IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

IA. No. 662/2021

In

Company Petition No. (IB)-297(ND)/2018

Order under Section 60(5) of Insolvency & Bankruptcy Code, 2016

IN THE MATTER OF:

Smash Entertainment Private Limited	...	Operational Creditor
Vs		
Pramod Kumar Sharm, Resolution Professional for International Recreation and Amusement Part	...	Respondent No. 1
Dakshin Haryana Bijli Vitran Nigam	...	Respondent No. 2

And IN THE MATTER OF:

Col. Sanjeev Dalal (Retd.)	...	Applicant/Petitioner
Vs		
M/s. International Recreation and Amusement Ltd.	...	Respondent

Judgment delivered on 15.02.2021

CORAM:
SH. B.S.V. PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT

SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

PRESENT:
For the Applicant : Ms. Mrinalini Sen, Ms. Kritika Gupta, Tanmay Yadav, Advs.
For the RP : Mr. Abhishek Anand, Mr. Mohak Sharma, Advs.
: Mohd Nazim Khan, PCS for RP along with
Mr. Pramod Kumar Sharma in Person

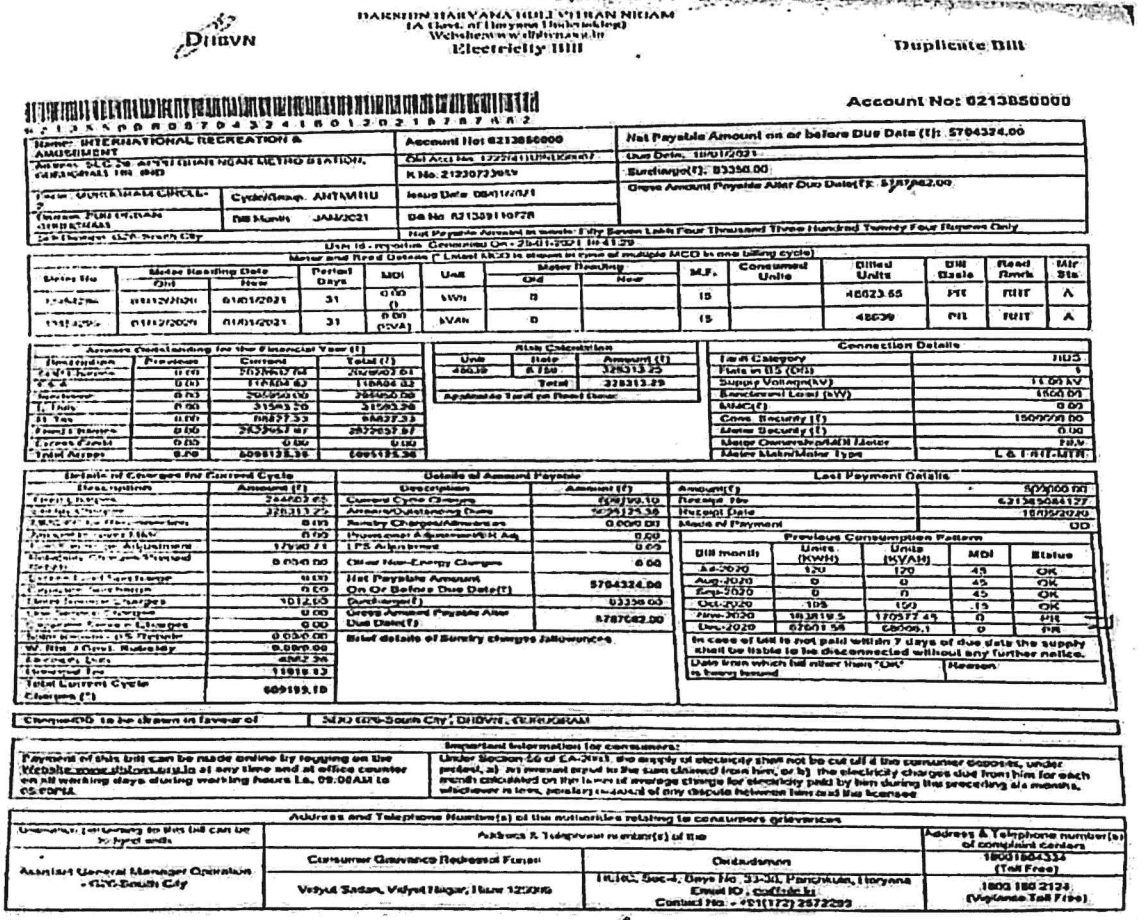
AS PER: B.S.V. PRAKASH KUMAR, ACTG. PRESIDENT

