

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 10.04.2023 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB)/130/9/AMR/2022		9 of IBC	Southern Power Distribution Company of A.P. Limited Vs. Sudalagunta Sugars Limited

ORDER

Ms.Sarvani Desiraju, Counsel for the OC present. Orders pronounced.
CP(IB)/130/9/AMR/2022 is admitted, vide separate orders.

Sd/-
**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

RSN

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

*** **

CP (IB)/130/9/AMR/2022

**In the matter of a Petition under Section 9 of the Insolvency and
Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority) Rules, 2016**

AND

**In the matter of
M/s. SUDALAGUNTA SUGARS LIMITED**

Between:

M/s. Southern Power Distribution Company of A.P. Limited,
19-13-65/A, Srinivasapuram,
Tiruchanoor Road, Tirupati,
Chittoor District, Andhra Pradesh - 517503

... Operational Creditor

AND

M/s. Sudalagunta Sugars Limited,
Mayura Nagar, Katur Post,
B.N.Kandriga Mandal,
Andhra Pradesh – 517644.

... Corporate Debtor

Date of pronouncement of orders: 10.04.2023

CORAM:

Justice Telaprolu Rajani, Member Judicial.

Appearance:

For Operational Creditor : Ms.Saravani Desiraju, Advocate.

For Corporate Debtor : None appears (*ex parte*)

ORDER

1. This Petition is filed by M/s. Southern Power Distribution Company of AP Limited, i.e., the Operational Creditor (“in short OC”) against M/s. Sudalagunta Sugars Limited i.e., the Corporate Debtor (“in short CD”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the CD for the default committed in discharging the debt of Rs.29,42,38,402/- that was due to the OC.
2. The facts of the case, briefly, are as follows:
 - i. The debt amount pertains to the wheeling charges in kind along with the cross-subsidy charges payable by the CD to the OC as per the charges fixed by the Andhra Pradesh Electricity Regulatory Commission (APERC) on 24.03.2002 for the year 2002-2003 effective from 01.04.2002. The order of the APERC, fixing wheeling charges, was carried in appeal before the High Court and the High Court, vide its order dated 18.04.2003 allowed the appeal and set aside the order of APERC. However, an appeal was preferred before the Hon’ble Supreme Court impugning the order of the High Court. The Hon’ble Supreme Court delivered the judgement on 29.11.2019 in CA No.4569 of 2003 and batch of appeals, setting aside the impugned order of the High Court and restoring the order of the APERC as follows:

“Resultantly, we have to allow the appeals. The judgement and order passed by the High Court relating to wheeling charges and grid support charges and the passed by the APTEL regarding continuance of incentive as per G.O.Ms dated 18.11.1997 and

22.12.1998, are set aside. The appeals are allowed, and the orders passed by APERC are restored.”

- ii. Therefore, the wheeling charges and other charges are liable to be paid by the Generator as per the Tariff Orders issued by the APERC from time to time from Financial Year: 2002-2003. The month wise differential wheeling charges amount (as per Agreement and the APERC Tariff Orders) from 2002-2003 to 2013-2014 are arrived and year wise abstract enclosed to this application and the same was also informed to the CD.
- iii. An amount of Rs.29,42,38,402/- and interest @ 18% p.a from 01.07.2021, i.e., from the date of payment towards differential wheeling and other charges as per APERC Tariff orders under the Agreement from 2002-2003 to 2019-2020, is liable to be paid by the CD i.e., M/s. Sudalagunta Sugars Limited.
- iv. Further to the Supreme Court Order, the OC issued notices, vide letters dated 25.06.2020, 01.07.2020, 21.12.2020, 21.01.2021, 27.10.2021, 20.12.2021 & 25.02.2022 and memo dated 21.03.2022 to the CD demanding the dues. But no amount was paid by the CD. The amount fell due from the date on which APERC has fixed tariff for wheeling charges vis-à-vis the original agreement and which tariff has been restored vide Supreme Court order dated 29.11.2019 in C.A. No.4569 of 2003 and batch matters and as the services were subsequently provided till 2019-2020 and invoices were regularly raised but no payment was made by the CD.

- v. The OC sent the demand notice in Form 3 dated 20.10.2022 to the CD demanding an outstanding payment and as per the postal track consignment, the demand notice was delivered on 31.10.2022. The CD neither made any payment nor has given any reply to the demand notice. Hence this Petition, seeking to initiate CIRP.
3. After this Company Petition was filed, a notice was issued to the Respondents and the matter was posted to 30.01.2023 from 03.01.2023. On 30.01.2023, the OC's counsel appeared and submitted that the notice sent to the CD was returned with an endorsement that the addressee left and sought time to take a fresh notice and the matter was posted to 02.02.2023. On 20.02.2023, the OC's counsel appeared and submitted that the notice sent to the CD was returned stating that the factory is closed. Hence, OC was directed to take notice by way of substitute service by a publication in newspapers. For filing proof of service, matter was posted to 14.03.2023. On the next date of hearing i.e., 14.03.2023, in spite of paper publication none appeared for the CD, hence CD is as *set exparte*. For hearing the OC, the matter posted to 30.03.2023.
4. Heard the counsel for the OC. The counsel for the OC during the course of arguments, draws the attention of this Tribunal to the Amended and Restated Power Purchase & Wheeling Agreement dated 29.01.2000 between Transmission Corporation of Andhra Pradesh Ltd and Sudalagunta Sugars Ltd. This agreement amends, restates and

