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NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
CORPORATE BHAWAN, NEWTOWN, AKANDAKESHARI, NEW TOWN, WEST BENGAL 700135

(Ph: 033-22486330 Email: registrar-kol@nclt.gov.in)

No. NCLT/KB/2025/IBC 1934

① Damodar Valley Corporation

DVC Towers, VIP Road, Kol- 700054, W.B.

② M/s. Jai Venkatesh Comcast Pvt. Ltd.

Bamunana Industrial Estate, P.S. Kamksa, Durgapur - 713212,
Burdwan, W.B.

③ Mr. Sandip Kumar Kejriwal, IRP

Martin Burn House, Room NO - 322, L.R.N. Mukherjee Road, Kol-
700001, W.B.

Sub: CP (IB)/C.P. NO. 243 Of 2023 C.A. No. Of I.A. No. Of
In the matter of Damodar Valley Corporation

Sir,

-VS-
Jai Venkatesh Comcast Pvt. Ltd.

I am directed to forward herewith a copy of the order dated 19/6/25 passed by this Tribunal in respect of the above matter, for information/ compliance thereof.

Encl. As stated

Yours faithfully,



For: *Schub*
Court Officer

NCLT, Kolkata Bench

Date: 24/06/2025

Place: Kolkata



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO.1
KOLKATA
C.P.(IB) NO. 243/KB/2023**

***An Application under Section 9 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 6 of the Insolvency
and Bankruptcy Rules, 2016***

IN THE MATTER OF:

Damodar Valley Corporation

... Operational Creditor

Versus

M/S. Jai Venketesh Concast Private Limited

... Corporate Debtor

Date of Pronouncement of Order: 19th June, 2025

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Shri. Cmde Siddharth Mishra, Member (Technical)

Appearance:

For the Operational Creditor: Ms. Rishav Banerjee, Adv.

Mr. Sayak Ranjan Ganguly, Adv.

Ms. Srijani Ghosh, Adv.

Ms. Indrani Majumdar, Adv.

For the Corporate Debtor: Mr. Sourita Ganguly, Adv.



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ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through hybrid mode.
2. The Ld. Counsels of both the parties were heard.
3. The instant application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016, for brevity '**I&B Code**' to initiate a Corporate Insolvency Resolution Process, hereinafter referred to as '**CIRP**' against **M/s. Jai Venktesh Concast Private Limited**, hereinafter referred to as the '**Corporate Debtor or CD**' .

4. FACTS OF THE CASE:

- 4.1 In terms of the power purchase agreement dated May 20, 2012 and November 18 2021 executed between the operational creditor and corporate debtor, the operational creditor had sold, supplied and delivered electrical power to the factory premises of the corporate debtor.
- 4.2 Upon determination of the final tariff for the period 2017-2018 and 2018-2020 by West Bengal Electricity Regulatory Commission by its orders dated May 05, 2022 and June 17, 2022 respectively the Operational Creditor raised the final/differential bills dated June 02, 2022 for a sum of Rs. 4,42,98,859/- and July 01, 2022 for a sum of Rs. 1,59,46,251/- in view of the enhancement of tariff.
- 4.3 On August 20, 2022 after issuance of the disconnection notice dated the supply of the corporate debtor was disconnected due to non-payment of the security deposit.



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4.4 Even after adjustment of the security deposit an aggregate sum of Rs. 18,80,50,167/- is still due and payable by the Corporate Debtor to Operational Creditor along with applicable DPS.

4.5 The operational creditor issued notice dated July 27, 2023 under section 8 of the Insolvency and Bankruptcy Code 2016 calling upon the Corporate Debtor to pay the said sums of Rs. 18,80,50,167/-along with applicable Delayed payment surcharge.

5. SUBMISSIONS OF THE LD. COUNSEL ON BEHALF OF THE OPERATIONAL CREDITOR

5.1 It is submitted that a total debt of **Rs.18,80,50,167/-** arised out of the dispute of supply of power by the OC to the CD under the Power Purchase Agreements executed between the OC and CD on 20.05.2012 and 18.11.2021.