Heard and dictated in the open court on 15.02.2021:

IA-662/2021

It is **IA-662/2021** filed by one Smash Entertainment Pvt. Ltd. referring to itself as licensee of the corporate debtor seeking directions against **Dakshin Haryana Bijli Vitran Nigam (R2)** to resume the electricity connection of Appu Ghar, Sector-29, Next to Huda City Centre Metro Station, Gurgaon, Haryana-122009 and to provide separate meter for "SMASH Sky Karting" and "Unforked Bar & Restaurant" at Appu Ghar, Sector-29, Next to Huda City Centre Metro Station, Gurgaon, Haryana-122009 in such a manner that the electricity bill be directly paid for consumption of electricity by the applicant to Dakshin Haryana Bijli Vitran Nigam- R2.

ANNEXURE-A-7 92



DAKSHIN HARYANA BIJLI VITRAN NIGAM
(A Govt. of Haryana Undertaking)
Website: www.dhbvn.org.in
Electricity Bill

DHBVN

Duplicate Bill

Account No: 0213850000

Name: INTERNATIONAL RECREATION & AMUSEMENT		Account No: 0213850000	Net Payable Amount on or before Due Date (₹): 5784324.00
Address: SCO 29, NEXT TO HUDA METRO STATION, GURGAON (HR) 000		Old Acct No: 12270411UN1(Old)	Due Date: 18/01/2021
		K No: 21330723019	Surcharge(₹): 93336.00
Town: GURGAON CIRCLE-2	Cycle/Group: ANTAVIIU	Issue Date: 08/11/2021	Grace Amount Payable After Due Date(₹): 5787662.00
Division: GURGAON CIRCLE-2	Bill Month: JAN/2021	Bill No: 0213091 10728	
Sub Division: GTA South City		Net Payable Amount in words: Fifty Seven Lakh Four Thousand Three Hundred Twenty Four Rupees Only	

Unit Id - mysore Generated On - 29-01-2021 11:41:29

Meter and Read Details (* Latest MRD is shown in case of multiple MRD in one billing cycle)

Meter No	Meter Reading Date Old	Meter Reading Date New	Period Days	MDI	Unit	Meter Reading Old	Meter Reading New	M.F.	Consumed Units	Billed Units	Bill Basis	Read Remk	Mtr Sts
[illegible]	01/12/2020	01/01/2021	31	0.00 (0)	kWh	0		15		46023.65	PIT	RUIT	A
[illegible]	01/12/2020	01/01/2021	31	0.00 (0VA)	kVAh	0		15		46039	PIT	RUIT	A

Amount Outstanding for the Financial Year (₹)

Description	Previous	Current	Total (₹)
[illegible]	0.00	2029907.61	2029907.61
[illegible]	0.00	118484.63	118484.63
[illegible]	0.00	2659560.00	2659560.00
[illegible]	0.00	31593.20	31593.20
[illegible]	0.00	6837.33	6837.33
[illegible]	0.00	2829567.87	2829567.87
[illegible]	0.00	0.00	0.00
Total Arrear	0.00	5684131.36	(5684131.36

Risk Calculation

Units	Rate	Amount (₹)
46039	8.750	328313.25
	Total	328313.25

Applicable Tariff on Road Date:

