

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
BENCH- I**

**IA No. 2187 of 2020
IN
CP(IB) No. 839 of 2017**

&

**IA No. 320 of 2021
IA No. 340 of 2021
IA No. 1534 of 2021
IN
IA No. 2187 of 2020
IN
CP(IB) No. 839 of 2017**

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

IA No. 2187 of 2020

In the Application of

Rakesh Kumar Agarwal (Corporate Debtor)

...Applicant

Versus

Uttarakhand Power Corporation Limited

...Respondents

IA No. 320 of 2021

In the Application of

Uttarakhand Power Corporation Limited

...Applicant

Versus

Rakesh Kumar Agarwal (Corporate Debtor)

IA No. 340 of 2021

In the Application of

Uttarakhand Power Corporation Limited

...Applicant

Versus

Rakesh Kumar Agarwal (Corporate Debtor)

IA No. 1534 of 2021

In the Application of

Uttarakhand Power Corporation Limited

...Applicant

Versus

Rakesh Kumar Agarwal (Corporate Debtor)

In the matter of

Shirdi Industries Limited

...Corporate Applicant

Order Delivered on : 21.02.2024

Coram:

Hon'ble Member (Judicial) : SH. Justice Virendrasingh G. Bisht (Retd.)

Hon'ble Member (Technical) : SH. Prabhat Kumar

Appearances:

For the Applicant : Mr. Yakesh Anand, Advocate

For the Respondent : Mr. Shyam Kapadia, Advocate

ORDER

Per: Virendrasingh G Bisht, Member (Judicial)

1. The Application bearing **IA No. 2187/2020** is filed by Mr. Rakesh Kumar Agarwal (“**Applicant**”), Successful Resolution Applicant (“**SRA**”) and currently Director of Shirdi Industries Limited, Mumbai in the Corporate Insolvency Resolution Process (“**CIRP**”) of Shirdi Industries Limited, Mumbai (“**Corporate Debtor**”) under the provisions of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) against Uttarakhand Power Corporation Limited (“**UPCL/Respondent No. 1**”) and M/s Dev Abrasive (“**Respondent No. 2**”) seeking the following reliefs :
 - a) This Authority, be pleased to order that amount of Rs.1,76,44,903/- pertaining to the period prior to date of admission and payable by Petitioner to Respondent No. 1 shall be paid in 8 quarterly instalments commencing from June 2022 to March 2024 and all kind of claims for the period till 17.05.2017 along with interest, cost, damage etc. on such claims shall be settled upon the payment by Petitioner.
 - b) This Authority, be pleased to order that amount of Rs.11,33,457/- pertaining to the period prior to date of admission and payable by Petitioner to Respondent No. 2 shall be paid in 8 quarterly instalments commencing from June 2022 to March 2024 and all kind of claims for the period till 17.05.2017 along with interest, cost, damage etc. on such claims shall be settled upon the payment by Petitioner.
 - c) Both the Respondents are ordered that the above said amount shall be payable only if they continue as regular operational creditor till March 2022, in absence of which they will paid 15% of the above said amount only in 8 quarterly instalments

commencing from June 2022 to March 2024.

- d) This Authority, be pleased to order that non-compliance of the order passed, will result in proceedings under the provisions of Section 74 and 235A of IBC.
- e) Pending compliance of order of this Authority for the approval of resolution plan by Respondents, or until further orders by this Authority, the Respondent No 1 is directed not to take any coercive measures and not to disconnect the power connection of Petitioner as an interim relief.

2. Uttarakhand Power Corporation Limited filed by three IAs in IA 2187/2021 i.e. (a) IA 320/2021 for taking on record additional affidavit dated 19.2.2021; (b) IA 340/2021 seeking recall of Order dated 3.12.2020 & 04.02.2021 to the extent these orders restrain Uttarakhand Power Corporation Limited from disconnecting the power and further permission to disconnect the electricity of Shirdi Industries Limited as well as direction to Shirdi Industries Limited to pay dues in terms of order dated 3.12.2020; and IA 1534/2021 for prayers already contained in IA 320/2021 and IA 340/2021.

