

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH**

**IA(IBC)/12/KOB/2024**

**IN**

**CP(IB)/26/KOB/2022**

*(Under Section 60 (5) of the IBC, 2016 read with 11  
of the NCLT Rules)*

***In the matter of:***

M/s. Rubberwood India Private Limited.

***Memo of Parties:***

M/s. Kuttanad Coir and Rubber Products, represented through its Managing Partner Mr. Ajay Zacharia Mathew, Nellickal House, Manganam P.O., Vijayapuram Village, Kottayam Taluk, Kottayam District, Kerala. Email: - [kuttanadrubber@gmail.com](mailto:kuttanadrubber@gmail.com).

**... Applicant.**

**-Versus-**

1. Kerala State Electricity Board Limited, Represented through its Deputy Chief Engineer, Office of the Deputy Chief Engineer, Electrical Circle, Pakkil P.O., Kottayam- 686 012. Email:- [dcektm@gmail.com](mailto:dcektm@gmail.com).

2. Mr. Renahan Vamakesan, Liquidator of Rubber Wood India Private Limited, Villa 23, Skyline, Rosemount Homes, Kunjan Bava Road, Ponnurunni, Vytila P.O., Ernakulam District, Kerala. Email:- [renahanv@gmail.com](mailto:renahanv@gmail.com).

**... Respondents.**

**Order delivered on: 09.04.2024**

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***Coram:***

**Hon'ble Member (Technical)**  
**Shyam Babu Gautam**

**Hon'ble Member ( Judicial)**  
**TMT. Justice (Retd.) T. Krishna Valli**

***Appearances:***

For the Applicant : Mr. Vinod P.V, Adv.,  
For the Respondent No. 1 : Mr. Riji Rajendran, Adv.  
For the Respondent No. 2 : None appeared.

**ORDER**

**Per: Coram**

1. The application is filed by the Applicant, who is the Auction Purchaser of the assets of the Corporate Debtor through the E-auction conducted by the Liquidator on 12.10.2023. under Section 60 (5) of the IBC, 2016 read with 11 of the NCLT Rules for the following relief: -
  - To the 1<sup>st</sup> Respondent, Kerala State Electricity Board Limited, to grant fresh connection to the Applicant without charging any outstanding dues of the Corporate Debtor
2. The Brief facts of the case are as follows: -

3. The Applicant stated that this Tribunal by vide order dated 17.05.2022 in CP(IB)/26/KOB/2022, admitted the Corporate Debtor for initiating the Corporate Insolvency Resolution Process. Since no resolution plan was received by the Corporate Debtor, by Order dated 15.12.2022 this Tribunal passed an order for Liquidation of the Corporate Debtor in IA(IBC) /408/ KOB /2022 in CP(IB)/ 26/ KOB/ 2022 and appointed the 2<sup>nd</sup> Respondent, as the Liquidator of the Corporate Debtor.
4. It is stated that as per Section 35 of the IBC read with Regulations 32 and 33 of the IBBI (Liquidation Process) Regulations, 2016, the liquidator caused a public notice for the auction of the properties of the Corporate Debtor under Schedule I (5) of the IBBI (Liquidation Process) Regulation, 2016 on 12.09.2023 inviting prospective bidders to submit their bid on the assets of the Corporate Debtor.
5. The reserve price fixed for the assets was Rs. 3,70,00,000/- and the date of the auction was scheduled on 12.10.2023. It is stated that the owner of the property is the Rubber Board, a statutory body incorporated under the Rubber Act of 1947. It is stated that the Applicant qualified to submit the bid under the IB Code and participated in the E-Auction process by depositing an EMD of Rs.37 lakhs. The E-Auction was held on 12.10.2023 and this Applicant emerged as the successful bidder for a total bid amount of Rs.

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- 3,70,00,000/- Subsequently, the Liquidator has issued a Letter of Intent on 14.10.2022 confirming the auction in favour of the Applicant and also directing the Applicant to pay the balance sale consideration of Rs. 3,33,00,000/ -
6. It is stated that upon receipt of the entire sale consideration of Rs. 3,70,00,000/- executed an agreement jointly with the Rubber Board in favour of the Applicant on 15.12.2023 assigning the lease in favour of the Applicant.
  7. It is further stated that before the liquidation of the Corporate Debtor, Respondent No.1 had disconnected the electric supply service to the Corporate Debtor on the grounds of arrears of due. Respondent No.1 has filed its claim against such arrears before the Liquidator. It is stated after taking over the Land and Building, the Applicant approached the KSEB for reconnection/ fresh connection to the said premise in the name of the Applicant on 16.11.2023. However, Respondent No.1 vide letter dated 15.12.2023 refused to grant any connection to the Applicant on the ground of outstanding dues of the Corporate Debtor, Rubber Wood India Pvt Ltd despite filing Claim before the Liquidator.
  8. It is stated that once the claim is filed before the Liquidator for past dues and arrears, any payment under the said claim shall be under Section 53 of the Insolvency and Bankruptcy Code, 2016.