Connection Details

Tariff Category	HDS
Fixed on DS (Off)	1
Supply Voltage(kV)	11.00 kV
Sanctioned Load (kW)	1500.00
SMC(₹)	0.00
Cons. Security (₹)	1500000.00
Meter Security (₹)	0.00
Meter Ownership/MAIN Meter	DHV
Meter Make/Meter Type	L & T RIEL-MTR

Details of Charges for Current Cycle

Description	Amount (₹)
[illegible]	2644803.45
[illegible]	328313.25
[illegible]	0.00
[illegible]	0.00
Fixed/Min. Charges Waived Details	17930.71
[illegible]	0.00 0.00
[illegible]	0.00
[illegible]	0.00
[illegible]	1012.05
[illegible]	0.00
[illegible]	0.00
[illegible]	0.00 0.00
W. Tax / Govt. Subsidy	0.00 0.00
[illegible]	4847.36
[illegible]	11918.93
Total Current Cycle Charges (₹)	6091193.18

Details of Amount Payable

Description	Amount (₹)
Current Cycle Charges	6091193.18
Arrears/Outstanding Dues	5684131.36
Sundry Charges/Allowances	0.00 0.00
Payment of Agreement/H.Adj.	0.00
LPS Adjustment	0.00
Other Non-Energy Charges	0.00
Net Payable Amount On Or Before Due Date(₹)	5784324.00
Surcharge(₹)	93336.00
Gross Amount Payable After Due Date(₹)	5787662.00

Brief details of Sundry charges /allowances

Last Payment Details

Amount(₹)	5000000.00
Receipt No	6213850841T7
Receipt Date	18/05/2020
Mode of Payment	OD

Previous Consumption Pattern

Bill month	Units (KWH)	Units (KVAH)	MDI	Status
Jul-2020	120	120	45	OK
Aug-2020	0	0	45	OK
Sep-2020	0	0	45	OK
Oct-2020	105	105	15	OK
Nov-2020	1838195	1705774.5	0	PR
Dec-2020	67601.58	68098.1	0	PR

In case of bill is not paid within 7 days of due date the supply shall be liable to be disconnected without any further notice.

Date from which bill other than "OK" is being issued	Reason

Cheque/DD to be drawn in favour of: AEO GTA-South City, DHBVN, GURUGRAM

Payment of this bill can be made online by logging on the Website www.dhbvn.org.in at any time and at office counter on all working days during working hours i.e. 09:00AM to 05:00PM.

Important Information for consumers:

Under Section 56 of EA-2003, the supply of electricity shall not be cut till the consumer opposes, under protest, a) any amount paid to the sum claimed from him, or b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending finalisation of any dispute between him and the licensee

Address and Telephone Number(s) of the authorities relating to consumers grievances

Authority for issuing the bill can be approached	Address & Telephone number(s) of the		Address & Telephone number(s) of complaint centers
Assistant General Manager Operation - GTA-South City	Consumer Grievance Redressal Forum	Ombudsman	1800180 4334 (Toll Free)
	Vidyut Sadan, Vidyut Nagar, Hisar 125005	H.E.R.C., Sec-4, Bays No. 33-36, Panchkula, Haryana Email ID : cgrf@herc.in Contact No. - +91(172) 2572293	1800 180 2124 (Vigilance Toll Free)

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Page 1 of 1

On perusal of this application, it appears that this applicant is a company engaged in the business of gaming and sports entertainment with the name of Oyster Beach Water Park in 10 acres of land at Sector-29, Next to Huda City Centre Metro Station, Gurgaon, Haryana-122009. This licensee has been operating its

units as "SMASH Sky Karting" and "Unforked Bar & Restaurant" by entering into a licence agreement with the corporate debtor on 21.06.2016 and this applicant has been in the possession of the units since June, 2016.

