

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

**LA. No. /CTB/2020
TP No. 44/CTB/2019
CP (IB) No. 373/KB/2017**

In the matter of:

An application u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016.

And

In the matter of:

ADHUNIK METALIKS LIMITED, having its Registered Office and works at Chadri Hariharpur, P.O.: Kuarmunda, Dist.: Sundergarh, Odisha – 770039.

Email – contact.adhunik@libertysteelgroup.in

..Applicant

Versus

In the matter of:

WESTERN ELECTRICITY SUPPLY COMPANY OF ODISHA LIMITED, having its Registered address at 1st Floor, Kalyani Market Complex, Unit-8, Bhubaneswar, Dist – Khordha, Odisha – 751012 Also at: At/PO – Burla

Dist – Sambalpur, Odisha – 768017. Email – wesco@wescoorissa.com, sk_mahalik@yahoo.com **(As per Master Data)**

..Respondent

Coram: Shri J inan K.R., Hon'ble Member (J udicial)

Date of hearing: 13.05.2020

Order delivered on: 13.05.2020

ORDER

Per J inan K.R. Member (J udicial)

1). This unnumbered I.A. has been moved on the side of the Petitioner alleging that the matter requires utmost consideration. On going through the request and the ground of urgency set up being found satisfactory the matter has been listed for hearing on today.

2). The Applicant is an Industrial concern with a steel manufacturing plant at Odisha. The Respondent is a Power Company for supplying electricity to the Applicant. However, the Respondent disconnected the Applicant's electricity connection, during the CIRP, i.e. while the moratorium period was ongoing, and thereafter, this Hon'ble Tribunal also directed to restore the said electricity connection vide order dated 21.6.2018. However, the Respondent has not only failed to restore such connection till date, but is also demanding that the Applicant applies for a new connection. Hence this application was filed for an urgent hearing since the corporate debtor company could not resume its operation for want of electricity and prays for the following relief;

A) Direct the Respondent Power Company to reinstate the Applicant Company's electricity supply as per the above-mentioned supply agreements between the said parties;

B) Declare that the dues the Respondent Power Company, as claimed, are contrary to the approved Resolution Plan and therefore the same stand extinguished;

C) Direct the Respondent Power Company to treat its outstanding dues as settled and extinguished as per terms of Approved Resolution Plan and recall its demand for the same;

D) Direct the Respondent Power Company to reinstate and retain the Applicant Company's Security Deposit of Rs. 12,08,59,396/- against the above-mentioned supply agreements between the said parties;

E) Interim and ad-interim orders in terms of prayers A to D;

F) Costs;

G) Such further and other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

3). Today when this case was taken up for hearing through video conference (VC) the Ld. Sr.Counsel Mr. Ratnanko Banerji and Ld.Advocate Mr. Saswat Acharya were represented for the applicant and Ld.Counsel Mr. Hasan Murtaza represented for the respondent were heard at length.

4). Ld. Sr.Counsel for the applicant has submitted that despite directions issued to the respondent during the CIRP period the Respondent has not only failed to restore such connection till date, but is also demanding that the Applicant applies for a new connection. Further, the Respondent is also demanding the repayment of the dues, that already stand extinguished when this Hon'ble Tribunal approved the Resolution Plan vide order dated 17.7.2018. Subsequently the matter went up to the Hon'ble NCLAT and by virtue of order dated 3.3.2020, the management and control of the Applicant has been taken over by the successful Resolution Applicant, only recently in March 2020. He would submit that the respondent unilaterally terminated the two agreements which were entered into on 02.06.2018 vide letter dated 19.08.2019 by adjusting the security deposit towards the dues allegedly payable to the respondents. Till date the Applicant has been making correspondences to the Respondent but that has been of no avail. Such conduct is also causing irreparable prejudice and obstruction to the implementation of the Applicant's Resolution Plan in these difficult times. Hence, the present application with prayers, *inter alia*, for interim relief of immediate restoration of electricity supply which is an essential service.