9. It is further stated that the Applicant has spent a huge sum for the revival of the building and is not able to commence its business. The Applicant has also availed a loan of Rs. 3.80 Crore to purchase the property and is paying EMI every month.
10. **On 14.02.2024, Respondent No. 1** filed a reply statement and stated that this application by the auction purchaser is not maintainable. The clean slate theory is encoded in Section 31 of the Code, in terms of which, an approved resolution plan is binding on all stakeholders, including the corporate debtor and its employees, members, and creditors. This provision intends to ensure that all stakeholders (including government authorities) abide by the terms of the approved plan and refrain from making claims that are not a part of the plan. The Applicant is an auction purchaser who stands on a different footing compared to a Successful Resolution Applicant. The terms and conditions of the public auction notice dated 12.09.2023 clearly show that the property is sold on an “as in where is” basis. The existence of an “as in where is” clause in auction agreements warns buyers about pending dues, requiring them to thoroughly investigate the nature of the property. Buyers must assess title, encumbrances, and statutory obligations. Public auctions allow inspection, including utilities like electricity, with disconnections prompting further inquiry. Clause 9 of the agreement dated 15.12.2023 states that the Assignee shall be

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obliged to comply with all the applicable laws, and statutory provisions from time to time.

11. It is stated that the KSEBL had duly submitted its claims as per Rules 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 under FORM B before the Insolvency Resolution Professional. As the resolution process was not successful, the Corporate Debtor has undergone liquidation as per the order dated 15.12.2022. Thereafter, KSEBL submitted FORM C as per Rule 17 Insolvency and Bankruptcy Board of India (Liquidation Process), Regulation, 2016. The total amount of electricity arrears due on 28.12.2022 and statutory interest @ 18% amounts to Rs. 27,05,831/- (Rupees Twenty-Seven Lakhs Five Thousand Eight Hundred and Thirty-One Only). The 2nd Respondent has not cleared the dues as claimed under FORM C.
  
12. Subsequently on 16.11.2023, the Applicant submitted a new application for the electricity connection before the 1<sup>st</sup> Respondent. However, the same was not considered by the 1<sup>st</sup> Respondent as the Applicant/Auction Purchaser had not cleared the arrears on the property. It is further stated that the consequence of not recovering arrears from subsequent owners could prove disastrous for state-run public utility companies like KSEBL. Therefore, enforcing

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payment of arrears from the previous owner would enable state-run utilities to mitigate some of the damage inflicted on the public exchequer.

13. **On 15.02.2024, Respondent No. 2** filed a reply statement and stated that Respondent No. 2/Liquidator is required to distribute the proceeds of the sale as per the priority provided under Section 53. It is further stated that once a Corporate Debtor is admitted into Liquidation, creditors are only entitled to claim under Section 53 of the Code and the assets of the corporate debtor, which are subject to claim shall be free from all encumbrances and charges for the successful purchaser of the property. A person, who is a creditor of the Corporate Debtor, whether he filed a claim or not, has no right whatsoever to demand any arrears or claim or any amount from the successful auction purchaser in liquidation and their claim stands extinguished. The creditor shall only be entitled to a share of the proceeds as per the mandate of Section 53 of the Code based on the priority as provided therein. Assuming, that all creditors, including secured creditors, operational creditors, workmen and employees still can enforce their claims and enforce securities and demand arrears from the auction purchaser, then Section 53 and 238 and the auction under Liquidation is meaningless. It is stated that, which is not the objective of the Code and the Liquidator cannot sell any property of the CD in auction and no person shall come forward to

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purchase a property in the auction in the IBC proceedings. Therefore, the claim of Respondent No.1 for the arrears due from the auction purchaser is illegal and against the provisions of Section 53 of the Code.