2. Now the grievance of this applicant is that power connection was disconnected by Dakshin Haryana Bijli Vitran Nigam- R2 in the month of March, 2020 and it has been categorically mentioned that R2 has disconnected the electricity connection for Appu Ghar in March, 2020. The applicant has stated that in terms of licence agreement, the corporate debtor was to raise the bill for consumption of electricity on the applicant as per reading of the meter and the applicant was to give equivalent amount to the corporate debtor which in turn was required to pay and clear the dues of R2. It has been stated owing to lockdown and by virtue of the restrictions imposed during the lockdown, especially entertainment and gaming sector activities being completely locked down, the applicant/licensee was not aware of electricity dues commencing from March, 2020.

3. The applicant has stated it is impossible to operate these two businesses I.e. SMASH Sky Karting and Unforked Bar & Restaurant

from the licensed premises without electricity therefore, the applicant says it was brought to attention of the RP on 15.12.2020 about electricity issue, upon which the RP/R1 assured the applicant that remedial steps would be taken by him to restore the electricity connection for Appu Ghar and the license premises. As no response came from the RP, the applicant again addressed a letter on 21.01.2021 to the RP seeking resumption of the electricity connection to resume operations at the licensed premises. Apart from this, the applicant has also addressed a letter dated 29.01.2021 to R2 to resume the electricity connection of Appu Ghar expeditiously, however no response being received, the applicant has filed this application.

4. In addition to this factual aspect, the applicant counsel has argued that, as per Section 14(2) of the Insolvency & Bankruptcy Code, supply of essential goods and services to the corporate debtor shall not be terminated or suspended or interrupted during the moratorium period.

5. Upon this argument when we have verified regulations of CIRP under Section 32 we have noticed that it has been mentioned as follows:-

32. Essential supplies.

"The essential goods and services referred to in section 14(2) shall mean- (1) electricity; (2) water; 19 (3) telecommunication services; and (4) information technology services, to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

Illustration- Water supplied to a corporate debtor will be essential supplies for drinking and sanitation purposes, and not for generation of hydro-electricity."

6. Before considering the submissions of the applicant, since Dakshin Haryana Bijli Vitran Nigam/R2's respective counsel is not present before this bench, therefore we believe it is necessary to reproduce the electricity bill issued on 08.01.2021.

7. On perusal of this bill, it appears that this connection falls under category of non-domestic service (NDS). This bill was raised on 08.01.2021 for the month of December i.e. from 01.12.2020 to 01.01.2021 on face it, it is clear that bill was generated only in the year 2021 therefore, the applicant has made a complete lie before this bench stating that power connection was disconnected in the month of March, 2020. By further going into the bill and by seeing the previous consumption pattern, it is evident that owing to lockdown, unit consumption in the month of July, 2020 was only 120 units; in

the month of August, 2020 is zero consumption; in September, 2020,it is zero consumption; in the month of October, 2020, consumption is 195 units; but from November, 2020 onwards, the corporate debtor perhaps started business, therefore consumption for that month has gone up to 1,63,819.5 units, when it has come to December, 2020, the corporate debtor consumed 67,601.55 units. As to the month of December, 2020 alone, this power consumption bill has come for payment of to ₹6,09,199.10. Since the corporate debtor has not even paid earlier months bills, past dues outstanding as on 01.01.2021 has come to ₹50,95,124.36, so net payable amount as on the date of this bill was aggregated to ₹57,043,24. Regrettable part is, this applicant as well as the corporate debtor represented by RP stated that power was disconnected somewhere in the month of March, 2020. Since it is evident in the consumption Bill that power was not disconnected at any point of time at least until 01.01.2021, when we put it to the Resolution Professional as to how they stated that power was disconnected in the month of March 2020, the Resolution Professional has not given clear answer to us as to whether disconnected or not, but only mentioned that he stated by relying upon the statement mentioned in the application moved by