Brief Facts

3. The Corporate Debtor is a wood based interior furnishings solution provider; primarily engaged in manufacture and trading of wood based panel products. The Corporate Debtor's adverse financial conditions resulted in the erosion of its net worth and led to the filing of an Application under Section 10 of the Code for initiation of CIRP.
4. This Tribunal vide Order dated 18.05.2017 admitted the Application and appointed Mr. Devendra Padamchand Jain (Chartered Accountant) as Interim Resolution Professional ("IRP").

5. The CIRP process culminated in the approval of the Resolution Plan submitted by the Applicant herein, Mr. Rakesh Kumar Agarwal, by the Committee of Creditors (“CoC”) with 99.43% votes. The Resolution Plan was approved by this Tribunal vide Order dated 12.12.2017.
6. It is submitted that the Applicant is liable to pay to the Operational Creditor in the following manner only in the approved Resolution Plan by this Tribunal :
- a) Regular Operational Creditor shall receive 100% of balance amount payable to them in accordance with the disclosure made by Corporate Debtor in application filed by the Corporate Debtor under Section 10 of IBC for commencement of CIRP.
 - b) Irregular vendor will be paid 15% of the amount disclosed.
 - c) Against contingent liability 15% of the finally concluded amount shall be paid.
 - d) The percentage of the amount payable to Operational Creditor shall relate to the amount disclosed by Corporate Debtor in application in case of Operational Creditor who do not file claims during CIRP. Further this amount will not be liable for any additional cost/interest/ charges/fee of any nature.
 - e) The Corporate Debtor shall be entitled for regularizing procedural lapses/ bonafide default and relaxation provided in the relevant Law. There are provisions relating to relaxing the provisions by the authorities mentioned in such Law. Such amount shall be payable in 8 quarterly installments commencing from June 2022 and ending till March 2024.
 - f) In case of regular operational creditor, the payments made by corporate debtor in respect of transactions with effect from 18.05.2017 shall be treated independent of transactions made till 17.05.2017.

7. After the approval of the Resolution Plan by this Tribunal, the Office of Deputy Commissioner of Central Excise and Service Tax Division, Rudrapur issued a Demand Notice dated 09.01.2018 to the Petitioner u/s 87(C) of Finance Act 1994; inter-alia, demanding the payment of the outstanding Service Tax dues.

8. The Petitioner, aggrieved with the demand notice, filed a Miscellaneous Application No. 34 of 2018 before this Tribunal to issue suitable clarifications/directions to the Deputy Commissioner of Central Excise and Service Tax Division, Rudrapur concerning the fact, that since the Resolution Plan had been successfully approved by this Hon'ble Authority (under section 31 of IBC 2016); the said Resolution plan would be binding upon all stakeholders, including the Government authorities. This Tribunal vide its order dated 07.05.2018, disposed the Miscellaneous Application by opining as under:

“On hearing the submissions of either side, it appears that RI has not understood the order in correct perspective because it has been made clear in the order dated 12/12/2017 that this Corporate Applicant is not entitled to any kind of exemption after approval of the Resolution Plan. Since this order has clarified that the Corporate Applicant is not entitled to have any exemption in respect of payment of any kind of taxes that arise from the date of approval of the Resolution Plan, this Bench disposes of this application clarifying that RI is not entitled to realise its dues which were claimed before the Resolution Professional during CIRP, henceforth this Bench hereby holds that this Respondent as well as other authorities are at liberty to realise all kinds of taxes that arise subsequent to the approval of the resolution plan, accordingly this application is hereby disposed of”.

9. The petitioner has still been receiving Notices/Orders from various Government Authorities and others demanding amount pertaining to period prior to the Order of this Tribunal dated 12.12.2017 without taking into account the waiver/sacrifice ordered by this Tribunal.

