

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No.164/2021
In
CP (IB) No. 102/Chd/Chd/2018
(Admitted Matter)**

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

In the matter of:

Weather Makers Pvt. Limited

...Operational Creditor

Vs.

Parabolic Drugs Ltd.

...Corporate Debtor

And in the matter of IA No. 164/2021:

Akums Lifesciences Limited
(Formally known as Parabolic Drugs Limited)
Through its Authorized Representative
Mr. Shekhar Bhaskar
S.C.O. 186-187, Second Floor
Sector 8-C, Chandigarh- 160008

...Applicant

Vs.

1. Punjab State Power Corporation Limited
(Through its Managing Director)
The Mall, PSEB Head Office,
Patiala, Punjab- 147001

... Respondent No.1

2. Assistant Executive Engineer
Punjab State Power Corporation Limited
Sub-Division, Village Mubarikpur
Dera Bassi, District Mohali

... Respondent No.2

3. Senior Executive Engineer
Punjab State Power Corporation Limited
Sub-Division Lalru,

Dera Bassi, District Mohali

... Respondent No.3

Order delivered on: 05.07.2023

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

Present:

For the Applicant in

IA No. 164/2021

:

Mr. Arora Vishwas Kumar, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by **Akums Lifesciences Limited** (Formally known as Parabolic Drugs Limited)(hereinafter referred to as 'Applicant') against the respondents seeking directions to adhere to the terms of approved resolution plan and to restore electricity connection at factory premises of applicant located at village Sundran and Chhachhrauli, Tehsil- Derabassi.

2. The brief facts stated in the application are that the CIRP was initiated vide order dated 23.08.2018. Resolution Plan was approved vide order dated 12.01.2021 creating hindrance in restarting production at factory premises after the successful resolution of CIRP of the applicant, by not installing/ restoring the electricity connection. and the resolution plan was approved by the Committee of Creditors with 73% voting shares. The management and control of the company was transferred to Successful Resolution Applicant and the name of the company was changed. The applicant approached the respondent to restore the electricity connection, however, respondent no. 2 replied that the amount of Rs. 3,87,96,889/- is outstanding on account of non-payment of electricity bills for the

years 2017 and 2018 in reference to the Mubarakpur plant and certain amount was outstanding towards Chhachhrauli plant for which details have not been shared. Despite the intimation by the IRP, the respondents failed to submit the claims. The applicant has already made payments to operational creditors including workmen and employees, governmental authorities, and other operational creditors. It is further submitted that the applicant is not liable for past dues and is entitled in law for the restoration of electricity connection.

3. The reply was filed by Diary No. 00427/2 dated 27.05.2021 wherein it is stated that the electricity connection for two premises has already been sanctioned by PSPCL. The electricity connection for Chhachhrauli will be released after the submission of the readiness of 66 KV grid substation by the applicant. The resolution plan has already been approved by the Tribunal. The electricity connection was disconnected long back and remained disconnected throughout the Resolution process. PSPCL has no objection to supply electricity to any premises where the owner or occupier clears all dues. In Clause 6.13.6 of the Resolution Plan provides no mention of any assistance being required from PSPCL in relation to an electricity connection. The applicant deposited an amount of Rs.3.87 crores with PSPCL pursuant to the electricity connection at Mubarakpur. For electricity at Chhachhrauli, there was no amount recoverable and only procedure formalities are being applied with, the electricity connection is in process of being released by PSPCL. The electricity connection has been released and commercial transaction in relation to the electricity connection stands completed.

4. The rejoinder was filed by the applicant by Diary No. 00427/4 dated 03.02.2023 wherein it is stated that the response of respondent No.2 against the

request letter for supply of electricity connection it was stated that an amount of Rs.3,87,96,889/- was outstanding pertaining to the year 2017 & 2018 on account of non-payment of electricity bills. The dues pertain to the period prior to the commencement of CIRP. Despite intimation, respondent No.1 has failed to submit its claim before the IRP. In the absence of any claim of respondents before IRP, the payment to the said authority shall be deemed as awaited, settled and extinguished. Therefore, nothing in respect to dues pertaining to the pre-CIRP period are payable by the applicant to respondents. The short written submissions were filed by the respondent by Diary No. 00427/5 dated 14.03.2023 reiterating the above-mentioned facts.

