

NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH-V

IA-1520/2021 In

IB - 848/ND/2019

In the matter of:

**INTERNATIONAL ASSET RECONSTRUCTION
COMPANY PRIVATE LIMITED**

...Financial Creditor

V/s

SWASTIK AQUA LIMITED

...Corporate Debtor

MEMO OF PARTIES

**POOJA BAHRY
MONITORING PROFESSIONAL
FOR SWASTIK AQUA LIMITED
IBBI/IPA-003/IP-N00007/2016-2017/10063
HAVING OFFICE AT:
59/27, PRABHAT ROAD, NEW ROHTAK,
NEW DELHI-110005
E-MAIL: rp.swastikaqua@gmail.com
Mobile no. - 9811071716**

...APPLICANT

VERSUS

**JHARKHAND BIJLI VITRAN NIGAM LIMITED
THROUGH
THE ELECTRICAL SUPERINTENDING ENGINEER
ELECTRIC SUPPLY CIRCLE, RANCHI
KUSAI COLONY, DORANDA,
RANCHI-834004, JHARKHAND**

SECTION: U/S 7 of IBC, 2016

Order delivered on:. 02.06.2022

IA-1520/2021 In

IB - 848/ND/2019



Coram:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. HEMANT KUMAR SARANGI, HON'BLE MEMBER (T)

PRESENT

For the Petitioner: Adv. Abhishek Anand and Adv. Pathik Choudhury for
monitoring professional

For the Respondent: Adv. Vikky Dang

ORDER

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

By filing this application, the Applicant Ms. Pooja Bahry, monitoring professional for Swastik Aqua Limited has prayed for following relief and their scanned copy of the prayer portion is reproduced below:

PRAYER

In the premises, it is most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to:

- a) Allow the present application; and
- b) Direct the Respondent to reconcile/submit the fresh bill/invoice of pending amounts due during the CIRP Period only, i.e. from 09.12.2019 to 24.11.2020 amounting to approximately Rs. **14,39,025/-** (after reducing the same on account of order passed by the JSERC dated 21.09.2020 giving reductions and relaxations on account of Covid-19), so that the same can be paid as CIRP Costs;
- c) Direct the Respondent to reconcile/submit the fresh bill/invoice of pending amounts due after the conclusion of the CIRP Period i.e. for the Monitoring period as per actual consumption/ actual units consumed from December 2020 onwards (for the Monitoring period), so that the same can be paid on actual basis, by the Resolution Applicants;



IA-1520/2021 In

IB - 848/ND/2019

17.

- d) Direct the Respondent not to disconnect the electricity connection of the Corporate Debtor and restrain the Respondent from taking any coercive actions in terms of the Electricity Act, 2003;
- e) Pass such other or further order / order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.



2. We have heard the Learned Counsel appearing for the applicant and the respondent and perused the averments made in application, reply, rejoinder and the written submissions filed on behalf of the respective parties. The scanned copy of the written submissions filed by the applicant and the respondent are reproduced below: -

IA-1520/2021 In

IB - 848/ND/2019

A handwritten signature in blue ink, appearing to be a stylized 'S' or similar character.

A handwritten signature in blue ink, appearing to be a stylized 'A' or similar character.

Written submissions filed by Applicant: -

1

BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI, BENCH V
I.A. NO. 1520 OF 2021
IN
C.P. (IB) NO. 848 (ND) OF 2019

IN THE MATTER OF:-
INTERNATIONAL ASSET RECONSTRUCTION
COMPANY PRIVATE LIMITED

...FINANCIAL CREDITOR

VERSUS

SWASTIK AQUA LIMITED

...CORPORATE DEBTOR

WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT, MRS. POOJA BAHRY, MONITORING PROFESSIONAL FOR SWASTIK AQUA LIMITED I.A. NO. 1520 OF 2021 IN C.P. (IB) NO. 848 (ND) OF 2019

1. That the instant application has been filed by the Applicant being the Monitoring Professional of Swastik Aqua Limited i.e., the Corporate Debtor seeking *direction against the Respondent i.e., Jharkhand Bijli Vitran Nigam Limited to reconcile/ submit the fresh bill/ invoice of pending amount due during the CIRP period and Monitoring period. Further, the Applicant sought direction against the Respondent to restrain from disconnecting the electricity connection of the Corporate Debtor.*

RESPONDENT HAS FAILED TO SUBMIT ITS CLAIM BEFORE THE RESOLUTION PROFESSIONAL AND ILLEGALLY SERVED NOTICE SEEKING PAYMENT OF OUTSTANDING DUES PRIOR TO THE CIRP