supersedes in its entirety the Power Purchase Agreement, dated 11.03.1998 between the APSEB and Sudalagaunta Sugars Ltd, wherein it was mentioned that the word “*wheeling charges*” explained at clause 1.26 of Article 1 in the agreement means the consideration payable in kind (kWh) deducted by the APTRANSCO in accordance with Paragraph 2.4 below from the Wheeled Energy for providing Wheeling Service and also Duration of Agreement. Paragraph 2.4 in Article 2 and Duration of Agreement at Article 9 are extracted hereunder for ready reference:

“2.4:- As compensation for the provision of Wheeling service, the APTRANSCO shall be entitled to deduct from the delivered energy the Wheeling Charges, in kind, which charges shall be at 2%, subject to Article 11.3. The Wheeling Charges payable under this Paragraph 2.4 shall be the sole and exclusive consideration payable to the APTRANSCO for the provision of Wheeling service.”

***Article 9:-** This agreement shall be effective upon its execution and delivery thereof between parties hereto and shall continue in force from the schedule date of completion and until the twentieth (20th) anniversary that is for a period of twenty years from the Scheduled Date of Completion, and this Agreement may be renewed for such further period of time and on such terms and conditions as may be mutually agreed upon by the parties, 90 days prior to the expiry of the said period of twenty years.”*

Further, the counsel for the OC, draws the attention of this Tribunal to the Judgment of the Hon’ble Supreme Court in C.A. No.4569 of 2003 and batch matters dated 29.11.2019, which held as follows:

“Concerning aforesaid Government Orders dated 18.11.1997 and 22.12.1998, this Court already held that the plea of promissory estoppel is not attracted, and there was no unequivocal promise. We are of the opinion that there was no material change in the facts and circumstances of the case to attract the plea of promissory estoppel based on Government orders mentioned earlier. The Tribunal has passed an order, by which it had temporarily extended the period to 24.7.2001. In the impugned order dated 24.3.2002, the objection raised of the non-conventional energy developers regarding wheeling charges was dealt with and it was stated that non-conventional energy have to pay the wheeling charges without discrimination and it was also stated that if Government wants to pay any subsidy, it may pass fresh order to compensate the licensee. The Government has, after that, never given any subsidy, for subsidy care is taken by the statutory provision contained in the Electricity Act, 2003. Section 65 of the Electricity Act, 2003, provides that if State Government requires grant of any subsidy to any consumer in the tariff determined by the State Commission under Section 62, the State Government shall, notwithstanding, any direction which may be given under Section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct. Subsidy/incentive is governed by Section 65, and the Government has not issued any such direction to continue the incentives in the form of subsidy. It was open to the Government to do so because of the order passed by the Commission, but it has not extended such benefit. No command can be given to State to grant subsidy.

Thus, we find that the order of APTEL based on the Doctrine of Promissory Estoppel for continuing the benefit of Government Orders dated 18.11.1997 and 22.12.1998, cannot be said to be in accordance with the law. The order of APTEL is liable to be set-aside, and that passed by the APERC has to be restored.

Resultantly, we have to allow the appeals. The judgment and order passed by the High Court relating to wheeling charges

and grid support charges and that passed by the APTEL regarding continuance of incentive as per G.O. MS dated 18.11.1997 and 22.12.1998, are set aside. The appeals are allowed, and the orders passed by APERC are restored. No costs.”

5. Hence I am of the considered view that it is a fit case to admit and order initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The OC did not suggest any name as Insolvency Resolution Professional (IRP) and sought the Tribunal to appoint an IRP. Hence, **Mrs. Gaddam Sritha Shireen**, (Registration No.IBBI/IPA-001/IP-P01225/2018-2019/11974) is appointed as Insolvency Resolution Professional (IRP).

ORDER

The Company Petition is admitted. The Corporate Insolvency Resolution Process of the Corporate Debtor shall commence from this date and shall be completed within 180 days hence.

- i. **Mrs. Gaddam Sritha Shireen**, (Registration No.IBBI/IPA-001/IP-P01225/2018-2019/11974), having office at Gaddam Satyanarayana And Co., D.No:23-38-1, 1A, Sivaraman Street, Satyanarayanapuram, Vijayawada, Krishna District, Andhra Pradesh -520011; e-mail: **gsshireen@yahoo.co.in**; Mobile: **9912898434**; is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website.
- ii. She is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms

of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.

- iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.
- iv. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code.
- v. The Registry shall communicate the order to the Operational Creditor and the Corporate Debtor forthwith.
- vi. The Operational Creditor and the Registry shall send the copy of this order to IRP for necessary compliance.

Sd/-
JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu