

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

I.A. No. 723 of 2023
C.P. No. 176/KB/2018

*An application under Rule 11 of the National Company Law Tribunal Rules,
2016*

In the matter of:

Maithan Alloys Limited

...APPLICANT

Versus

Eastern Power Distribution Company of Andhra Pradesh Limited and Ors.

...CONTEMNORS/RESPONDENTS

Date of pronouncement of order: 16.04.2024

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearances (via Video Conferencing/Physical):

| | |
|--------------------------------|------------------------------|
| Mr. Zeeshan Haque, Adv. |] For the Applicant in |
| Ms. Tanvi Luhariwala, Adv. |] IA(I.B.C)/2074(KB)2023 |
| Mr. Supriyo Gole, Adv. |] |
| Ms. Madhuja Barman, Adv. |] |
| Mr. Shaunak Mukhopadhyay, Adv. |] For the Applicant in |
| Mr. Supriyo Gole, Adv. |] IA(I.B.C)/1617(KB)2023 |
| Ms. Madhuja Barman, Adv. |] |
| Mr. Joy Saha, Sr. Adv. |] In IA(I.B.C)/2074(KB)2023 |
| Mr. Sidhartha Sharma, Adv. |] For the Respondent No.1 in |
| Mr. Rishav Dutt, Adv. |] IA(I.B.C)/2074(KB)2023 |
| Ms. Namrata Basu, Adv. |] |
| Mr. Danish Taslim, Adv. |] |
| Mr. S. Mitra, Adv. |] |
| Mr. Rohit Kumar Keshri, Adv. |] For the Respondent in |
| Mr. Ankit Chaurasia, Adv. |] IA(I.B.C)/1617(KB)2023 |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

I.A. No. 723 of 2023
C.P. No. 176/KB/2018

| | |
|------------------------------------|---------------------------|
| Mr. Devajoyti Barman, Adv. |] For the Respondent in |
| Ms. S.B. Mallick, Adv. |] IA(I.B.C)/1618(KB)2023 |
| Mr. Kaustubh Rai, Adv. |] For the Respondent in |
| |] IA(I.B.C)/738(KB)2021 |
| Mr. Rahul Auddy, Adv. |] For the Liquidator |
| Mr. Aditya Gooptu, Adv. |] |
| Mr. Samir Kumar Bhattacharya, Adv. |] Liquidator |
| Ms. Deblina Lahiri, Adv. |] For State Bank of India |
| Ms. T. Chetri, Adv. |] |

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through a hybrid mode.
2. Ld. Counsels were heard and records were perused.
3. This application has been preferred by Maithon Alloys to seek the following reliefs:
 - a. *To pass an order directing the Respondent No.1 to refund the amount of Rs.11,35,27,000/- to the Applicant, along with interest at 18% p.a. calculated from the date of payment, in compliance with the order dated 05.10.2021;*
 - b. *To pass an order directing the Respondent No.1 to refund ACD of Rs.9,37,47,635/- (9,34,91,770 paid on 06/01/2023 and Rs.2,55,865/- paid on 17/02/2023) along with interest @ 18% calculated from the date of payment, which was paid under protest by the Applicant to keep the Corporate Debtor as a going concern;*
 - c. *To pass ad-interim order(s) in terms of prayers above;*
 - d. *To pass such further and/or other order(s) as this Learned Tribunal may deem fit.*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

I.A. No. 723 of 2023
C.P. No. 176/KB/2018

- e. The applicant contends that, it had paid an amount of Rs.13,14,73,000/- was for the security deposit and the remaining amount had to be refunded as per the Order dated 05.10.2021 passed by this Hon'ble Tribunal. In addition to the availability of the balance amount, the Respondent had demanded additional amount of Rs.9,37,47,635/-on account of adequacy of consumption deposits which was paid by the Applicant under protest to keep the Corporate Debtor as a going concern. Levy of adequacy of consumption deposits she was erroneous. Hence, Respondent is liable to refund/return the said amount of Rs.9,37,47,635/- paid towards adequacy of consumption deposits along with interest at 18% p.a.*
4. It is evident that an IA 748 of 2021 was filed by the Applicant, inter alia, seeking direction upon the Respondent No.1 for restoration of electricity connection of the Corporate Debtor.
5. An Order dated 05.10.2021 (Annexure F) in IA 748 of 2021 records the following as extracted hereunder:
- a. IA (IBC) No.748 (KB) 2021 is not on board today. It was taken up for hearing upon being mentioned by the Learned Senior Counsel for the Applicant.*
- b. The Applicant has filed the present Application seeking the following reliefs:*
- (i) Direct the Respondent No. 1 to restore the electricity connection of Consumer No. VZM 283 i.e., the Corporate Debtor so that the necessary restoration and repairing work of the company can be done and the Corporate Debtor can be kept as a “going concern.”*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

I.A. No. 723 of 2023
C.P. No. 176/KB/2018

(ii) *Direct the Respondent No.1 to maintain uninterrupted supply of electricity to the Corporate Debtor from the date of restoration of such supply so that the Corporate Debtor can be kept as a “going concern”.*

c. Mr. Ratnanko Banerji, Learned Senior Counsel appearing for the Applicant, submitted as follows:-

(i) The Applicant is the successful auction purchaser of Impex Metal and Ferro Alloys Limited (hereinafter referred to as the “Corporate Debtor”), under liquidation ‘as a going concern’.

(ii) Pursuant to the joint Settlement Agreement dated 24.05.2021 executed between the Applicant, State Bank of India, the Liquidator and Bank of Baroda (being the other financial creditor of the Corporate Debtor), the sale was ultimately confirmed by Hon'ble' NCLAT, vide order dated 21.06.2021.

(iii) While disposing off the appeal in terms of the settlement arrived at by the parties, Hon'ble NCLAT has held as follows:
“...Ld. Counsel for the Respondent No.1 submits the Liquidator may be directed to pay the electricity charges as per Section 53 of IBC.

Prayer allowed.

The Parties shall be bound by the terms and conditions of the settlement agreement and auction notice.

Liquidator is directed to extent necessary cooperation so that the electric supply may be restored at the earliest.”

d. Clause 3 of the settlement agreement dated June 21, 2021 stipulates that “Maithan shall not be liable to pay any further amount and/or

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

I.A. No. 723 of 2023
C.P. No. 176/KB/2018

amounts to the Liquidator towards the sale of the Corporate Debtor in liquidation process apart from what is stated in clause 1 above”.

- e. The Applicant has also paid an amount of Rs.5.97 crore over and above the highest bid to settle all the liabilities of the Corporate Debtor.

xxx xxx xxx xxx xxx

- f. The Respondent No.1 refused to reconnect the supply without clearing the previous dues. The Respondent No.1 stated in the said letter that Applicant/Corporate Debtor is liable to pay the past dues till the commencement of insolvency as well as for the dues during moratorium and hence without payment of dues, no new connection or restoration can be sanctioned.
- g. Thereafter, in terms of the order dated 06.09.2021 of this Adjudicating Authority, the Applicant deposited the security deposit towards obtaining electricity connection. Subsequent to the passing of the Order, Respondent No.1 intimated the Applicant that an amount of Rs.24.50 crore is required to be deposited. The Applicant deposited the amount of Rs.24.50 crore on 15.09.2021 on account of the Corporate Debtor. However, the electricity connection of the Corporate Debtor was not energised.
- h. Mr. Rakesh Sharma, learned Counsel appearing on behalf of the Respondent No.1/Eastern Power Distribution Company of Andhra Pradesh Limited, submitted that in order to obtain electric supply, a new connection to the said premises can only be given subsequent to the payment of accrued dues as mandated under Andhra Pradesh Electricity Regulatory Commission (APERC) Regulations and Clause

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

I.A. No. 723 of 2023
C.P. No. 176/KB/2018

8.4 of the General Terms and Conditions of Supply (GTCS). Further, the High Tension (HT) Agreement with the Corporate Debtor was terminated on 24.04.2019. At this point, after the auction sale has been concluded, the HT Agreement should be signed by the new entity which is successful bidder.

xxx xxx xxx xxx xxx

- i. Learned Senior Advocate also referred to the Regulation 45(3)(a) of the IBBI (Liquidation Process) Regulation, 2016. Hence, when a Corporate Debtor is sold in Liquidation as a 'going concern', the Company survives, there will be no need for dissolution of the Company in terms of Section 54 of the Code. The assets along with all attendant claims, limitations, licenses, permits or business authorizations remain in the Company. The Company survives as it was; the ownership of the Company is transferred by the Liquidator to the acquirer. Hence, Corporate Debtor survives, only the ownership is transferred by the Respondent No.1 Liquidator to the Applicant. All the rights, titles and interest in the Corporate Debtor including the legal entity is transferred to the Applicant. After the sale as a 'going concern', the Applicant will be carrying on the business of the Corporate Debtor.

xxx xxx xxx xxx xxx

- j. The learned Senior Advocate also referred to the judgment of Hon'ble NCLAT in Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Limited & Ors. [**Company Appeal (AT)(Insolvency) No.639/2018**] Para 18 of the said judgment, states that:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

I.A. No. 723 of 2023
C.P. No. 176/KB/2018

“In view of Section 238 of the ‘I&B Code’ will have overriding effect on all laws which are for the time being in force, including the ‘Electricity Act, 2003’ Rules and Regulations framed thereunder.”

- k. Learned Senior Advocate submitted that the Applicant is not liable for the dues of the Respondent No.1 prior to the issue of the sale certificate by Respondent No.2. The Applicant has deposited the requisite security deposit on account of the Corporate Debtor for energising connection at the factory premises of the Corporate Debtor. Since, the sale is as a ‘going concern’ basis, the Corporate Debtor is entitled to receive connection in its own name. Hence, the Hon'ble Adjudicating Authority may please to direct the Respondent No.1 to energise the connection of Corporate Debtor only. The Hon'ble Adjudicating Authority also direct the Respondent No.2 to pay the dues of Respondent No.1 in accordance with Section 53 of the Code.
1. The application be and the same allowed and the following is ordered:
- a. Since a deposit of Rs.24.50 crore has already been made by the Applicant on behalf of the Corporate Debtor, Respondent No.1 is directed to conclude the necessary documentation with the Corporate Debtor and energise the connection to the Corporate Debtor within 3 days from the date of this Order;
- b. Respondent No.1 is directed to energise the connection to the Corporate Debtor for 24 MW as per the load requirement of the Applicant;
- c. Respondent No.1 is directed to keep the security deposit amount as per regulations and refund the balance to the Applicant within 7 days from the date of this Order;

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

I.A. No. 723 of 2023
C.P. No. 176/KB/2018

- d. Statutory charges of APTRANSCO, if any, to be paid by Applicant/Corporate Debtor within 3 working days from the date when such charges are intimated by APTRANSCO/Respondent No.1;
- e. Respondent No.1 is also directed to approach Respondent No.2 liquidator for payment of its dues and Respondent No.2 is directed to consider the dues of the Respondent No.2 in accordance with the Code and make the payment as per Section 53 of the Code;
- f. Corporate Debtor is directed to pay the electricity dues of the Respondent No.1 from the date of connection by the Respondent No.1 in accordance with the rules and regulations of Respondent No.1.
- m. The applications being IA ((IB)) No.748/KB/2021 is disposed of accordingly.

6. It is evident that the order dated 05.10.2021 was assailed before Hon'ble NCLAT but affirmed by the Appellate Forum on 26.05.2022. Civil Appeal therefrom was dismissed by Hon'ble Supreme Court on 17.01.2023.

7. The Respondent Corporation Contends that:

- (i) The said order dated 5th October, 2021 stands complied. As regards the direction contained in Paragraph 17(a) of the said order dated 5th October 2021, the Respondent No.1 has already concluded the necessary documentation with the Corporate Debtor re-energised the connection to the Corporate Debtor. In any event, the order dated 5th October, 2021 stands complied.
- (ii) The Respondent No.1 has already energised the connection to the Corporate Debtor for 30 MW on 4th December, 2021, which was the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

I.A. No. 723 of 2023
C.P. No. 176/KB/2018

same load which was being supplied to the applicant prior to the disconnection of the electricity connection by the Respondent No.1.

