



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

I.A.(IBC)/1395/ 2024

IN

TCP/130/IB/CB/2017

IN THE MATTER OF AURO MIRA BIPOWER INDIA PRIVATE LIMITED

*(Filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 Read with Rule 11
of the National Company Law Tribunal Rules, 2016)*

M/s Sri Gomathi Energy Private Limited,

Represented by its Managing Director,

Mr.P. Srinivas Rao, having its registered office at

10-2-46, Plot No.3, West Marredpally,

Secundrabad, Andhra Pradesh – 500 026

... Applicant

Vs.

1. The State of Tamil Nadu, Represented by its

Secretary to the Government, Energy Department,

Fort St.George, Chennai – 600 009.

2. The Tahsildhar, Taluk Office, Veerakalampudur,

Tirunelveli District, Tirunelveli – 627 860

3. The Sub Registrar Uthumalai, Door No.279/13,

Near Police Station Uthumalai, Tenkasi District,

Tirunelveli – 627 860



4. Mr. L.K.Sivaramakrishnan, Liquidator for
M/s. Auro Mira Bipower India Private Limited,
IBBI/IPA – 001/IP-P00045/2017-18/10119, Rajparis,
1st floor, 147, G.N.Chetty Road, T. Nagar,
Chennai – 600 017

... Respondents

Order Pronounced on 8th April 2025

CORAM:

Shri. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

Shri. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present:

For Petitioner : M/s. Kishore Balasubramanian

For Respondents : Thiru B Vijay

ORDER

This application has been filed by Mr. L.K.Sivaramakrishnan, Liquidator for M/s. Auro Mira Bipower India Private Limited, under 60(5) of Insolvency and Bankruptcy Code 2016, seeking the following reliefs,

- i) *Direct the 1st and/ or 2nd respondent to restore the existing power connection to the immovable property purchased by the Applicant from the 4th respondent, by issuing a no-due certificate in respect of the alleged past electricity due within a stipulated time frame, without insisting on the payment of any past dues by the Corporate Debtor, M/s. Auro Mira Bipower India Private Limited.; and*
- ii) *Pass any such other order/ direction as deemed appropriate in the fact and circumstances of this case.*



2. APPLICANT SUBMISSIONS:

- 2.1. The applicant contends that the Corporate Debtor, M/s. Auro Mira Biopower India Pvt. Ltd., was admitted into CIRP, under section 9 vide order dated 01.09.2017. Subsequently vide order dated 16.07.2018, Liquidation was ordered and the 4th Respondent was appointed as Liquidator and vide order on 27.09.2019 private sale of the Corporate Debtor's assets was approved.
- 2.2. It is submitted that the Applicant purchased the Immovable Property, including land, buildings, plant, and machinery, for Rs.10,53,60,000/- through a Sale Deed executed on 12.02.2021, under Regulation 33 of the IBC Liquidation Process Regulations, 2016 and The secured creditors relinquished their security interest, and the property was sold free of encumbrances.
- 2.3. It was further submitted that the Applicant submitted the Sale Deed for registration with the 3rd Respondent, paying Rs.8,20,560/- in stamp duty and registration fees. However, registration was refused, citing the absence of an NOC from the 2nd Respondent due to alleged unpaid electricity tax dues of Rs.3,04,16,748/- by the CD for the period July 2011–March 2014 and further submitted that no proof of claim was submitted by respondents regarding the same.
- 2.4. It is submitted that vide order dated 01.06.2022 in IA(IBC)/1005/CHE/2021, we directed the 3rd Respondent to register the Sale Deed dated 12.02.2021. However, it is noted that the 3rd Respondent continues to deny registration, citing alleged inadequate stamp duty and non-payment of past electricity dues.
- 2.5. It was emphasized that the past electricity dues of the CD cannot be enforced against the Applicant, as highlighted with recent



legal precedents, including *Paschimanchal Vidyut Vitran Nigam Ltd. v. HSA Traders*, which establish that a new purchaser is liable only for fresh electricity dues. Further, the claim for past dues was made after the liquidation order and is barred under Section 33 of the IBC, which imposes a moratorium on proceedings against the CD.

