulations.

- (ix) In the e-auction documents, it was clearly mentioned that the properties i.e. Land and Building, and Plant and Machinery being sold by the Respondent No.3 are on "AS IS WHERE IS BASIS", "AS IS WHAT IS BASIS", "WHATEVER THERE IS BASIS" and "NO RECOURSE BASIS". The HPSEBL had filed a claim for Rs.6,87,815/- in Form C in the capacity as Operational Creditor with the Liquidator. The HPSEBL had not even uttered a single word about the lien or security interest in the claim form annexed at page no.18 to 22.
- (x) Upon receiving information from the Applicant, the Respondent No.3 requested the HPSEBL to provide a NOC for removal of encumbrances and transfer of property, which they did with a condition that their claim should be settled. The said NOC was handed over to the Applicant for transfer of property in his favour. It may also be taken on record that the HPSEBL had filed a claim for Rs.6,87,815/- with the Respondent No.3, which was admitted in full and settled (but not paid) as per the section 53 of the Code in the light of insufficient funds available to distribute to the unsecured creditors, hence the claim stands settled.
- (xi) The Respondent No.3 has performed his part of the duties as per the

Code for transfer of property in favour of the Applicant and will adhere to the directions, if any, given to him and therefore the present Application is liable to be dismissed qua the Respondent No.3.

7 The Respondent No. 3 filed the short note vide Diary No. 00755/8 dated 04.09.2024 in compliance of the Order dated 02.09.2024 of this Tribunal, vide which the order was reserved.

### **ANALYSIS AND FINDINGS**

8 We have gone through the arguments along with their submissions filed by all the parties and have perused the records carefully.

9 The first issue for consideration before us is “***Whether the IA has been filed within the period of limitation***”.

Based on the facts stated in the IA, it has been filed on 07.03.2023. The cause of action, which arose on 12.07.2022 on the date of issue of sale certificate to the Applicant in this matter. Therefore, it is within 3 years of limitation.

10 The next issue for consideration before us is “**Whether the Applicant, who has purchased the property pursuant to successful e-bidding under e-auction dated 08.04.2022 is liable to pay the electricity dues of the property**”.

(i) The HPSEBL, a State Government Undertaking governed by the Electricity (Supply) Act, 1948, is a Distribution Licensee under the Electricity Act, 2003 and is authorised to operate and maintain a distribution system for supplying electricity to its consumers in the State of Himachal Pradesh.

(ii) Since the Corporate Debtor was not paying the outstanding dues for use/




consumption of electricity in spite of repeated follow-ups, the Respondent No.1 vide its Permanent Disconnection Order dated 10.10.2018 had disconnected the electricity connection. The last bill for outstanding dues of electricity as payable by the Corporate Debtor after adjustment of security amount and issue of permanent disconnection order was issued by the Sub-Division- Dulehar of HPSEBL on 10.01.2019, according to which the total outstanding amount payable by the Corporate Debtor was Rs.6,87,815/- is outstanding and payable to the Respondent No.1 along with interest and penalty.

- (iii) As provided under the sales manual instruction number 38.2.4, regarding defaulted customers, the Respondent No.1 on 23.09.2019 intimated the Naib Tehsildar of District Una, Himachal Pradesh that the Corporate Debtor is a permanent defaulter of the HPSEBL and requested to create a charge on the property located at Khasra No. 54/ (0-52=69 kita). Based on the intimation given by the Respondent No.1 on 23.09.2019, the Naib Tehsildar recorded the lien in the revenue records. The scanned copy of the above letter and lien created on the property in the revenue records, as annexed as Annexure 2 with the reply of the Respondent No.1, is as below:

**ANNEXURE -2**

**HIMACHAL PRADESH STATE ELECTRICITY BOARD LIMITED**

(A state Govt. undertaking)



Registered office Vidyut Bhawan, HPSEBL, Shimla-171004(HP)

Number(CIN) U40109HP2009SGC031255

GST No. HPSEBL02AACCH4894EHZB

Telephone Number 0177 2803600, 2801675(Office), 2658984(Fax)

Website Address [www.hpseb.com](http://www.hpseb.com)

Email [cmd@hpseb.in](mailto:cmd@hpseb.in) & [directorfa@hpseb.in](mailto:directorfa@hpseb.in)

No. HPSEBL/DES/Case-file/ 2019-413-15 Dated:- 23/9/2019

To

✓ The Naib Tehsildar,  
SubTehsil Dulehar Distt. Una(HP),  
Subject: Regarding non-payment of energy bill in respect of M/s  
Addinath Rubbers Pvt. Ltd. Village Shampura PO Bidherwal  
Tehsil Haroli Distt. Una.

Respected Sir,

"Jai Hind."

