

Eastern Power Distribution Company Of ... vs Maithan Alloys Limited & Ors on 26 May, 2022

Author: Ashok Bhushan

Bench: Ashok Bhushan

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 961 of 2021

(Arising out of Order dated 05.10.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in I.A. (IBC)/748 (KB) 2021 in C.P. (IB)/176 (KB) 2018)

IN THE MATTER OF:

Eastern Power Distribution Company of
Andhra Pradesh Limited.
Having its Corporate Office at
C/o 50-27-5/1,
TPT Colony, Sethammadhara,
Vishakhapatnam,
Andhra Pradesh - 530013
Through SE (Operations), Vizianagaram

...Appellant

Versus

1. Maithan Alloys Limited
Having its Registered Office at
9, A.J.C. Bose Road,
Kolkata, West Bengal - 700017
Successful Purchaser of
Impex Metal & Ferro Alloys Ltd. (in liquidation)

2. Samir Bhattacharya,
Liquidator of Impex Metal & Ferro Alloys Ltd.
Sagar Trade Cube, 104,
Kolkata, West Bengal - 700026

3. Subodh Kumar Aggarwal,
Resolution Professional of
Impex Metal & Ferro Alloys Ltd.
1, Ganesh Chandra Avenue,
Kolkata, West Bengal - 700013.

...Respondents

Present:

For Appellant: Mr. Nakul Dewan, Sr. Advocate with Mr. Rakesh
K. Sharma and Mr. Nishant Shrama, Advocates.

For Respondents: Mr. Abhijeet Sinha, Mr. Arijit Mazumdar, Mr. Shambo Nandy and Mr. Supriyo Gole, Advocates for R-1.

Mr. Rahul Auddy, Advocate for R-2.

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JUDGMENT

ASHOK BHUSHAN, J.

This Appeal has been filed against the order dated 05.10.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata deciding the I.A. No. 748(KB)2021 filed by the Respondent No.1 seeking direction to restore the electricity connection by the Appellant. By the impugned order the Adjudicating Authority has directed the Appellant, electricity provider, to energize the connection of the Corporate Debtor and further to refund the balance to the Appellant (Respondent No.1) after retaining the security deposit amount as per Regulation. The Respondent No.1 was also directed to make payment of statutory charges, if any. Aggrieved by the order dated 05.10.2021, this Appeal has been filed by the Appellant. Brief facts of the case necessary to be noticed for deciding this Appeal are:

i. The Corporate Debtor has obtained an electricity connection from the Appellant. By an order dated 09.03.2018, on an application by State Bank of India, Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor. Due to non-payment of electricity dues, the Appellant disconnected the electricity supply of the Corporate Debtor on 24.12.2018. No Resolution Plan having been approved, the Adjudicating Authority passed an order on 12.02.2019 directing for liquidation of the Corporate Debtor. The Respondent No. 2 was appointed as Liquidator.

Company Appeal (AT) (Insolvency) No. 961 of 2021 ii. The Liquidator issued an e-auction notice for going concern sale of the Corporate Debtor. In e-auction, the Respondent No. 1 was declared as Successful Auction Purchaser of the Corporate Debtor. After few litigation pertaining to e-auction, a joint settlement was entered between the Liquidator, the Auction Purchaser, State Bank of India and Bank of Baroda on 24.05.2021. The Adjudicating Authority vide order dated 21.06.2021 noticed the Settlement Agreement and also recorded the submission of Respondent No. 1 that Liquidator may be directed to pay electricity charges as per Section 53 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC'). After the aforesaid order, the Liquidator confirmed the auction and issued a Sale Certificate dated 16.09.2021.

iii. The Respondent No. 1 preferred I.A. No. 748 (KB) 2021 before the Adjudicating Authority seeking restoration of electricity supply to the premises of Corporate Debtor. The Adjudicating