5.2 That the date of default is **02.06.2022** and a Statutory Notice of Demand under Section 8 of the I&B Code was sent to the CD on **27.07.2023**. The CD replied to the same by its letter dated 17.08.2023.

5.3 That the West Bengal Electricity Regulatory Commission ("WBERC") passed an order dated 05.05.2022 for the year 2017-2018 and on 17.06.2022 for the year 2018-20 for determining the final tariff w.e.f. April 2017 and April 2018 respectively with a direction to revise bills from April, 2017 and April, 2018 respectively up to issuance of orders.

5.4 On the basis of the aforesaid orders, the OC raised final bill dated 02.06.2022 for a sum of Rs.4,42,98,859/ for FY:2017-18 and final bill dated 01.07.2022 for a sum of Rs. 1,59,46,251/- for FY:2018-20 and that there is no



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dispute as regards to receipt of the final bills dated 02.06.2022 and 01.07.2022 by the Corporate Debtor.

5.5 That being dissatisfied with the Tariff Order dated 05.05.2022 passed by the WBERC and the differential bills raised by the Operational Creditor on 01.07.2022, the CD challenged the Tariff Order before the Hon'ble High Court at Calcutta being WPA No. 12060 of 2022 wherein ultimately the Hon'ble High Court at Calcutta by an order and judgement dated 17.02.2023 dismissed the writ petition filed by the CD and observed that single year tariff structure restored by WBERC was valid in law and there was no illegality.

5.6 That the Learned APTEL on 22.08.2024 clarified in its order that only the Appellant before the Learned Tribunal shall be entitled to the reliefs granted by the Learned Tribunal and similarly affected parties shall not be entitled to any protection granted by the Learned APTEL. The CD is not a party before the Learned APTEL and has not preferred any appeal before the Learned Tribunal.

5.7 It is submitted that the Hon'ble Division Bench of the Calcutta High Court by an order dated 23.09.2024 clarified that the CD, namely, Jai Venkatesh Concast Pvt. Ltd. does not have any protection and is no longer entitled to any interim protection granted by the order dated 19.04.2024

5.8 That after the order dated 23.09.2024 passed by the Hon'ble Division Bench of the Calcutta High Court, it is explicitly proved that the CD has admittedly committed a default towards the OC and the application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by the Operational Creditor deserves to be admitted.

5.9 The Learned APTEL by an order dated 30.09.2024 further clarified that the Corporate Debtor does not come under the purview of the protection granted under the order dated 19.04.2023, which has already been vacated.



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5.10 The Learned APTEL, thereafter by an order dated 17.01.2025 directed the DVC consumers to pay 50% of the arrears based on the impugned tariff order and stayed the rest 50% subject to securing the same by way of Bank Guarantee within 30 days i.e, within 16.02.2025. The CD, Jai Venkatesh Concast Private Limited, was neither an appellant before the Learned APTEL nor a member of DVPCA.

5.11 The Operational Creditor filed application before the Hon'ble High Court at Calcutta in the pending writ petitions seeking for a direction upon the appellants (consumers) to make payment in terms of the APTEL order dated 17.01.2025. By an order dated 23.09.2024 passed by the Hon'ble High Court at Calcutta, it is clarified that the CD does not have any protection and is no longer entitled to any interim protection granted by the order passed by the Hon'ble Court on 19.04.2024 and the interim protection is confined only to the consumers, who are appellant before the Hon'ble High Court.

5.12 The Hon'ble Division Bench of the Hon'ble High Court at Calcutta vide an order dated 10.02.2025 modified the earlier interim orders dated 19.04.2023, 23.09.2024 & 30.09.2024 by directing the appellants to pay 50% of the arrears invoice raised by the OC based on the tariff as determined in the orders passed by the Ld. APTEL within a period of 60 days from the date of receipt of the server copy of this order and the balance 50% shall remain stayed, however, subject to the conditions that the appellants shall give unconditional bank guarantee from a scheduled bank within 60 days from the date of receipt of the same. It is pertinent to mention that the CD is not an Appellant before the Hon'ble High Court at Calcutta.