Submissions made by the Ld. Counsel on behalf of the Applicant

Submissions relating to Debt of Respondent No. 1

10. The Applicant submits that as on the insolvency commencement date, i.e. 18.05.2017, following amounts had become due for payment to Respondent No. 1 which were pertaining to period prior to commencement of CIRP :

Particular	Amount (Rs.)
Full Bill No. 1K051700003939 Dated 01/05/2020 for the month of April 2017	1,06,06,895/-
Part of Bill No. 1K061700003939 Dated 01/06/2020 for the month of May 2017(Rs 1,28,34,015/-) for 17 days	70,38,008/-
Total amount	1,76,44,903/-

11. The Applicant submits that Respondent No. 1 is a regular Operational Creditor and an essential service provider. Respondent No 1 had not filed any claim before the Resolution Professional during CIRP. However, the Applicant is willing to make the payment to the Resolution No.1 in accordance with the terms and conditions of approved resolution plan vide Order dated 12.12.2017. Hence an amount of Rs.1,76,44,903/- is payable to Respondent No. 1 in 8 quarterly installments commencing from June 2022 and ending till March 2024. This amount will be payable without any interest/cost/charges etc.

12. The Applicant submits that after the commencement of CIRP, the Respondent No. 1 has raised bills amounting to Rs. 44.94 crores, which

have been paid by the Applicant. However, Respondent No. 1 has been adjusting all the payments made by the Applicant on FIFO basis even after being informed by the Applicant about the manner in which outstanding amount as on 18.05.2017 will be paid in accordance with the approval of Resolution Plan. Respondent No. 1 has also recovered interest/cost towards delayed payment improperly, owing to which, the Applicant has paid excess amount of Rs. 2,86,28,420/- to Respondent No. 1.

13. The Applicant had filed an Application before this Tribunal upon receiving Notices for disconnecting the power seeking interim relief. On 26.10.2020, during the course of hearing, the Bench had advised Respondent No. 1's Counsel for not taking any coercive action against the Applicant as the Resolution Plan is binding to all stakeholders including Respondent No 1. The Applicant submitted letter dated 31.10.2020 followed by letters dated 03.11.2020 & 05.11.2020 to the Respondent No. 1 explaining the entire matter and the fact that the Respondent No. 1 is under obligation to abide with payment plan offered in the resolution plan approved by this Tribunal. However, Respondent No. 1 disconnected power connection granted to the Applicant at their Plant in Pantnagar, Uttarakhand on 05.11.2020 at 6 pm, which resulted into shutdown of operations.

14. The Applicant was forced to pay amount of Rs. 97.14 lacs under protest to Respondent No. 1. This amount was paid by the Applicant to the Respondent No. 1 through Kotak Mahindra Bank Ltd on 06.11.2020 and after the credit of amount in the account of Respondent No. 1 and payment of other charges claimed by the Respondent for restoration of power, the power connection was restored by Respondent No.1 after 12 p.m. on 06.11.2020.

15. The Applicant also submits that the Applicant has made a payment of Rs. 47,75,84,722/- since 18.05.2017 against the bills of Rs. 46,66,78,911 including late payment charges of Rs. 32,85,365/-. It is also submitted that as of the date of filing this Application, Respondent No. 1 has recovered excess payment of Rs. 1,41,91,176/- by forcing the Applicant to pay under the threat of power disconnection.

16. The Applicant has relied on the following judgements to support its contention :

- a) Asset Reconstruction Company (India) Ltd. And R. Venkatakrishnan vs. R. Venkatakrishnan and Anr.
- b) Uttarakhand Power Corporation Ltd. vs. M/s. ANG Industries Ltd.
- c) Dakshin Gujarat VIJ Company Ltd. vs. Oracle Home Textile Limited
- d) Indian Overseas Bank vs. Mr. Dinkar T. Venkatasubramaniam, Resolution Professional for Amtek Auto Ltd.
- e) GGS Infrastructure Private Limited vs. Commissioner of CGST & Central Excise WP-LD-VC-No. 268 of 2020
- f) Sri Vasavi Industries Limited and Another vs. West Bengal State Electricity Distribution Company Limited.