Authority on 06.09.2021 recorded that the Applicant - Respondent No. 1 proposes to deposit a sum of Rs.20 Crores plus whatever charges are applicable to energize the connection from the Grid to the premises in question. The Adjudicating Authority directed that on deposit of Rs.20 Crores, the Appellant shall take necessary steps to energize the connection. However, this order dated 06.09.2021 was without prejudice to the rights and contentions of the parties in the application. In the Application a Reply was filed by the Appellant. Company Appeal (AT) (Insolvency) No. 961 of 2021 Appellant opposed the application stating that Respondent No. 1 is liable to pay all outstanding dues of the Corporate Debtor as per Regulation 8.4 of the General Terms and Conditions of Supply and even if Respondent No. 1 is Auction Purchaser it has liability to clear the entire dues of the Corporate Debtor, only then a fresh connection can be granted. The Adjudicating Authority by the impugned order held that since the sale is as a going concern basis, the Corporate Debtor is entitled to receive connection in its own name. The Adjudicating Authority directed the Appellant to energize the connection to the Corporate Debtor and further directed to refund the balance to the Respondent No. 1 after deduction of Security Deposit as per Regulations. Following are the directions issued by the Adjudicating Authority in Para 17:-

"17. In light of the facts stated in the application and the submissions made, the application be and the same allowed and the following is ordered:

a. Since a deposit of Rs.24.50 Crore has already been made by the Applicant on behalf of the Corporate Debtor, Respondent No. 1 is directed to conclude the necessary documentation with the Corporate Debtor and energise the connection to the Corporate Debtor within 3 days from the date of this order;

Company Appeal (AT) (Insolvency) No. 961 of 2021 b. Respondent No. 1 is directed to energise the connection to the Corporate Debtor for 24 MW as per the load requirement of the Applicant; c. Respondent No. 1 is directed to keep the security deposit amount as per regulations and refund the balance to the Applicant within 7 days from the date of this order;

d. Statutory charges of APTRANSCO, if any, to be paid by Applicant/ Corporate Debtor within 3 working days from the date when such charges are intimated by APTRANSCO/ Respondent No. e. Respondent No. 1 is also directed to approach Respondent No. 2 liquidator for payment of its dues and Respondent No. 2 is directed to consider the dues of the Respondent No. 2 in accordance with the Code and make the payment as per S. 53 of the Code;

f. Corporate Debtor is directed to pay the electricity dues of the Respondent No. 1 from in accordance with the rules and regulations of Respondent No. 1."

Company Appeal (AT) (Insolvency) No. 961 of 2021 iv. Aggrieved by the aforesaid directions, the Appellant has come up in this Appeal.

2. We have heard Shri Nakul Dewan, learned senior counsel for the Appellant, Mr. Abhijeet Sinha, learned counsel for Respondent No. 1 and Mr. Rahul Auddy, learned counsel appearing for Respondent No. 2.

3. Learned counsel for the Appellant challenging the order impugned contends that the Respondent No. 1 was liable to pay the entire outstanding dues of the Corporate Debtor both pre-CIRP dues and CIRP dues which is statutory requirement as per Regulation 8.4 of General Terms and Conditions of Supply. Total dues of the Appellant of pre-CIRP was Rs.28,34,90,801/- and during the CIRP the dues are Rs.20,72,84,722/- and the Respondent No. 1 entitled to have electricity connection only after clearing the aforementioned two amounts. Respondent No. 1, who is Successful Auction Purchaser, prays for fresh connection in the same premises, hence, he is liable to clear the entire dues. It is further submitted that the issues raised in this Appeal are fully covered by the judgment of Hon'ble Supreme Court dated 01.06.2020 in Civil Appeal No. 1815/2020 - 'Telangana State Southern Power Distribution Company Ltd. & Anr. vs. M/s Srighdaa Beverages'