In the above noted context, it is submitted that a consumer named M/s Addinath Rubbers Pvt. Ltd. Village Shampura PO Bidherwal Tehsil Haroli Distt. Una bearing ID 100012001172 is a permanent defaulter under this office and after adjusting all the security, a sum of Rs 687815/- (Rs Six lac eighty seven thousand eight hundred and fifteen only) is still pending against his account. Despite issuance of several reminders and legal notices the consumer is not clearing the electricity due pending against its account. Being the Director of the firm Sh. Sunil Jain has bought the land for setting up the plant at above location bearing Khasra No. 54/ (0-52-69Kita). So, your good-self is requested to create charge on the above property.

This is for your kind information and further necessary action

Yours faithfully,

Assistant Engineer,  
Electrical Sub-division,  
HPSEBL, Dulehar Una (HP).


DA: - Nil.

Copy forwarded to the following for the information and necessary action please:-

1. The GM, DIC, Una, Distt. Una (HP).
2. The Senior Executive Engineer, ED, HPSEBL, Gagret.

Assistant Engineer,  
Electrical Sub-division,  
HPSEBL, Dulehar Una (HP).

Naib Tehsildar  
Haroli, Distt. Una (HP)

  
 डॉ. रमेश चंद्रा  
 डॉ. रमेश चंद्रा (डि.ए.)  
 01/10/2019

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विद्यार्थी के नाम और पता  
 नाम और पता  
 नाम और पता

**नाम पराजो**

एत.जी.ए रसीद संख्या: 4382409201910613  
 नाम : A  
 पिता/पति : B

नकल शुल्क : 10  
 सेवा शुल्क :  
 कल शुल्क : 11

[illegible]

Electrical Sub Division  
DULHAS (UVA) 10 रु फाय बदेने के  
6/87, 815/1 के कराले Charge  
दोउरी से.

Certified that this copy has been generated from the database of Revenue Department at as  
accessed by the Lok Mitra Kendra Hira Nagar on 24-September-2019

दिनांक: 24-Sep-2019

सबजेट : हिमाचल प्रदेश - शिमला

For Validity Refer : Notice, No. Rev-C/FY10/1/2009 Dated 14-Feb-2011

Jam04041929432

पृष्ठ संख्या: 1

ANNEXURE-2



- (vii) The ***Hon'ble Supreme Court in the matter of KC Ninan v. Kerala State Electricity Board, 2023 SCC OnLine SC 663, decided on 19.05.2023***

has decided that the electricity utilities can create a charge by framing subordinate legislation or statutory conditions of supply enabling recovery of electricity arrears from a subsequent transferee.:

- (i) In the e-auction documents, it was clearly mentioned that the properties i.e. Land and Building, and Plant and Machinery being sold by the Respondent No.3 are on "AS IS WHERE IS BASIS", "AS IS WHAT IS BASIS", "WHATEVER THERE IS BASIS" and "NO RECOURSE BASIS".
- (ii) The Lol dated 09.04.2022 issued to the Applicant (annexed with the Application as Annexure A-2) has clear mention of the above condition.

The relevant part of the Lol is reproduced below:

After payment of the entire sale consideration and interest, if any payable, the Certificate of Sale containing due disclosure of the fact that the sale is "AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS" will be issued in the name of the Successful Bidder only and will not be issued in any other name. This Letter of Intent cannot be assigned by you or transferred by you, in any manner whatsoever, to any other person.

- (iii) The Sale Certificate dated 12.07.2022 annexed with the Application as Annexure A-3 also finds clear mention of the above condition.
- (iv) On this issue the ***Hon'ble Supreme Court in the matter of KC Ninan v. Kerala State Electricity Board, 2023 SCC OnLine SC 663, decided on 19.05.2023*** has decided that all prospective auction purchasers are put on notice of the liability to pay the pending dues when an appropriate "as is where is" clause is incorporated in the auction sale agreement. It is for the intending auction purchaser to satisfy themselves in all respects about circumstances such as title, encumbrances and pending statutory dues in respect of the property they propose to purchase. In a public auction sale, auction purchasers have the opportunity to inspect the premises and ascertain the facilities available, including whether

electricity is supplied to the premises. Information about the disconnection of power is easily discoverable with due diligence, which puts a prudent auction purchaser on a reasonable enquiry about the reasons for the disconnection. When electricity supply to a premises has been disconnected, it would be implausible for the purchaser to assert that they were oblivious of the existence of outstanding electricity dues."

- (v) It is noted that four Judgements (supra) relied upon by the Applicant are either related sale in auction was as a going concern *only related to title deed and relates to pre IBC period* and therefore would not be applicable in the present case.
- (vi) In view of the above discussions, we are of the considered view that the Applicant would be liable to pay the arrears of the electricity dues.

11 After coming to the conclusion that the Respondent No.1 has security interest on the property and the Applicant would be liable to pay the outstanding dues, the next question arises before us is that **"Whether the Respondent No.1 has relinquished the security interest"**.