2.6. It is submitted that the Applicant has taken possession of the property but cannot commence operations due to non-registration and denial of an electricity connection. This continued obstruction is causing financial loss and hardship to the applicant.

2.7 It was contented in the rejoinder that the Applicant was not aware of the tax dues and they stated that they are so far not the consumers. And non-payment of alleged dues does not entitle 3rd respondent to withhold the registration and the matter itself was held as time barred.

3. RESPONDENTS SUBMISSIONS:

3.1 It was averted that as of 12.02.2021, electricity tax dues of Rs.3,04,16,784/- were outstanding on the subject property. The Corporate Debtor was repeatedly notified since 2012 but failed to clear the dues. Consequently, the matter was referred to the District Collector, Tirunelveli, under the Revenue Recovery Act, leading the 3rd Respondent to refuse the register of the sale deed.

3.2. It was submitted that the CD suppressed the initiation of CIRP from the authorities, causing a delayed Form-B claim submission on 22.04.2022, which the Liquidator (4th Respondent) rejected as belated. The Revenue Recovery Act invocation in 2019 was a continuation of



recovery efforts initiated in 2012 and predates the liquidation process under IBC, 2016.

3.3. It is further submitted that the Liquidator failed to account for government dues before finalizing the liquidation, while Respondents 1 to 3 acted lawfully under the Electricity Tax Act, 2003. Non-payment of dues would result in a significant revenue loss and set a precedent for tax evasion.

3.4. It was further submitted that Respondents 1 and 2 are not obstructing registration but enforcing statutory dues under Section 7(b) of the Electricity Tax Act, 2003. The Applicant or the CD must clear the dues before registration.

4. FINDINGS OF THIS TRIBUNAL

4.1 Heard to the learned counsel and perused the document place on record, under adjudication is an application filed by Sri Gomathi Energy private limited purchaser of the property from the liquidator of Auro Mira Biopower India Private Limited .

4.2 At this juncture it is relevant for us to discuss on the background of this case, The corporate debtor Aura Mira Biopower India Private limited was admitted to CIRP vide order dated 01.09.2017, Liquidation was ordered against the corporate debtor vide order dated 16.07.2018 and vide order dated 27.-09.2019 this tribunal permitted to conduct the private sale of the assets of the Corporate debtor.

4.3 The Applicant herein had expressed interest in purchasing the plant and machinery of 18 megawatt plant land and building of the corporate debtor measuring 8 Hectares and 95 Ares, i.e., 22.11 Acres as per patta 25.66 Acres, comprised in various Revenue Survey no.'s of



Melamaruthappapuram village, Veera Keralapudur Taluk, Tamil Nadu which is within the registration ambit of District of Tenkasi and sub registration district of Uthumalai. Upon payment of sale consideration of Rs.10,83,60,000/- the sale deed dated 12.02.2021 is executed between the applicant and 4th respondent.

4.4 Applicant has approached this tribunal seeking relief for restoring the existing power connection to the immovable property purchased by the applicant from the 4th respondent by issuing the no due certificate in respect of past electricity dues of the CD.

4.5 The respondent contended that CD Company has not paid the electricity dues and it will lead to major revenue loss to the government if the said dues are not paid.

4.6. On perusal of record it is seen that on 27.04.2021 Form B is submitted by the Director of electricity Tax and chief Electrical Inspector of government to the liquidator for the claim of Rs.3,04,16,784 , vide e mail dated 27/04/2022 the liquidator returned the Form B reasoning that the as per the public announcement date 18.07.2018 the last date for submission of claims 16.08.2018 and the claim of the department is not filed within the stipulated period hence cannot be admitted at the belated stage.

4.7 Meanwhile, IA(IBC)/1005(CHE)/2021 was filed by Sri Gomathi energy seeking directions against the Tirunelveli electricity distribution circle and electrical inspectorate government of Tamil Nadu restraining and restricting them from taking any further proceedings against the property purchased by them which will hinder them in getting fresh electricity connection from the 2nd respondent. It was noted in an order dated 01.06.2022 that the sale of the corporate debtor was executed as "As is



where is, whatever there is basis". Vide order dated 01.06.2022 relying on the decision of Hon'ble Apex court in *Telangana State Southern Power Distribution Company Limited Vs Srigdhaa Beverages* where it was stated by the Hon'ble apex court that dues can be claimed from the purchaser. The factual scenario of the case is that respondent auction purchaser of Srigdhaa beverages which failed to pay the dues and auction was done under securitisation and reconstruction of financial assets and enforcement of security interest act 2002. Relying on the same this tribunal had stated that liability with regard to the property is not extinguished.