4. Shri Abhijeet Sinha, learned counsel for the Respondent No. 1 refuting the submissions of learned counsel for the Appellant submits that the Respondent No. 1 was the Successful Auction Purchaser to the Corporate Debtor which was sold as going concern. There is no liability of Company Appeal (AT) (Insolvency) No. 961 of 2021 the Respondent No. 1 except the sale consideration of Rs.74,22,18,750/- which was paid by the Respondent No.1 to the Liquidator in terms of the Joint Settlement Agreement. The Appellant has with regard to their pre- CIRP dues had already filed their claim, out of which, claim of Rs.36,51,40,582/- has been admitted. Appellant is entitled to receive payments as per Section 53 of the Code. No liability of the payment of electricity dues of the Corporate Debtor can be fastened on the Successful Auction Purchaser, in view of the provisions of IBC. In the terms and conditions of Auction Sale there is no such condition that Successful Auction Purchaser shall be liable to pay electricity dues of the Corporate Debtor. The Adjudicating Authority has rightly passed the order for refund of the amount deposited by the Respondent No.1. Respondent No. 1 has deposited an amount of Rs.20 Crores to immediately receive the electricity connection pending adjudication of the application filed by the Respondent No.1. Judgment relied by learned counsel for the Appellant of the Hon'ble Supreme Court in 'Telangana State Southern Power Distribution Company Ltd. & Anr.' (supra) has no application as there was specific terms and conditions that the auction purchaser will be responsible for any charges including electricity charges, hence, the Hon'ble Supreme Court held that the electricity dues will be payable by Successful Auction Purchaser. The auction in 'Telangana State Southern Power Distribution Company Ltd. & Anr.' (supra) was not an auction by the Liquidator under the IBC rather the said auction was under SARFAESI Act, 2002, which is not attracted in the present case.

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5. Learned counsel for the Liquidator submits that the Liquidator has already written to the Appellant to grant the electricity connection to the Respondent No.1. The Appellant is not entitled to any relief in this Appeal. The Corporate Debtor has been sold as a going concern in pursuance of which Sale Certification was also issued on 16.09.2021. The Appellant has lodged claim with the Liquidator for total sum of Rs.52,44,85,882/-. In so far as pre-CIRP dues is concerned, the same

shall be paid in accordance with Section 53 of the Code which is an operational debt. However, looking to the claim of Secured Financial Creditors there will not be fund available to the Liquidator to make any payment to operational claim of Rs.33.24 Crores, which has been informed by the Liquidator to Appellant vide email dated 05.06.2021. In so far as CIRP Cost of Rs.19.19 Crores is concerned, in the list of unpaid Creditors as handed over to the Liquidator name of Appellant is not appearing.

6. We have considered submissions of learned counsel for the parties and perused the record.

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?

8. The Liquidator has auctioned the Corporate Debtor as a going concern which is clear from the e-auction notice issued by the Liquidator Company Appeal (AT) (Insolvency) No. 961 of 2021 for sale as going concern. E-auction notice published in the newspaper dated 28.05.2019 contain following heading:

"NOTICE FOR GOING CONCERN SALE (GCS) UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016 E-AUCTION SALE NOTICE"

9. The Respondent No. 1 has given highest bid of Rs.68.25 Crores. There was brief litigation pertaining to auction sale which culminated into Joint Agreement of Settlement dated 24.05.2021, which settlement agreement was noticed by this Tribunal in its order dated 21.06.2021. Order dated 21.06.2021 is as follows:-

"O R D E R (Virtual Mode) 21.06.2021: Ld. Counsel for the Respondent No. 1 submits that they have paid full consideration as per the settlement to the Liquidator. Ld. Counsel appearing on behalf of the Liquidator is an agreement with the submission made by the Respondent No. 1. Ld. Counsel for the Respondent No. 1 submits the Liquidator may be directed to pay the electricity charges as per Section 53 of IBC. Prayer allowed. The parties shall be bound by the terms and conditions of the settlement agreement and auction notice. 2 Liquidator is directed to extent necessary cooperation so that the electric supply may be restored at the earliest. Thus, the Appeal is disposed of in terms of the settlement arrived at by the parties."