Submissions relating to Debt of Respondent No. 2

17. The Applicant submits that Respondent No. 2 is regular operational creditor since Corporate Debtor is continuing business with Respondent No. 2 even after approval of plan and until all payments offered in the Resolution Plan are fully paid.

18. The Applicant submits that between 18.05.2017 and 31.10.2020, the Applicant has made total purchase of Rs. 1,03,99,274/- from Respondent No. 2 and made payment of Rs. 1,03,46,470/-. It is submitted that

Respondent No. 2 had not filed any claim before the Resolution Professional during the period of CIRP. However, since the Applicant had disclosed the amount payable to Respondent No. 2 in the Application and Respondent No. 2 is regular operational creditor as on date of filing this Application, the Applicant is willing to make the payment to the Respondent No.2 in accordance with the terms and conditions of the approved Resolution Plan vide order dated 12.12.2017. Accordingly, an amount of Rs. 11,33,457/- payable to Respondent No. 2 based on admission by the Corporate Debtor in the Application filed under Section 10 of the Code is payable in 8 quarterly installments commencing from June 2022 until March 2024. This amount will be payable without any interest/cost/charges etc.

19. However, Respondent No. 2 made reference to Chairperson of Micro and Small Enterprises Facilitation Cell, Director of Industries, Patel Nagar, Dehradun-248001 under Section 18 of Micro, Small & Medium Enterprises Development Act, 2006 (MSMED) seeking recovery of amount payable to MSME against goods or services supplied by MSME.
20. The Applicant submits that Respondent No 2 has made total claim of Rs. 17,90,163/- inclusive of interest/fees and other costs. In the said amount of claim Respondent No. 2 has not considered the manner in which the amount of Rs. 11,33,457/- is lawfully payable to Respondent No. 2 in accordance with the Resolution Plan approved by this Tribunal.
21. The Applicant also received a Notice dated 26.06.2020 from Micro and Small Enterprises Facilitation Cell, Dehradun directing the Applicant to submit a response in the subject matter. The Applicant made a detailed reply to MSMED vide letter dated 23.07.2020 and marked a copy of the said letter to Respondent No. 2 also. The Applicant has clarified that no claim was made by Respondent No.2 during the course of CIRP and

hence no amount is payable to them. However, the Applicant offered to pay 15% of total dues in 8 quarterly instalments commencing from June 2022 and ending in March 2024. The matter is presently pending for disposal before Micro and Small Enterprises Facilitation Cell, Dehradun.

Submissions made by the Ld. Counsel on behalf of the Respondents

22. Respondent No. 1 submits that they had no knowledge of the CIRP proceedings initiated against the Corporate Debtor and received no intimation about it. Hence, the amounts of the outstanding electricity dues were charged without any special consideration/treatment. Further, the Applicant had been regularly defaulting in making timely payments towards the electricity dues.
23. Respondent No. 1 submits that the Applicant has been consuming electricity under category RTS-7 New RTS-5 HT Industry above 1000KVA (KNO 3939) electricity connection since 27.08.2008 at its factory in Pant Nagar, Uttarakhand. The Respondent No. 1 states that it continued to provide unhindered electrical supply so as to enable the company to function as a going concern. The grievance of the Respondent is that the IRP did not pay the electricity dues while continuing to consume the electricity.
24. The Respondent has clarified vide their Additional Affidavit dated 19.02.2021 that as on 18.05.2017, the bill dated 01.05.2017 for Rs. 1,06,06,895 for the month of April, 2017 and Rs. 70,38,008 pertaining to 17 days for May, 2017 were due to be paid by the Corporate Debtor. It is Respondent No. 1's case that the Corporate Debtor voluntarily paid both these bills on 19.05.2017 vide Cheque No. 426003 and 19.06.2017 vide Cheque No. 439101, respectively. It is then submitted that there were no pre-CIRP dues outstanding on the part of the Corporate Debtor and

hence, there arose no occasion for Respondent No. 1 to submit any claim.