5. We have heard the learned counsels for the applicant as well as the respondent and perused the material available on record.

6. A reference is made to the following clauses in the resolution plan for the sake of clarity:-

“Part-III- Financial Proposal Of The Resolution Applicant

6. Other Operational Creditors

6.1. Amount: The Operational Creditors of the Corporate Debtor shall be paid the following amounts, in full and final satisfaction of all Claims of all Operational Creditors and in order to provide an equitable solution for stakeholders of the Corporate Debtor.

6.1.1. All Statutory Dues, and Claims in relation thereto, shall be fully and finally settled by making the payment of an amount of up to IN IN 3,75,00,000 (Indian Rupees Three Crore Seventy Five Lakhs), in aggregate, (the "Statutory Dues Settlement Amount") to the Governmental Authorities determined by the Resolution Applicant after due consideration and discussions with the relevant Governmental Authorities (if required).

6.1.2. It is proposed to pay certain other Operational Creditor(s) such portion of their Verified Amounts as may be determined by the Resolution Applicant after consideration of the importance of such Operational Creditors to the revival of the Corporate Debtor and / or recommencement of its operations, subject to an aggregate cap of IN 3,75,00,000 (Indian Rupees three core seventy five lakhs) ("Other Operational Creditor Amount"), in full and final satisfaction of all Claims of such Operational Creditors.

14. Effect of the Plan, implementation of the Plan and payments under the Plan

.....**14.5.** *The payment to Persons contemplated in Part 111 (Financial Proposal of the Resolution Applicant) shall be each of Corporate Debtors and Resolution Applicant's full and final performance and satisfaction of all its obligations to such Persons and all Claims (including, for the avoidance of doubt, any unverified portion of their Claims) of such Persons against the Corporate Debtor shall stand irrevocably and unconditionally abated, settled and extinguished in perpetuity with effect from the First Payment Date (save and except, the Claims relating to Deferred Lender Amount).*

14.15. All Claims that may be made or arising against the Corporate Debtor in relation to any payments required to be made by the Corporate Debtor under Applicable Law, or in relation to any breach, contravention or Non-Compliances of any Applicable Law (whether or not such Claim was notified to or Claimed against the Corporate Debtor, and whether or not any Governmental Authority was aware of such Claim shall be deemed to be owed and due by such member of the Corporate Debtor and shall immediately, irrevocably and unconditionally stand abated, settled and extinguished on and with effect from the First Payment Date. No Governmental Authority shall have any further rights or claims against the Corporate Debtor, in respect of the period prior to the First Payment Date”.

(Emphasis Supplied)

7. Under the Code, the applicant is an operational creditor and as is apparent from the forementioned clauses in the resolution plan approved by this Authority, the pre-CIRP dues are treated as settled. The records indicate that the amounts outstanding of electricity bills pertain to the year 2017-18 which is much prior to the initiation of CIRP in the present case.

8. Respondents No.1 to 3 through their reply have relied upon the various decisions of the Hon'ble Supreme Court which are produced as below:-

(a) Haryana SEB v. Hanuman Rice Mills, (2010) 9 SCC 145

"12. The position therefore may be summarised thus:

(i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner /occupier.

(ii) Where the statutory rules or terms and conditions of supply which are statutory in character, authorise the supplier of electricity to demand from the purchaser of a property claiming reconnection or fresh connection of electricity, the arrears due by the previous

owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser."