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10. After aforesaid order dated 21.06.2021, Sale Certificate was also issued by the Liquidator to the Respondent No.1 which clearly mentions that the Liquidator has received the full consideration money for sale of the Corporate Debtor as a going concern "ON AS IS WHERE IS WHATEVER THERE IS AND WITHOUT RECOURSE BASIS". The terms and conditions of the sale which has

been brought on record as Annexure R-1 as well as E-auction Notice which has been filed with the Reply of Respondent No. 1 does not indicate that there was any indication in e-auction notice that electricity dues of the Corporate Debtor shall be payable by the Auction Purchaser. Sheet anchor of the Counsel for the Appellant is Regulation 8.4 of the General Terms and Conditions of Supply. Regulation 8.4 provides as follows:-

"8.4 Transfer of Service Connection The seller of the property should clear all the dues to the Company before selling such property. If the seller did not clear the dues as mentioned above, the Company may refuse to supply electricity to the premises through the already existing connection or refuse to give a new connection to the premises till all dues to the Company are cleared."

11. The submission of learned counsel for the Appellant is that the Auction Purchaser is liable to clear all the dues of the Company before obtaining a new connection to the premises. Details of the dues of the Company Appeal (AT) (Insolvency) No. 961 of 2021 Appellant standing on the premises in respect of the Corporate Debtor are to the following effect:-

1. Pre-CIRP dues as on 09.03.2018 a. Arears in respect of Corporate Debtor =19,76,57,061/-

b. Deemed consumption charges for the =13,48,33,740/-

Financial Year 2015-16

2. Dues during CIRP period =20,72,84,722/-

The dues, thus, are in two parts; firstly, prior to CIRP i.e. as on 09.03.2018 and secondly, during the CIRP process. The present is the case where the Corporate Debtor has been sold as going concern under liquidation proceeding under IBC.

12. The IBC provides for detailed procedure and provisions for dealing with the claims of the creditors which are against the Corporate Debtor who is facing insolvency/ liquidation. Under Section 35 of the Code, the Liquidator is obliged to verify the claims of all the creditors. Section 36 deals with liquidation estate. Under Section 38, Liquidator has to receive/ collate the claims of creditor within 30 days from the date of commencement of the liquidation process. In the present case, the Appellant themselves has filed their claim before the Liquidator. In the reply filed by the Liquidator, details of the claim submitted by the Appellant has been given. The total claim lodged by the Appellant before the Liquidator has been captured in Para 3(h) of the Reply of the Liquidator, which is to the following effect:-

Company Appeal (AT) (Insolvency) No. 961 of 2021 "h. Pursuant to the public announcement published by me on 15.2.2019, the Appellant had lodged its claim with the Liquidator on 11th March 2019 for a total claim of Rs.52,44,85,882/- details of which are as follows:-

Sl. No. Particulars Amount

1. Outstanding CC charges Rs. 19,76,57,061.00 arrears at the time of CIRP - Pre CIRP claim

2. Outstanding CC Charges Rs. 19,19,95,081.00 arrears in CIRP period -

March 2018 to February

3. Deemed Consumption Rs. 13,48,22,740.00 charges - 2015-16 Rs. 52,44,85,882.00

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-CIRP 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.

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14. Now, we come to the electricity dues during the CIRP. The said dues are also to be taken care of and paid in accordance with Section 53(1). The electricity consumed by the Corporate Debtor during CIRP period is an insolvency process cost which is also to be paid in accordance with Section 53 Sub-section (1) of the Code. The above is the statutory scheme for payment of all claims including operational debts i.e. claim of the electricity dues pre-CIRP and post-CIRP. 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.

15. Now, we come to the judgment of Hon'ble Supreme Court in 'Telangana State Southern Power Distribution Company Ltd. & Anr.' (supra). The above was the case of Auction Purchaser under SARFAESI Act, 2002. In Para 2 of the Judgment terms and conditions of the sale notice have been captured which is to the following effect:-

"TERMS AND CONDITIONS

21. The successful bidder shall bear the stamp duties, charges including those of sale certificate, registration charges, all statutory dues payable to central/state government, taxes and rates and Company Appeal (AT) (Insolvency) No. 961 of 2021

outgoing, both existing and future relating to the properties.

.....

24. The property is sold in "AS IS WHERE IS,
WHAT IS THERE IS AND WITHOUT ANY

RECOURSE BASIS" in all respects and subject to statutory dues if any. The intending bidders should make discrete enquiry as regards any claim, charges/encumbrances on the properties, of any authority, besides the bank's charges and should satisfy themselves about the title, extent, quality and quantity of the property before submitting their bid. For any discrepancy in the property the participating bidder is solely responsible for all future recourses from the date of submission of bid.