- (i) This Tribunal, vide its Order dated 25.09.2019, admitted the CIRP against the Corporate Debtor in petition filed under section 9 of IBC by Ms. Jai Ganesh Trading Co. bearing CP(IB) No.42/Chd/HP/2019.
- (ii) Subsequently, this Tribunal in the hearing in IA No. 819/2020 [in CP(IB) No. 42/Chd/HP/2019] dated 06.10.2021 noted that in the 5<sup>th</sup> meeting of the CoC held on 07.03.2020, Andhra Bank holding 100% voting share, did not extend the time of CIRP and decided to pass resolution to liquidate the Corporate Debtor in the best interest of all the stakeholders. In view of the satisfaction of the conditions provided under Section 33 (1) of the Code,

this Tribunal, vide its order dated 06.10.2021, directed the corporate debtor to be liquidated in the manner as laid down in Chapter III of the Code and appointed the Respondent No.3 as the Liquidator under the Section 33(2) of the Insolvency and Bankruptcy Code 2016 for conducting liquidation process of Corporate Debtor.

- (iii) The Respondent No.1 filed its claim of outstanding dues in Form C vide its letter dated 24.03.2022. From perusal of para 8A of Form C, it is observed that the Respondent No.1 has clearly mentioned that the security interest has not been relinquished. The relevant extract of Form C is produced as below:

8A.	WHETHER SECURITY INTEREST RELINQUISHED	No
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- (iv) It is noted from the pleadings of the Applicant that pursuant to the public notice and e-auction process document dated 21.03.2022 and its addendum dated 03.04.2022, e-auction was conducted on 08.04.2022 on the platform of Linkstar Infosys Pvt. Ltd. and the Applicant was declared successful bidder on the basis of highest bid and Lol was issued on 09.04.2022. Subsequently, after payment of the entire sale consideration, the sale certificate was issued to the Applicant on 12.07.2022. It is noted that although petitioner filed its claim after the public notice, but the Respondent No. 3 was aware of the security interest of the Respondent No. 1, because in all the documents to the sale i.e. public notice and e-auction process document, Lol and sale certificate have clear mention that the sale is on "AS IS WHERE IS BASIS" "AS IS WHAT IS BASIS", "WHATEVER THERE IS BASIS" and "NO RECOURSE BASIS".

- (v) After verification of the above claim filed, the Respondent No.3 after verification of the claim in terms of section 39 and 40 of the IBC read with Regulation 30 of the IBBI (Liquidation Process) Regulations 2016, informed, vide his letter dated 02.08.2022 to Respondent No.1 that its claim of Rs.6,87,815/- has been accepted. The relevant extract of the letter dated 02.08.2022 of Respondent No.3 is produced as below:

That the undersigned had verified your claim as per the provisions of the Code and the same was also informed you by way of email and now based on your request the status of claim is again re-iterated here:

Sr. No.	Name of Claimant	Amount of Claim	Amount of Claim approved
1	HPSEBL	6,87,815	6,87,815

- (vi) Subsequently, the Respondent No. 3 after issue of sale certificate to the Applicant communication to the Respondent No. 1 vide letter dated 15.08.2022 that it does not have security interest in terms of Regulations 21 of Liquidation Regulations, as it failed to intimate security interest within 30 days of liquidation commencement date and also in terms of Rule 21A of Liquidation Process Regulations.
- (vii) We are of the considered view that once the claim of Respondent No. 1 has been admitted by the liquidator (Respondent No. 3), no subsequent impediments can be imposed by the liquidator. However, we observe that the Respondent No. 1 has given NoC to the liquidator (Respondent No. 3) vide its letter dated 24.08.2022, the relevant extracts of which are as below:



This NOC is pursuant to your request made in the capacity as Liquidator of M/s Addinath Rubbers Private Limited which is in Liquidation at NCLT, Chandigarh Bench. As per your email, we understand that you have sold the property of Addinath Rubbers in an auction to a buyer under liquidation process as per Insolvency and Bankruptcy Code, 2016. We have also submitted a claim of Rs. 687815 in this matter.

We have no objection if you sell the property of the company to the new buyer. As HPSEBL being a commercial organisation and making the efforts to recover the outstanding amount of the permanent defaulter consumers. So, we request you to settle our claim on priority at the earliest as per provisions of the Insolvency law.

In view of the above, we are of the considered view that the above NOC would result in relinquishment of the secured interest of Respondent No.1 in the liquidation estate in terms of section 52(1)(a) of the IBC.

12 In view of the above, we are of the considered view that the Applicant after payment of arrears of electricity dues would be entitled to get the lien vacated in the revenue records and Respondent No.1 would be entitled to receive the sale proceeds of the liquidation estate as per the waterfall mechanism prescribed under section 53(1) of the IBC with its priority falling under (b)(ii) i.e. debt owned by a secured creditor in the event, such secured creditor relinquished security in the manner set out in section 52. Thereafter, respondent No.3/Liquidator is directed to take exclusive steps to transfer/ registration of the property in the name of applicant.

13 In the light of above discussion and reasons recorded hereinbefore, the present **IA No. 754 of 2023 is partly allowed & disposed of accordingly.**

14 Let a copy of the Order be supplied to the parties, if applied for.

**Sd/-**  
**(Umesh Kumar Shukla)**  
**Member (Technical)**

**Sd/-**  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

October 14, 2024

Japneet