5.13 Aggrieved by the above circumstance, the Damodar Valley Power Consumer Association (DVPCA) & Inox Air Products Pvt. Limited had preferred an appeal before the Hon'ble Supreme Court of India against the order of Hon'ble APTEL dated 17.01.2025. The Hon'ble Apex Court vide its order dated



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14.02.2025 has refused to interfere with the aforementioned order of the Hon'ble Tribunal but extended the time limit for the compliance of the Ld. APTEL order till 30.04.2025

6. SUBMISSIONS OF THE LD. COUNSEL ON BEHALF OF THE CORPORATE DEBTOR

6.1 The order dated 5th May 2022 was challenged by the CD through a Writ Petition being WPA No. 12060 of 2022. Both the bills were also challenged by the CD in WPA No. 14728 of 2022 before the Hon'ble High Court at Calcutta. Parallely, proceedings were also initiated by other aggrieved parties before the APTEL regarding the method of determination of tariffs by the WBERC.

6.2 On 23rd November 2022, the Apex Court restored part of the order dated 6th June 2022 passed by APTEL which directed the appellants before the tribunal to pay the full tariff at the rate determined by the WBERC from the date of orders dated 5th May 2022 and 17th June 2022.

6.3 It is submitted that the date of default as purportedly claimed by the applicant is on the dates when the tariff orders for the period 2017-2018 and 2018-2020 were published being the 5th of May 2022 and the 17th of June 2022 respectively.

6.4 Further it is submitted that the date of default regarding the arrears from the period of 2006-2009 which have been claimed by the applicant has been omitted. The date of default is an important material fact and the omission of the same would defeat the objective of this tribunal to arrive at a free and fair



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resolution and would make it impossible to determine whether such debt falls within the limitation period.

6.5 It is submitted that the Applicant has failed to showcase any invoice generated nor has put forward any material to suggest that it had served any notice upon the respondent regarding its claim of Rs. 9851913 as arrears for the period of 2006-2009.

6.6 It is further submitted that the breakup as mentioned in the particulars of the operational debt in the demand notice does not add up to the tune of Rs. 18,80,50,167/- which is the sum being claimed as the amount of debt by the Applicant.

7. We have heard the Ld. Counsels and perused the documents on record.

ANALYSIS AND FINDINGS

8. It is evident that the WBERC vide its order dated 05.05.2022, for the year 2017-2018 and on 17.07.2022 for the year 2018-20 determined the final tariff w.e.f April 2017 and April 2018 respectively with a direction to revise bills from April 2017 and April 2018 respectively upto the issuance of order. **Annexure "E/II"**

9. After the passing of the said order by WBERC, the OC raised final bill dated 2.06.2022 for a sum of Rs. 4,42,98,859/- for FY: 2017-18 and final bill dated 1.07.2022 for a sum of Rs. 1,59,46,251/- for FY: 2018-20.- (**Annexure F**).

10. The CD on being dissatisfied with the Tariff Order dated 05.05.2022 passed by WBERC challenged it before the Hon'ble High Court at Calcutta wherein by an order dated 17.02.2023, the High Court at Calcutta dismissed the writ



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petition and held that the single year tariff structure which has been restored by WBERC is valid in law and there was no illegality.

11. It is evident that the Hon'ble Division Bench of the Calcutta High Court by an order dated 23.09.2024 clarified that the CD does not have any protection and is no longer entitled to any interim protection which was earlier granted by an order dated 19.04.2024.

12. The dispute arises out of supply of power by the OC namely the DVC to the CD namely Jai Venkatesh under the Power Purchase Agreements executed between the OC and the CD, dated 20.05.2012 and 18.11.2021 respectively.

13. The WBERC passed its order on 05.05.2022 for the 2017-18 and 17.07.2022 for the year 2018-20 for determining the final tariff with a direction to revise bills for 2017-2018 till issuance of order.

14. The OC on the basis of order dated 05.05.2022 and 17.07.2022 of the WBERC, raised its final bill on 02.06.2022 for a sum of Rs. 4,42,98,859 for FY: 2017-2018 and 01.07.2022 for a sum of Rs 1,59,46,251 for the FY 2018-2020 (Annexure F).