(emphasis supplied)

(b) **Dakshin Harvana, DiVil Vitran Migom 1d. v. Paramount Polemers (P) Ltd. (2006) 13 SCC-101**

(c)

"15. We must observe that the decision in Isha Marbles (4995) 2 SCC 648: (1925) 1 SCR847) is by itself nor an answer to the validity of clause 21-A of the Terms and Conditions inserted by the notification, under Section 19 of the Supply Act, the licensee or rather, the Electricity Board, is entitled to set down the Terms and Conditions of Supply of electrical energy. In the light of the power available to it, also in the context of Section 796) of the Supply Act, it could not be said that the insertion of clause 21-A in the Terms and Conditions of Supply of electrical energy is beyond the power of the appellant. it is also not merely contractual. This Court in Hyderabad Vanaspathi Ltd. v. A.P. SEB ((1998) 4 SCC 470 : (1998) 2 SCR 6201 has held that the Terms and Conditions of Supply of electricity notified by the Electricity Board under Section 49 of the Electricity (Supply) Act are statutory and the fact that an individual agreement is entered into by the Board with each consumer does not make the Terms and Conditions of Supply contractual. This Court has also held that though the Electricity Board is not a commercial entity, it is entitled to regulate its tariff in such a way that a reasonable profit is left with it so as to enable it to undertake the activities necessary. If in that process in respect of recovery of dues in respect of a premises to which supply had been made, a condition is inserted for its recovery from a transferee of the undertaking, it cannot ex facie be said to be unauthorised orunreasonable. Of course, still a court may be able to strike it down as being violative of the fundamental rights enshrined in the Constitution of India. But that is a different matter. In this case, the High Court has not undertaken that exercise."

(emphasis supplied)

(d) **Embassy Property Developments Pt Ltd, v. State of Karnataka & Ors, (2020) 13 SC 308**

(e)

"37. From a combined reading of sub-section (4) and sub-section (2) of Section 60 with Section 179, it is clear that none of them hold the key to the question as to whether NCLT would have jurisdiction over

a decision taken by the Government under the provisions of the MMDR Act, 1957 and the Rules issued thereunder. The only provision which can probably throw light on this question would be sub Section (5) of Section 60, as it speaks about the jurisdiction of NCLT. Clause (c) of sub-Section (5) of Section 60 is very broad in its sweep, in that it speaks about any resolution. But a decision taken by the Government or a statutory cannot, by any stretch of imagination, be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution" where a corporate debtor had suffered an order at the hands of Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of the IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under Section 260-A of the Income Tax Act, 1961. Therefore the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results. [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(20). 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.]

.....

46. Therefore, in fine, our answer to the first question would be that NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute supplemental lease deeds for the extension of the mining lease. Since NCLT chose to exercise a jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was coram non iudice.

.....

53. The upshot of the above discussion is that though NCLT and Nclat would have jurisdiction to enquire into questions of fraud, they would not have jurisdiction to adjudicate upon disputes such as those arising under the MMDR Act, 1957 and the Rules issued thereunder, especially when the disputes revolve around decisions

of statutory or quasi-judicial authorities, which can be corrected only by way of judicial review of administrative action. Hence, the High Court was justified in entertaining the writ petition and we see no reason to interfere with the decision [State of Karnataka v. Tiffins Barytes Asbestos & Paints Ltd., 2019 SCC OnLine Kar 2463] of the High Court. Therefore, the appeals are dismissed. There will be no order as to costs.

9. The judicial decisions relied upon by the respondents relate to the claims of government agencies which were not part of a resolution process. These decisions are distinguishable from the facts of the present case and do not in any way help the case of the respondents. In the present case, the respondent i.e. Punjab State Power Corporation Limited has failed to file its claims before the Resolution Professional and the approved resolution plan clearly states that the amounts provided in the resolution plan for operational creditors is in full and final settlement of their claims. Thus, post approval of the Resolution Plan no claim of the respondents pertaining to the CIRP period subsist. There are twin prayers for the restoration of electricity as well as the cancellation of outstanding dues prior to the period of CIRP. As stated by the respondent the electricity supply has already been restored. In view of the abovementioned discussion, the applicant's prayer to nullify the outstanding dues which pertain to the period prior to CIR Process is allowed.

10. In the result, IA 164/2021 is allowed and stands disposed of accordingly.

-sd-

(Subrata Kumar Dash)
Member (Technical)

July 05, 2023

SM/TB

-sd-

(Harnam Singh Thakur)
Member (Judicial)