- (iii) The Respondent No.1 has already refunded an amount of Rs.16,83,81,500/- by way of bank transfer from the account of Respondent No.1 maintained with the State Bank of India, M. G. Road Branch-Vizianagaram. Respondent No.1 has retained in its books an amount of Rs.3,16,08,440/- on account of true-up charges imposed by the Andhra Pradesh Electricity Regulatory Commission through its power under the Electricity Act, as per applicable laws.
- (iv) That the Applicant had deposited with the Respondent No.1 an amount of Rs.20,00,00,000/- and Rs.16,83,91,560/- was refunded.
- (v) The Respondent No.1 as aforementioned, has adjusted an amount of Rs.3,16,08,440/- on account of true-up charges imposed by the Andhra Pradesh Electricity Regulatory Commission through its powers under the Electricity Act, 2003. Such retention is in accordance with law.
- (vi) In exercise of powers conferred in Andhra Pradesh Electricity Reforms Act, 2005 and in terms of the Tariff Order of 2022-23 the Respondent was entitled to recover the true-up charges, being the gap between the power supply billed amount and the actual collected amount in terms of the tariff order dated 31st March, 2022. APEDCL was directed to recover the true-up charges being the gap between the power supply billed amount and the actual collected amount in terms of the tariff order dated 31st March, 2022, in 18 monthly instalments commencing from 1st August, 2022. In view of the directions of the APERC for recovery of true-up charges from the consumers, the Respondent herein had deducted/adjusted the amount of Rs.3,16,08,440/-. Such deduction/adjustment is accordance in law and the Respondent was

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

I.A. No. 723 of 2023
C.P. No. 176/KB/2018

justified to make such adjustment. Further that in spite of the Respondent including the said True-up charges in month-wise CC charge bills from July, 2022 to June, 2023 the Applicant had failed to pay the said amounts and the Applicant was forced to deduct the amounts the Security deposit.

8. The details of the electricity bills issue by the Respondent No.1 to the Applicant for the months of July 2022 till June 2023 are as under:-

| Electricity Bill for the Month of | Date of the Bill | Amount |
|--|-------------------------|----------------|
| June 2023 | July 2, 2023 | 26,34,036.63/- |
| May 2023 | June 2, 2023 | 26,34,036.63/- |
| April 2023 | May 4, 2023 | 26,34,036.63/- |
| March 2023 | April 5, 2023 | 26,34,036.63/- |
| February 2023 | March 5, 2023 | 26,34,036.63/- |
| January, 2023 | February 5, 2023 | 26,34,036.63/- |
| December 2022 | January 5, 2023 | 26,34,036.63/- |
| November 2022 | December 5, 2022 | 26,34,036.63/- |
| October 2022 | November 5, 2022 | 26,34,036.63/- |
| September 2022 | October 5, 2022 | 26,34,036.63/- |
| August | September 5, 2022 | 26,34,036.63/- |
| July 2022 | August 5, 2022 | 26,34,036.63/- |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

I.A. No. 723 of 2023
C.P. No. 176/KB/2018

| | | |
|--|---------------|------------------|
| | Total amount: | 3,16,08,439.56/- |
|--|---------------|------------------|

9. We have considered the rival contentions and perused records.
10. In as much as the Respondent was bound to levy true up charges as mandated by APERC vide tariff order of 2022-23 (post sale) and the Applicant had failed to pay the amounts raised, we find no infirmity in deduction of Rs.3,16,08,439.56/- as per break up supra. However, we would note that out of Rs.25.05 crores paid in term of Order dated 05.10.2021, a refund of Rs.16,83,91,560/- has been made to the Applicant adjusting to Rs.03,16,08,440/-towards true up charges.
11. Hence, if the Applicant has paid Rs.24.50 crores to Respondent No.1, the said Respondent shall retain the following amounts:
- (i) Security deposit of Rs.13,14,73,000/-
 - (ii) True up charges of Rs.03,16,08,440/-
- And refund the balance to the Applicant within two weeks from the date of receipt of a copy of this order.
12. With the aforesaid directions IA 723 of 2023 is allowed and **disposed of** with no costs.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Singed on this, the 16th April, 2024.

SG, Steno