15. The challenge to the bills before the Hon'ble High Court met with a dismissal on 17.02.2023.

16. The present CD is not protected by any interim order of the Division Bench.

17. The default on the part of the CD is in regard to non payment against final bills of 02.06.2022 and 01.07.2022. This petition has been preferred in the year 2023 and is as such within the prescribed limitation period.



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18. The default in payment of the total debt of Rs.18,80,50,167/- meets the prescribed threshold.

19. Legal Position:

The Learned Appellate Tribunal for Electricity (APTEL) vide an order dated January 17, 2025 in **DVPCA & Ors. vs. WBERC & Anr. (APL No. 244 of 2022); Inox Air Products Pvt. Ltd vs. WBERC & Anr. and Dinman Polypacks Pvt. Ltd vs. WBERC & Anr.** held that:

*In view of the above deliberation, we are of the view that instead of complete vacation of stay, and with a view to protect the interest of the Appellants, the ex-parte ad interim orders passed by this Tribunal dated 06.06.2022 (in APL 286 of 2023), 21.06.2022 (in APL 244 of 2022) and 01.07.2022 (in APL 288 of 2023) **should instead be modified to the extent that 50% of the arrears based on the tariff as determined in Impugned Order are to be paid within 30 days of this order and balance 50% shall remain stayed.** However, we note that few consumers in the past have left the distribution system of DVC subsequent to interim orders of this Tribunal, and therefore, with a view to ensure that Respondent No.1-DVC is not left high and dry in case the main Appeals were to be dismissed later, we direct that, for the balance 50% of the arrears, which are directed to be stayed, the Appellants shall give unconditional Bank Guarantee of equivalent amount from a scheduled bank within 30 days of this order. Needless to state that the Appellants shall comply with the direction of payment of full tariff as per interim orders dated 06.06.2022, 21.06.2022 and 01.07.2022. It*



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is also clarified that the above interim arrangement is subject to the result of the main appeal. The IAs are disposed of accordingly. The captioned Appeals are to be included in the 'List of Finals to be taken up from there, in their turn.

The CD herein has failed to demonstrate or establish that it is not required to pay the arrears. Assuming that it is not required to pay 50% of the arrears, still the default is way above the threshold.

The Hon'ble Supreme Court vide an order dated 14th February, 2025 in an appeal preferred against the Learned APTEL order dated 17.01.2025 in **Damodar Valley Power Consumer's Association & Ors. vs. West Bengal Electricity Regulatory Commission & Ors. (Civil Appeal No. 1976 of 2025 and Civil Appeal No. 2281 of 2025)** held that

While we are not inclined to interfere with the impugned order passed by the Appellate Tribunal for Electricity (APTEL), the thirty days period/time granted by the APTEL in paragraph 41 of the impugned order is extended till 30th April 2025. However, it is made clear that no further extension of time in this respect will be granted.

20. In the aforesaid backdrop the petition is **admitted**. In the light of the above facts and circumstances, it is, hereby ordered as follows:-

- a. The application bearing **C.P (IB) NO. 243/KB/2023** filed by **Damodar Valley Corporation**, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for



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initiating CIRP against **M/s. Jai Venketesh Concast Private Limited**, the Corporate Debtor, is **admitted**.

b. There shall be a moratorium under section 14 of the IBC.

c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

e. **Mr. Sandip Kr. Kejriwal**, phone no. **9831074124**, email: **sandipkej2@gmail.com**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18,19, 20 and 21 of the Code.

f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish



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every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.

h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

i. The Operational Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

j. In terms of section 9(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

k. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.





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21. The C.P. (IB) No. 243/KB/2023 to come up on 21.07.2025 for filing the periodical report.

22. A certified copy of this order may be issued, if applied for, upon compliance with all requisites.

Sdr

Siddharth Mishra
Member (Technical)

Sdr

Bidisha Banerjee
Member (Judicial)

This Order is signed on this, the 19th Day of June, 2025

Oindrila, K. (LRA)



For *Sdr*
DD/DR/AR /Court Officer
National Company Law Tribunal
Kolkata Bench

CERTIFIED TRUE COPY