25. Respondent No. 1 submits that Annexure-I of the Resolution Plan has been shared for the first time on 29.12.2020 (after filing of IA No.2187/2020). There is no mention of the fact that the pre-CIRP dues of Respondent No. 1 already stand paid in May/June 2017 by the Corporate Debtor. There is also no clause in the Resolution Plan which entitles the Corporate Debtor to any type of adjustment of the pre-CIRP, dues which have already been paid by it voluntarily 2017 itself;
26. Respondent No. 1 states that they had issued a disconnection notice dated 25.06.2020 to various consumers in Uttarakhand including the Corporate Debtors. Pursuant to the letter the executives of the Corporate Debtor and Respondent No. 1 came to a settlement wherein the Corporate Debtor was to pay the outstanding electricity dues amounting to Rs. 1,35,98,281/- for the period of lockdown to Respondent No. 1 in 6 monthly instalments as per orders of the Superintending Engineering (Com.) Office Letter No. 1827 dated 15.07.2020 and EDD Rudrapur Office Letter No. 1879 dated 25.06.2020, beginning from 25.08.2020 till 25.01.2021. Respondent No. 1 submits that the last instalment has not been paid yet.
27. Respondent No. 1 also submits that the Applicant had filed an IA No. 428/2020 against Respondent No. 1 and various other parties which was dismissed as withdrawn by this Tribunal vide Order dated 26.10.2020. After this Application was dismissed, the Corporate Debtor sent a letter dated 31.10.2020 to Respondent No. 1 proving details of CIRP and contending that it is entitled to an adjustment of Rs. 1,89,13,942/- against future bills. On 03.11.2020, the Corporate Debtor sent another letter that Rs. 1,89,13,942/- shall be paid in 8 equal instalments from

June 2022 to March 2024 and that bills for September and October 2020 shall be “deem to be paid up to Rs. 1,89,13,942/-“.

28. Respondent No. 1 also submits that the bill for the month of December, 2020 and January, 2021 amounting to Rs. 92,84,325.53/- and Rs. 1,00,59,657/- towards current dues remain unpaid, despite Orders of this Tribunal dated 04.12.2020 and 29.01.2021 directing the Applicant to pay the current electricity charges.

29. Respondent No. 1 submits that although Sec. 14 of the Code and Regulation 32 of the CIRP Regulations essential services are to be provided by respective service providers during the period of moratorium but it has also been settled through various precedents that if current dues during moratorium are not paid by the Corporate Debtor/RP, the essential service ought not to be provided to it. Respondent No.1 has relied on the following judgements to support its contention :

- a) Uttarakhand Power Corporation Ltd. vs. M/s. ANG industries Ltd. [Company Appeal (AT) (Insolvency) No. 298 of 2017]
- b) Dakshin Gujarat VIJ Company Ltd. vs. M/s. ABG Shipyard Ltd. & Anr. [Company Appeal (AT) (Insolvency) No. 334 of 2017]
- c) Andhra Bank Vs. Oracle Home Textile Ltd. [CP (IB) No. 1842/MB/2018]

30. Respondent No. 1 submits that in light of the above judgements, it is clear that the current charges of essential services can be accounted as Insolvency Resolution Process Costs.

31. Respondent No. 1 also submits that in the event of default of payment of the electricity dues, Respondent No. 1 has a legal right to issue a disconnection notice and disconnect electricity under Section 56 of The Electricity Act, 2003.