25. No claim of whatsoever nature regarding the property put for sale, charges/encumbrances over the property or on any other matter etc., will be entertained after submission of the bid/confirmation of sale.

26. The Authorised Officer will not be responsible for any charge, lien, encumbrance, property tax dues, electricity dues, etc., or any other dues to the Government, local authority or anybody, in respect of the property under sale."

16. In the context of the aforesaid case, the Hon'ble Supreme Court had occasion to consider the clauses of General Terms & Conditions of Supply Company Appeal (AT) (Insolvency) No. 961 of 2021 and Distribution and after noticing the earlier judgments in Para 15 following was laid down:-

"15. We have gone into the aforesaid judgments as it was urged before us that there is some ambiguity on the aspect of liability of dues of the past owners who had obtained the connection. There have been some differences in facts but, in our view, there is a clear judicial thinking which emerges, which needs to be emphasized:

A. That electricity dues, where they are statutory in character under the Electricity Act and as per the terms & conditions of supply, cannot be waived in view of the provisions of the Act itself more specifically Section 56 of the Electricity Act, 2003 (in pari materia with Section 24 of the Electricity Act, 1910), and cannot partake the character of dues of purely contractual nature.

B. Where, as in cases of the E-auction notice in question, the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on "AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS", there can be no doubt that the liability to pay electricity dues exists on the respondent (purchaser).

C. The debate over connection or reconnection would not exist in cases like the present one Company Appeal (AT) (Insolvency) No. 961 of 2021 where both aspects are covered as per clause 8.4 of the General Terms & Conditions of Supply."

17. It is to be noted that the Hon'ble Supreme Court in the above case was considering the Auction Sale under SARFAESI Act, 2002. No provision of IBC were under consideration of the Hon'ble Supreme Court. 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.

18. This Tribunal has occasion to deal with a case where in liquidation proceeding sale was conducted and assets were sold to Successful Auction Purchaser in Company Appeal (AT) (Insolvency) No. 650 of 2020, 'Shiv Shakti Inter Globe Exports Pvt. Ltd. Through its Authorised Representative Company Appeal (AT) (Insolvency) No. 961 of 2021 vs. KTC Foods Pvt. Ltd. Through Liquidator, Mr. Anup Kumar Singh & Anr.', 2022 SCC OnLine NCLAT 85, wherein in Para 23 following was laid down by this Tribunal:-

"21. Adverting to the contention of the Learned Counsel for the Appellant that the Adjudicating Authority has erred in denying the sale of the 'Corporate Debtor' as a 'going concern' to the Appellant without including any contingent liabilities, we hold that it is a settled law that when the sale proceeds of a 'Corporate Debtor' are duly distributed in the Order of priority and in the manner prescribed under Section 53 of the Code, claims of any other Creditor cannot be entertained contrary to the provisions entailed under Section 53; subsequent to the distribution of sale proceeds under Section 53 no other entity including any Government entity can claim any past unpaid or outstanding dues against the Appellant who has purchased the 'Corporate Debtor Company' as a 'going concern'. It is significant to mention that the second Respondent/Liquidator has specifically submitted that even these claims by the Uttar Haryana Bijili Vitran Nigam were not submitted in the prescribed form either during the CIRP Process or at the Liquidation stage. We are of the considered view that at this stage subsequent to the sale of the 'Corporate Debtor Company' as a 'going concern', these claims cannot be foisted upon the Appellant. The scope and objective of the Code is to extinguish all claims specifically the ones which were not even made during the CIRP Company Appeal (AT) (Insolvency) No. 961 of 2021 or in the Liquidation stage, to aid the purchaser of the Company as a 'going concern' to start on a 'clean slate'. The Hon'ble Supreme Court in 'Ghanshyam Mishra & Sons Pvt. Ltd.' Vs. 'Edelweiss Asset Reconstruction Company Ltd. & Ors.', Civil Appeal No. 8129 of 2019 and in 'CoC of Essar Steel India Ltd.' Vs. 'Satish Gupta & Ors.' (2020) 8 SCC 531 has laid down the proposition that the purchaser of the Company even in the Liquidation stage cannot be burdened with past liabilities when it is not mentioned in the 'Sale Notice'."