4.8 The applicant at this stage has placed reliance on the decision of Hon'ble NCLAT decision on *Paschimanchal Vidyut Vitran Nigam Ltd vs HAS Traders and others*. The Hon'ble NCLAT relied on the Decision in Company Appeal AT 1355 of 2022 in *Chinar steel segments centre Pvt Ltd v Samir Kumar Agarwal* and stated in Para 18 as follows,

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.



4.9 Hon'ble NCLAT in the judgement mentioned above had discussed on the specific scenario of a corporate debtor in liquidation and the sale is done as per "as is what is whatever there is basis" and contented that successful auction purchaser shall not be liable for payment of the pre-existing CIRP dues of the Corporate debtor.

4.10 The sale of the asset of the corporate debtor is done by the liquidator as per the provisions of IBC and the government dues comes within the ambit of operational debt and under section 5(21) making the government as operational creditor in terms of section 5(2) the said claim should be adjudicated as per the terms of IBC. The duty is cast on the authority to file the claim before the Liquidator as given in Regulation 16 of the Liquidation process regulation. As per reg 16(1) of the liquidation process regulation a person shall submit the claim before the last date mentioned in the public announcement and the payment of the dues is based on the claim submitted. In this case the respondent has belatedly filed the claim to the liquidator which couldn't have been admitted. Subsequently the assets of the corporate debtor are sold to the applicant.

4.11 We are of the considered view that relying on the decision of Hon'ble NCLAT decision on *Paschimanchal Vidyut Vitran Nigam LKtd vs HAS Traders and others* is applicable to this case is answered by Hon'ble NCLAT and the on perusal of record that the claim was submitted by the authority belatedly and was not admitted as it was not submitted in due time the contention of the respondent to cast the liability on the purchaser of the corporate debtor doesn't hold any water as the said claim was already filed before the Liquidator which



is not admitted and the purchaser brought the CD as "As is what is, whatever there is basis". It is not implied that the belated claim which is not admitted falls under the said ambit hence we are of the considered opinion that pre CIRP dues should not be cast upon the successful auction purchaser.

4.12 Where the past dues of the corporate debtor cannot cause hindrance to the applicant to successfully take over the business and utilize the resources only to run the affairs of the CD or take forward the utilization of assets brought under auction. The Successful Auction Purchaser cannot be saddled with the past electric dues of the CD as the same has to be dealt in accordance with the process clearly laid down in IBC. It is made clear that the applicant shall not be liable to pay the past dues and shall be liable to pay the taxes and charges to get the new connection subsequent to the purchase date as per the sale deed.

4.13 We are of the considered view that once the Liquidation sale has been completed and the Certificate of Sale has been executed followed by handing over of the possession of purchased properties to the Auction Purchaser, any claim relating to such property for dues prior to the Auction cannot be raised against the Auction Purchaser, specifically when the Company is in Liquidation and the dues were already claimed by the said party as an Operational Creditor, during the CIRP process, as the Company was in Liquidation and the respondent had already approached the Liquidator by filing a Form-B and the Liquidator has intimated to the respondent that the claim cannot be considered as it is filed belatedly. Hence, we are of the



considered view that the Auction Purchaser cannot be made liable for any dues arising on the property before the purchase of the said property.

4.14 For the above mentioned reasons and considerations the **IA(IBC)/1395(CHE)/2024** is **allowed** and Respondent no 1 and 2 is directed to restore the connection and 4th respondent is directed to issue no due certificate in respect of past due of the CD, it is hereby clarified that any due/fees/taxes payable for getting the new connection or for the restoration of the said connection, after the sale deed has to be borne by the Applicant.

-S/d-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-S/d-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)

Rannika