IA No. 340/2021 and IA No. 1534/2021

32. These Applications have been filed by Respondent No. 1 in IA No. 2187/2020, the Uttarakhand Power Corporation Limited seeking recall of the Orders dated 03.12.2020 and 04.02.2021 passed by this Tribunal in IA No. 2187/2020 to the extent they direct the Respondent not to disconnect the electricity connection. By way of a subsequent order dated 29.01.2021, this Tribunal directed both the parties to provide a detailed calculation up to 31.12.2021, clearly giving the break-up of pre-CIRP and post-CIRP dues, reasons for disconnection and excess payment made by the Respondent over the current dues. In the Order dated 29.01.2021, the Tribunal observed and directed as follows-

“The Respondent shall not disconnect the electricity for the the CIRP period. However, it Is made dear that the Respondent would ne at liberty to take dear the with the Department Rules on default in payment of current dues. List this IA No.2187 of 2021 on 16.02.2021”

33. The Applicant herein submits that despite the clear direction of this Tribunal in the Order dated 03.12.2020 to the Corporate Debtor to pay the current power charges on the due date, the Corporate Debtor has not paid the bills for the month of December, 2020 and January, 2021 amounting to Rs.1,88,24,961/-. The Corporate Debtor is in deliberate violation of the order dated 03.12.2020 and the conduct of the Corporate Debtor amounts to contempt.

34. The Applicant herein submits that the total outstanding amounts of the current electricity bills of the Applicant w.e.f. from December, 2020 to May, 2021 are Rs.5,04,62,245/- (including Late Payment Surcharge).

35. On 12.04.2021, the Corporate Debtor on its own sent a letter (with its own adjustment and calculations) to Respondent No. 1 contending that it is liable to adjustment in the bill of March, 2021 and is liable to pay only Rs.30,82,232 out of the total Rs.93,59,840. Another letter dated 21.05.2021 on similar lines was sent by the Applicant to Respondent No.1. It is pertinent to mention that whatsoever calculations and estimations with unilateral adjustments, as proposed by the Corporate Debtor, are not in any way admitted or accepted, and the same are arbitrary and whimsical. However, since the Applicant was not paying the outstanding dues, the Respondent Corporation issued a disconnection notice dated 18.05.2020 calling upon it to pay the then current outstanding dues amounting to Rs.4,36,56,201/-. The counsel for the Applicant sent a reply vide an email dated 23.05.2021 to the notice dated 18.05.2021. A rejoinder dated 27.05.2021 was sent by the counsel for the Respondent and a sur-rejoinder dated 31.05.2021 received on email on 02.06.2021, thereto was sent by the counsel for the Applicant.
36. On 12.06.2021 and 16.06.2021, the Corporate Debtor again issued letters to the Executive Engineer - EDD, UPCL at Rudrapur, Dehradun, wherein the Corporate Debtor has informed that a payment of Rs.51,29,456/- has been made on 15.06.2021, apart from the payments of Rs.30,82,232.00 on 15.04.2021 and of Rs.76,18,600.00 on 20.04.2021, by way of RTGS bank transfers. It is submitted that the above-mentioned on-account "part-payments" deposited/transferred by way of RTGS to the account of M/s Uttarakhand Power Corporation Limited without prior permission of the concerned department and yet defaulting in making "full payment" of the monthly dues and other charges as per the bills raised, are not an acceptable mode of payment. The Corporate Debtor has no authority to unilaterally execute part-payments on its own calculations and/or make adjustments in the current outstanding amounts, as calculated in the monthly electricity bills.

37. The Applicant herein submits that even after taking into account the total part-payment made by the Corporate Debtor, the Corporate Debtor is in default of payment of a sum of Rs. 3,46,31,957/- towards the bills for the months of December 2020 to May 2021.

38. The Applicant herein also submits that a Security Deposit amount of Rs.2,08,81,924.03/- is deposited by the Consumer/Corporate Debtor, with the essential service provider - M/s UPCL, against the electricity connection/consumer account of the Corporate Debtor bearing KNO. 3939. It is pertinent to mention that interest on the said security amount has been disbursed and adjusted in the bill dated 06.04.2021 for the month of March, 2021. In the said bill, an amount of Rs.9,71,009.46 has been accrued to the Corporate Debtor as interest on the security amount and a TDS amount of Rs. 97,100.94 has been charged on the same. Hence, an amount of Rs.8,73,908.52 has been adjusted in the electricity bill dated 06.04.2021. For further clarity, the electricity bill dated 06.04.2021 states:

"PREVIOUS SD_AMT: 2.0881924037

INTEREST_ON_SDAMT: 971009.46 TDS_AMT: 97100.94

AMT_ADJ_BILL: 873908.52 ISD_ADJTO_SD: 0.0"

39. The Applicant herein submits that they are entitled to disconnect the electricity connection of the Corporate Debtor in terms of Section 56 of the Electricity Act, 2003 read with Regulation 6.1 of the UERC (The Electricity Supply Code, Release of New Connections and Related Matters) Regulations, 2020. The Applicant herein is also praying for an express order from this Tribunal permitting it to disconnect the electricity connection of the corporate debtor for non-payment of the current electricity bills.

40. The Corporate Debtor submits that the payable amount as on 19.07.2021 should have been Rs. 2,54,83,945/- and not Rs. 5,04,62,245 as claimed by the Applicant herein.
41. The Corporate Debtor also submits that in the bill dated 07.09.2021 for the period from 01.08.2021 to 31.08.2021, the Applicant herein has disclosed total balance amount payable as Rs. 4,50,76,565/- whereas in affidavit filed by them on oath under IA 1534/2021, they have claimed balance payable amount as Rs. 5,04,62,245/-. The Corporate Debtor submits that if the amount claimed by them as on 19.07.2021 is correct, the balance payable in the bills dated 07.09.2021 should have been Rs. 6,21,46,121 instead of Rs. 5,04,62,245 claimed by them on the bill. The Corporate Debtor further submits that with the corrected computation and adjustment of Pre-CIRP, LPS and TCS dues, no balance amount for payment remains.

Findings and Decision

42. Heard learned Counsel and perused the material available on record.
43. The issue before us pertains to the payment of pre-CIRP and post-CIRP electricity dues and restoration of electricity connection which was disconnected on account of default in payment of such dues in accordance with the Approved Resolution Plan.
44. The CIRP of the Corporate Debtor was initiated vide admission Order dated 18.05.17 and a Resolution Plan was approved by this Tribunal vide Order dated 12.12.2017. The manner of payment of pre-CIRP electricity dues payable to the UPCL amounted to Rs. 1,76,44,903/- for the period of April and May 2017 (17 days) is in dispute. It is contention of the Applicant that such dues have to be paid in terms of approved Resolution Plan. Per Contra, the Respondents submitted that such dues were paid by the Corporate Debtor voluntarily after commencement of CIRP.

45. It is not in dispute that that the dues pertaining to April and May 2017 (17 days) were paid by the Applicant on 19.05.2017 and 19.06.2017. This payment was made after the commencement of CIRP, i.e. 18.05.2017 by the Corporate Debtor. It is trite law that the outstanding dues of the Creditors as on commencement of Corporate Insolvency Date are to be settled in terms of the approved Resolution Plan. Accordingly, the payment of any dues pertaining to that period subsequent to the Insolvency Commencement date prior to approval of Resolution Plan is not permissible. We note that the Approved Resolution Plan contemplate payment of all operational debts due as on Insolvency Commencement date in the books of Corporate Debtor, irrespective of fact whether any claim was filed by such creditor. The approved Resolution Plan contemplate payment of operational creditors dues, as appearing in books of account of Corporate Debtor, in 8 instalments. Accordingly, we are of considered view that the payments made after insolvency commencement date by the Corporate debtor cannot be appropriated towards the amount due as on such commencement date, and the same has to be appropriated towards the dues becoming payable during the CIRP period on account of availment of services during CIRP period only. Hence, the amount, if any, paid by the Corporate debtor after Insolvency commencement date shall only be adjusted against the CIRP dues and the Pre-CIRP dues shall be paid in accordance with the approved Resolution Plan. Accordingly, the Respondents are directed to appropriate the payments made after CIRP commencement towards CIRP dues. The late payment surcharge levied by the Respondents in relation to outstanding payments arising during CIRP period shall be adjusted accordingly. No late payment surcharge shall be due and payable upto the date of approval of Resolution Plan in respect of Pre-CIRP dues, if levied any, and late payment surcharge shall be computed in relation to Pre-CIRP dues to the extent such dues are not paid in accordance with approved Resolution Plan.