the licensee/the applicant. We believe it is not fair on the part of the RP appointed by this Bench to make such statement. The bill further discloses that a payment of ₹5,00,000 was made on 05.05.2020. Therefore, by seeing the consumption charges and payment in May 2020, it is evident that the applicant/the corporate debtor consumed electricity more than one lakh units in the month of November, 2020 and more than 50,000 units in the month of December, 2020 leading to accumulation of the Bill to ₹57,00,000, if this bill is not paid to the Government Department, which is generating electricity by spending public money over it, the Government has to bear all this loss, because if the power generation is by coal, then the government has to buy coal then convert it into energy, it all happens with public money. Here, it cannot be the case that business did not happen in the month of November and in the month of December, 2020, but when it has come to make payment, Insolvency has come in the way for making payment. And it is also not true that the applicant was not aware of things happened in between March 2020 and December, because there was part payment in the month of May 2020 and in the month of November and December the applicant consumed power and did business.

8. On looking at this position, when we have asked the RP counsel as to whether corporate debtor has any other business other than this business this applicant is running, the RP counsel has categorically mentioned the corporate debtor has not been doing any other business other than the business licensee (Applicant is) running. Indeed on reading the application, it is evident that in the past the RP gave license termination notice for license fee has not been paid.

9. By seeing the conduct of this applicant, from one side this applicant has not been paying license fee, from other side this applicant has been unabatedly consuming electricity in large scale and making money out of it, despite making money, now this applicant has come out with this application to avoid making electricity payment as well.

10. On being testimony to all this fraudulent conduct, we can't restrain ourselves from saying that in the name of insolvency process, private people are draining the public money and making illicit gain under the garb of this Code so as to avoid payments to government authorities. If it is a tax payment, it is understandable to some extent, but for power generation, natural resources to be pooled, industry has to work, for all this, money is required, where

from the Government meets all this expenditure. It is from public Governments generate money in the form of tax from the public buying anything in the market, every person of the country invariably paying either direct or indirect tax. Pity is money of the public collected as tax is draining in this way. In the name of survival of the corporate sector, this kind of people draining the money of the country into their pockets left, right, center by misusing the resources meant for the use of the public.

11. Over and above, this applicant has no locus to file this application, in case any application is to be filed, it is the corporate debtor to file, not this applicant. This applicant is not under CIR Process, it is the corporate debtor that is under CIR Process therefore, this applicant has no locus to file this application about this issue, because if any benefit is to go under Section 14 of the Code, it has to go to the Corporate Debtor, but not to a person other than the corporate debtor.

12. When it comes to legal proposition, may be by having bad experience, the legislature has brought in amendment to subsection 2 of Section 14 and added sub section 2A to Section 14 of the Code, in addition to the Regulation 32 envisaging, wherever any company

running as a going concern, if the corporate debtor has not paid dues arising from supply of essential goods, the exemption provided in Section 14 (2) is not applicable to the said corporate debtor. The exemption could be availed only where the corporate debtor keep paying dues, when payment is not done, the rigors of the Moratorium will not come in the way in disconnecting supply of essential supplies.

13. Side by side, if we read regulation 32 of the CIRP, it will be clear that the supply of electricity to this applicant company will not fall within the ambit of essential supplies because by using this large scale electricity for non-domestic use, this applicant company has been generating money, if power is not there, this company cannot do anything. It cannot generate any money, when supply of power to the company is directly or indirectly related to generating money to the company, usage of supplies will not fall within the ambit of essential supplies. In such event, supply of power as an input to have an outcome will amount to investment for generating money, in such cases, Moratorium clause is not applicable. In view thereof, this application shall be dismissed as misconceived, since this applicant is not a corporate debtor, the application is not only frivolous but also

an attempt to knock away the public resources by taking shelter under IBC, therefore we hereby impose ₹50,000 costs against this applicant to pay the same to Pay and Accounts Officer, Ministry of Corporate Affairs.

14. An application like this it does not warrant this bench to summon the public sector undertaking officers to be present before this Bench to defend this kind of application which will further drain the public exchequer of the respective state.

Accordingly, application is hereby dismissed as misconceived.

Sd/-

(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

Ritu Sharma - 15.02.2021