5). The Ld. Counsel for the respondents objected this application mainly on two grounds. Firstly he submits that as per the interim order dated 21.06.2018, the CD was directed to clear the post-CIRP dues, and that till date said dues was not paid despite repeated demand and therefore termination of agreement is proper and legal. Secondly he submits that as per the terms of the resolution plan the post-CIRP dues for the usage of electricity falls under resolution costs and therefore, the CD is liable to pay the dues as demanded. According to him the security deposit deposited by the CD being adjusted toward the dues

as per Regulation 16(1) of OERC Distribution (Conditions of Supply) Code 2004, the only remedy available to the applicant is to apply for a new connection.

6). Upon hearing the argument on both side and the Ld. Sr.Counsel for the applicant pressed for passing an interim order limiting relief (a) the main question to be answered is that whether the respondent is legally entitled to claim Pre-CIRP dues and Post-CIRP dues as claimed for and whether the termination of agreements entered into between the CD and respondents is legal?

7). The Ld.counsel for the respondent relied on the order of this AA dated 21.06.2018 for claiming post-CIRP dues. It is good to read the order dated 21.06.2018. it is extracted below:

Ld. Counsel for the Resolution Professional, Committee of Creditors and for the respondent nos. 1 and 2 in CP (IB) No. 515/KB/2018 is present.

CP(IB) No. 515/KB/2018 came up for consideration on today. Main relief sought for issuing directions to the respondents for restoration of electric connection.

Upon hearing the Ld. Counsel appearing for the both sides we are of the view that a direction should be issued to the respondents to restore the electric connection forthwith. In the meanwhile the Resolution Professional, applicant herein, is directed to make his endeavour to see that the entire amount due for the usage of energy post moratorium period is to be paid within one month, failing which action can be initiated by the WESCO Utility under applicable law. The Resolution Professional is also directed to see that the current charges for usage of energy is to be paid without any failure.

CA (IB) No. 515/2018 is disposed of accordingly.

8). According to the Ld.Sr.Counsel for the applicant, this order is not in force. Neither the respondent reconnected the supply as directed in the order, nor the applicant paid the dues. He would submits that without restoring connection as directed the respondent cannot claim the said dues. He also would submits that since the resolution plan was approved by the AA, and was re-approved by the NCLAT, vide order dated 03.03.2020, without any modification the right of the respondent for the pre- CIRP and Post-CIRP dues shall stand extinguished as per the terms in the approved plan and the plan is binding on the respondent and hence the termination of engagements and demand for arrears are illegal and in contravention of the terms of the resolution plan. He stressed the below extracted clauses in the plan for strengthening the said arguments.

Schedule 3: Extinguishment

Clause 3. All indebtedness of the Corporate Debtor which is not due as of the Insolvency Commencement Date but relates to the period prior to the Effective Date, shall stand irrevocably and unconditionally extinguished in perpetuity on and with effect from the Effective Date.

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Clause 16. Any and all rights and entitlements of any Governmental Authorities, any regulatory or local authority or body or any agency or instrumentality thereof or any other party or entity (under any agreement lease, license, approval, consent, privilege or permission), whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Information Memorandum, in relation to any period prior to the Approval Date pursuant to this Resolution Plan, shall be deemed to be permanently extinguished and discharged on and with effect from the Approval Date.

X X X X X X X X X X X

Clause 35: The waiver of certain CIRP Costs which are in the nature of direct input to the business and are unpaid since 31 May 2018. In this respect, a specific waiver and relief is being sought from the NCLT in respect of electricity dues of INR 12 Crore and dues towards certain creditors who have provided supply of goods and services to the

corporate debtor aggregating to INR 18 Crores. He also taken me to the termination letter issued by the respondent. It read as follows;

Termination letter.

WESCO UTILITY

19/08/2019

No.XX/REV/LARGE/8241

To
M/s. Adhunik Metaliks Ltd.
14 N.S. Road, 2nd Floor,
Kolkata 700001

And
M/s. Adhunik Metaliks Ltd
113, Civil Township, Rourk 769004, Odisha

Sub: Termination of agreement against consumer No.316(I)RRKL/3-0/0149

Ref: Letter No. ESCO/COM-546(4) dated 20.07.2019 of Chief Operating Officer, Burla.

Sir,

It is to inform you that the power supply to your industry has been disconnected on 02.06.2018 due to non-payment of outstanding dues. Also no steps have been taken by you to make payment of the outstanding dues and re connection of power supply within 2 months from the date of disconnection. Further, Mr. Rahul Fenurkar, member of monitoring committee, ED (Steel) Liberty House Group requested corporate office Burla not to terminate agreement till November '18.

Hence, your agreement dated 25.05.2007 for the contract demand of 23000 KVA at 132 KV is hereby terminated with effect from 01.12.2018 as per Regulation 16(1) of OERC Distribution (Conditions of Supply) Code 2004. The final bill up to 30.11.2018 is enclosed herewith and you are requested to pay Rs. 3,29,55,694/- after adjustment of available SD of Rs.12,08,59,396/-. Apart from this you are also requested to Rs.29,03,916/- towards payment of cross subsidy charges. Again you are also requested to submit the original money receipts of security deposit to the undersigned for adjustment of EC bill upto 30.11.2018.

Yours faithfully,
Sd/-
Executive Engineer (Elecl.)
RED, WESCO, Rajgangpur.

9). Relying on the above said clauses in the plan and the termination letter he would further submit that the Hon'ble NCLAT in its order recorded settlement of all dues due to

all creditors and therefore, the respondent is disentitled claim any dues as claimed for on the side of the respondent. The relevant para he relied on is extracted below;

Both the 'Resolution Plans' be implemented in its letter and spirit. The claim of all the Creditors stand settled. Control and records of both the 'Corporate Debtors'- 'M/s. Adhunik Metaliks Limited' and 'M/s. Zion Steel Limited' have already been handed over to the 'Successful Resolution Applicant' by 'Committee of Creditors'/ Monitoring Committee/ 'Resolution Professional'. 'Committee of Creditors'/Monitoring Committee/ 'Resolution Professional' stand discharged."

10). A reading of the above said clauses in the resolution plan, and the order of the Hon'ble NCLAT, primaface I am satisfied that the respondent is disentitled to claim the dues as demanded and as shown in the termination letter above referred. Clause 35 read as above is the answer to the objections on the side of the respondent. However the ld. counsel requested further time to have an inspection of the entire records and further requested time to submit detailed reply and also prays for a larger hearing as to the liability of the CD towards the dues as claimed by the respondent. Since this application was heard through VC, though advance notice of hearing of this application was given to the respondent natural justice demand to grant time to the respondent as prayed for.

11). In the view of the above said factors, and that the applicant primaface succeeds in proving its right to restore the disconnected supply as per the terms of the agreements unilaterally terminated by the respondent, it appears to me that the respondent is bound to restore the electricity supply as was given to the CD. Since the Ld. Sr. counsel for the applicant not pressed for the relief (b) and (c) relating to its alleged liability to pay the arrears of dues as demanded by the respondent for the time being, and since to have a determination of the said reliefs larger hearing and perusal of the voluminous records being necessary determination of the legality of the demand by the respondent and legality of termination of the agreements are to be left open for final determination. Upon the above said observation allowing relief (a) would meet ends of justice in the peculiar nature and circumstances in the instant matter. Accordingly the application is partly allowed upon the following directions:

- a) The respondent is directed to reinstate the Applicant Company's electricity supply as per the above-mentioned supply agreements between the said parties within two weeks from the receipt of the email copy of this order.
- b) Failing which the respondent is liable for contempt.
- c) The question as to whether the termination of agreements is legal and proper and whether the claim for the dues stand extinguished when this Hon'ble Tribunal approved the Resolution Plan as claimed by the applicant is left open for final determination by the regular tribunal after lifting of the lock down.
- d) Registry of the Cuttack Bench is directed to post this application immediately after lifting of the knockdown by giving prior notice.
- e) Registry of Kolkata bench is directed to send a copy of the order by way of e mail to the parties forthwith.

- f) I A is adjourned for final hearing by the Cuttack Bench upon lifting the lock down. The respondent shall submit its reply by serving copy to the applicant by way of email to the email id of the NCLT, Cuttack Bench within two weeks.

(Jinan K.R)
Member (Judicial)

Signed on this the 13th day of May, 2020.