19. This Tribunal again had occasion to consider a case pertaining to electricity dues in insolvency proceeding in Company Appeal (AT) (Insolvency) No. 13 of 2021 decided on 14.03.2022, 'Damodar Valley Corporation vs. Karthik Alloys Limited & Anr.', 2022 SCC OnLine NCLAT

109. This Tribunal held that payment of creditors including Operational Creditors i.e. Electricity Supply Provider shall be dealt with as per the Resolution Plan or Liquidation, as the case may be. In Para 30, this Tribunal laid down following:-

"30. We note that the context in the matter of Telangana Southern State Power Distribution Company Limited versus Srigdhaa Beverages (2020 SCC OnLine SC 478) cited by Learned Senior Counsel for Appellant is also distinguished from that in the present case, since in the Telangana Southern State Power case auction-purchase of the asset had taken place, whereas in the present Company Appeal (AT) (Insolvency) No. 961 of 2021 case the corporate debtor is under insolvency resolution and the settlement of past debts of financial and operational creditors will be considered under resolution plan or liquidation, as the case may be. Hence DVC, which is an operational creditor, or any other creditor cannot claim and be given priority in payment of its pre- CIRP debt before the resolution plan is finalised and approved by the Adjudicating Authority."

20. In the Rejoinder Affidavit filed by the Appellant with regard to CIRP cost it has been pleaded on behalf of the Appellant that appropriate application has been moved before the Adjudicating Authority claiming payment of full CIRP cost in terms of Section 53. Para 20 of the Rejoinder is as follows:-

"20. That the above chart refers to CIRP Costs vividly and both Liquidator and erstwhile RP have not filed any reply in the impugned proceedings despite opportunities granted and instead sent emails. Thereafter impugned order was passed and Liquidator had again sent the misplaced reply despite specific directions to Liquidator to make payment of CIRP costs. The appropriate application is moved before Adjudicating Authority seeking payment of CIRP costs which are to be paid in full in terms of Section 53 of IBC. The other heads are not being adjudicated by any forum other than this Hon'ble Tribunal."

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21. The submission raised by learned counsel for the Appellant claiming payment of entire pre-CIRP and post-CIRP dues from Successful Auction Purchaser in liquidation in event is accepted, the same will be in contravention of IBC. If even for argument sake it is accepted that entire pre-CIRP and post-CIRP dues are to be recovered from the Successful Auction Purchaser satisfying the entire dues of the Appellant, hence, in event, as in the present case, Electricity Supply Provider files a claim in the liquidation proceeding which is partly paid in the liquidation proceeding then the said payment shall be in excess to the entire dues realized by the Appellant from the Successful Auction Purchaser, which is not the intend of the IBC proceeding nor a claimant even if it is Electricity Supply Provider

can realize its claim against a Corporate Debtor in liquidation contrary to the scheme of IBC.

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. The Adjudicating Authority did not commit any error in issuing the directions as contained in the order dated 05.10.2021. We, however, are of the view that the Appellant is entitled to claim its electricity dues both pre-CIRP and post-CIRP in accordance with Section 53 of the Code. Ends of justice be served in granting liberty to the Appellant to move the Adjudicating Authority regarding aforesaid claims, if not already filed, which may be considered and decided in accordance with law. In result of the above discussion, we uphold the impugned order of the Adjudicating Company Appeal (AT) (Insolvency) No. 961 of 2021 Authority dated 05.10.2021 with liberty to the Appellant to file appropriate application, if not already filed, before the Adjudicating Authority with regard to its entitlement of pre-CIRP and post-CIRP cost. The Appeal is disposed of accordingly.

[Justice Ashok Bhushan] Chairperson [Naresh Salecha] Member (Technical) NEW DELHI 26th May, 2022 Archana Company Appeal (AT) (Insolvency) No. 961 of 2021