14. **On 26.02.2024, the Applicant filed a rejoinder** and stated that since the claim of the Respondent No.1 is governed by the Insolvency and Bankruptcy Code, 2016 and the right of the Respondent No.1 for any past arrears is limited to the proceeds, if any, in the event of distribution under Section 53(1) of the Code based on the claim admitted by the Liquidator. Respondent No.1 cannot refuse to grant permission for an electricity connection for a property that is sold under liquidation on account of past arrears. It is further stated that the contention of Respondent No. 1 that since the sale is conducted "as is where is basis", the Applicant is liable to settle all prior dues of the Corporate Debtor are frivolous and have no application to the present cases since the asset which is sold at auction in Liquidation is an asset forming part of the liquidation assets and solely governed by the provisions of the IBC. In the sale, the term "as is where is basis" is used to represent the condition of the immovable property and not to declare any charges and liabilities in the property. If the contention of Respondent No.1 is accepted, then an auction purchaser is liable to all the secured creditors and all of such creditors, who have an attachment, lien,

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encumbrance, or charge in the property for the balance dues, arrears and all other claims even after distribution under Section 53(1) as if no resolution or liquidation happened in the Corporate Debtor.

15. It is stated that Respondent No. 1 admits that the electricity was disconnected on 02.03.2016 and subsequently dismantled on 07.11.2016. Further, the Respondent also admitted that it has filed its claim before the IRP and also to the Liquidator during Liquidation as an Operational Creditor. The Liquidator has admitted the claim of Rs. 25,72,269/-. It is further stated that Respondent No.1 knows of the proceeding before this Tribunal. The Respondent No. 2/ Liquidator has also filed its reply stating that in terms of priority under Section 53(1) Respondent No.1 is not entitled to any proceeds of sale as the proceeds are insufficient to meet the cost of CIRP, Liquidation Cost and the claim of Secured financial creditors.

**FINDINGS: -**

16. We have heard the learned counsel for both parties and perused the entire case records/documents. We have also gone through the shreds of evidence on record. To decide on the matter, we have framed the following issue: -

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- Whether the Applicant is liable for paying the arrear on the electricity charges of the Corporate Debtor M/s. Rubber Wood India Private Limited

17. Concerning the issue framed, we have gone through Section 53 of IBC, 2016, which deals with the distribution of assets.

***Section 53-Distribution of assets.***

*(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely:—*

*(a) the insolvency resolution process costs and the liquidation costs paid in full;*

*(b) the following debts which shall rank equally between and among the following:—*

*(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and*

*(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;*

*(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;*

*(d) financial debts owed to unsecured creditors;*

*(e) the following dues shall rank equally between and among the following: —*

*(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;*

*(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;*

*(f) any remaining debts and dues;*

*(g) preference shareholders, if any; and*

*(h) equity shareholders or partners, as the case may be.*

*(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.*

*(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.*

*Explanation.—For the purpose of this section—*

*(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and*

*(ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013.*

18. Section 53 establishes a clear differentiation in the treatment of payments owed to secured creditors and those owed to the government. This distinction in the law prominently reflects

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Parliament's intention to handle government dues separately from the dues of secured creditors. Consequently, both secured and unsecured government dues fall under the purview of Section 53 of the Code, forming a distinct and separate class within the legislative framework.

19. For more clarity on the issue, we have also gone through the decision of Hon'ble NCLAT in its order in ***Paschimanchal Vidyut Vitran Nigam Ltd vs Hsa Traders & Ors (Company Appeal (AT) (Insolvency) No.527 of 2023)*** wherein the Appellate Tribunal held that: -

*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."*

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*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.***

20. In the light of the order passed by the Hon'ble NCLAT in Paschimanchal ***Vidyut Vitran Nigam Ltd vs Hsa Traders & Ors (Company Appeal (AT) (Insolvency) No.527 of 2023)*** whereby the Hon'ble NCLAT observed that that Section 238 of the IBC has an overriding effect in general, which would prevail over the non-obstante clauses of the Electricity Act. Thus, the Hon'ble NCLAT dismissed the appeal of the Paschimanchal Vidyut Vitran Nigam Ltd which sought to obtain priority for the electricity dues.

21. In the result, we are of the considered opinion that the financial loss to the 1<sup>st</sup> Respondent cannot be a ground to enforce its claim against the Applicant because the IBC is a complete code. In the aforesaid observation, **IA(IBC)/12/KOB/2024 is allowed** and directed the 1<sup>st</sup> Respondent to grant fresh connection to the Applicant without charging any outstanding dues of the Corporate Debtor.

22. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.

23. An urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

24. File be consigned to records.

**SHYAM BABU  
GAUTAM**

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**SHYAM BABU GAUTAM  
(MEMBER TECHNICAL)**

**T.KRISHNAVALLI**

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**T KRISHNA VALLI  
(MEMBER JUDICIAL)**

Signed on this the 09<sup>th</sup> day of April, 2024.

Rajasree R. Nair/LRA