46. In light of the above, the Applicant is directed to pay the pre-CIRP dues to the Respondent, UPCL, in accordance with the manner laid down in the approved Resolution Plan. Since the amount was to be paid in 8 quarterly installments commencing from June 2022 and ending till March 2024, the late payment surcharge, if any, shall be levied in accordance with the payment structure and timeline as envisaged under the approved Resolution Plan. The Applicant and Respondent are directed to reconcile the dues in accordance with this Order and the Applicant is directed to make the payment within 30 days from the communication of this Order.
47. It is not in dispute that the Applicant had been availing the supply of electricity uninterruptedly upto 2022 (except for a brief period in 2020 when the electricity had been disconnected by UPCL), when the dispute as to payment of outstanding dues arose. It cannot be said that the Respondent No. 1 is not a regular vendor, hence the Respondent No. 1's Pre-CIRP dues shall be paid in full in the manner as provided in the plan.
48. As regards Order dated 7.5.2018 stating that the Corporate Applicant is not entitled to have any exemption in respect of payment of any kind of taxes that arise from the date of approval of the Resolution Plan, we clarify that the word "arise" here is to be understood in the context of scheme of Code, which postulates that all dues upto the date of approval of Resolution Plan stands settled and extinguished in terms of approved Resolution Plan. Accordingly, it is to be read as referring to any dues arising in relation to period from the date of approval of plan. This position has been laid down in the decision of the Hon'ble Supreme Court of India in the matter of Ghanashyam Mishra and Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. where it has been held that –

*95. In the result, we answer the questions framed by us as under:
(i) That once a resolution plan is duly approved by the*

Adjudicating Authority under sub section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.

49. Respondent No. 1 shall recompute the dues payable by the Corporate Debtor accordingly and notify the Applicant within 30 days from the date of communication of this Order. Thereafter, the Applicant shall amount due and payable as on date of determination within 30 days of date of communication. Needless to say, the electricity connection of the Applicant shall be restored within 7 days from the date of communication of this Order.

50. The above proposition shall equally apply to Respondent No. 2 as well, but Respondent No. 2 shall be entitled to 15% of dues only for reasons stated hereinafter. As regards contention of the Applicant that the

Respondent No. 2 is not a regular vendor, hence 15% of dues are payable to them as per approved Resolution Plan. We find merit in the argument of the Applicant in this respect, accordingly we hold that dues of Respondent No. 2 shall be settled as is payable in case of irregular vendors. In case, no balance is due and payable as per books of the Corporate Debtor, no amount shall be payable to Respondent No. 2.

51. The Applicant in IA No. 2187/2020 has pleaded that MA No. 718/2020 filed by M/s. Mars Art Studio may also be clubbed along with the present Application. However, MA No. 718/2020 has already been dismissed and disposed of by this Tribunal vide Order dated 16.01.2024. Accordingly, IA No. 2187/2020 is allowed.

52. In light of the above directions, we find that the IA No. 340/2021 and IA No. 1534/2021 praying for recall of Interim Orders dated 03.12.2020 and 04.02.2021 passed by this Tribunal in IA No. 2187/2020 have become infructuous.

53. Another IA No. 320/2021 has been filed by the Uttarakhand Power Corporation Limited seeking permission to file an additional affidavit in response to IA No. 2187/2020 as there were certain factually incorrect statements and averments in their Reply dated 21.01.2021. We find that the said Additional Affidavit dated 19.02.2021 is already on record and hence, IA No. 320/2021 is dismissed.

Sd/-

Prabhat Kumar
Member (Technical)

/SP/

Sd/-

Justice V.G. Bisht
Member (Judicial)