2. It is submitted that it is an admitted fact that the Respondent has failed to submit its claim before the RP for dues prior to the CIRP. Applicant had sent several reminders to the Respondent for submission of claim vide letter dated 12.12.2019 (*page 48 of Application*) and email dated 23.12.2019 (*page 49 of Application*), however the Respondent has failed to submit its claim. That this Hon'ble Adjudicating Authority vide order dated 24.11.2020 approved the resolution plan of the Corporate Debtor. The Applicant vide letter and email dated 28.12.2020 (*page 50 of Application*) intimated the Respondent about the payment of electricity dues during the CIRP period which shall be paid as CIRP cost in accordance with Regulation 32. Further, vide email dated 30.12.2020 and reminder email dated 13.01.2020, the Applicant informed the Respondent that they are entitled to submit bill/ costs incurred for the payment of electricity dues during the CIRP period only. That the Respondent vide email dated 21.01.2021 supplied copy of all the remaining dues to the Applicant (*page 54 of Application*). That the Applicant sent several reminders to the Respondent vide email dated 21.01.2021, 25.01.2021 and 01.02.2021 to submit bills pertaining to the period of CIRP only (*page 56 to 59 of Application*). It is pertinent to mention here that the Respondent despite receiving several reminders to submit bills pertaining to CIRP period, served a notice dated 11.02.2021 (*page 60 of Application*) under Section 56 of Electricity Act for payment of outstanding dues of Rs. 32,92,040/- pending up to December 2020 failing which the electricity connection may be disconnected.
3. It is apposite to mention here that Jharkhand State Electricity Regulatory Commission (JSERC) in Suo Moto Case No. 15 of 2020 vide order dated 21.09.2020 (*page 61 to 74 of Application*) decided to provide certain relaxation to entities that suffered losses on account of the nation-wide lockdown. However, the Respondent did not take into consideration the said notice while raising the bill. That in terms of JSERC order, the Applicant recalculated the dues and the pending dues should only amount to Rs. 14,39,024.80/- for the CIRP period. That the Applicant has sent several reminder emails dated 12.02.2021, 17.02.2021 and 22.02.2021 (*page 78-83 of Application*) to the Respondent requesting to reconcile the bills and change the outstanding amount, however the Respondent has ignored to so do and issued another notice dated 09.03.2021 (*page 80 of Application*) demanding clearance of dues up to Rs. 35,82,080/- failing which the electricity connection may be cut.

PAYMENT OF PRE-CIRP DUES CANNOT BE MADE BY THE RESOLUTION PROFESSIONAL

4. It is submitted that the Respondent has failed to submit its claim in the prescribed form for the period prior to CIRP despite receiving several reminders from the Applicant. Thereafter, the Respondent in contravention to the provisions of the Code raised bills for remaining dues including the period prior to CIRP after the Resolution Plan has already been approved by this Hon'ble Adjudicating Authority. It is apposite to mention here that the Respondent has illegally issued notices under Section 56 of Electricity Act for payment of outstanding dues for the period prior to initiation of CIRP failing which the electricity connection may be cut.
5. That it is pertinent to mention here that pre-CIRP payment to Respondent cannot be made by the Resolution Professional when the Respondent has not filed its claim and the Resolution Plan has already been approved. Such payment to the Respondent is not only discriminatory to the other similarly situation Creditors, but also dilutes the scheme of the Code. The Hon'ble NCLAT in the case of *Uttarakhand Power Corporation Limited (UPCL) v ANG Industries Limited, Company Appeal (AT) (Insolvency) No.298 of 2017, dated 24.01.2018* while allowing the application under Section 14(2) of the Code seeking for restoration of electricity supply to ensure that the Corporate

IA-1520/2021 In

IB - 848/ND/2019

Debtor remains a going concern, held that the UPCL (Appellant) cannot recover the dues which are unpaid for the period prior to the insolvency. Further, the Hon'ble NCLAT in *Asset Reconstruction Company (India) Limited V. R. Venkatakrisnan & Anr., Company Appeal (AT) 232 of 2019* held that the Resolution Professional should not pay any dues to the electricity department for any period earlier to commencement of CIRP for restoration of electricity and the electricity department does not have any jurisdiction to disconnect electricity which shall be in violation of Section 14(2) of the Code.

6. It is worthwhile to refer to the judgment passed by the Hon'ble NCLAT in *Innoventive Industries Ltd. V. Maharashtra State Electricity Distribution Company Ltd.; Company Appeal (AT) (Ins) No. 156 of 2017* wherein it was held that the Resolution Professional is not liable to pay the electricity dues for the period prior to passing of order of moratorium. In *Dakshin Gujarat VIJ Company Limited V. M/s ABG Shipyard Ltd. and Anr.; Company Appeal (AT) (Ins) No. 334 of 2017*, the Hon'ble NCLAT observed that electricity supply is an essential service in terms of Regulation 32 and the same shall be included towards Insolvency Resolution Process Cost.

CLAIMS WHICH ARE NOT PART OF RESOLUTION PLAN SHALL STAND EXTINGUISHED

7. It is pertinent to submit here that all claims must be submitted and decided by the Resolution Professional so that a successful Resolution Applicant starts on a fresh slate. In the same vein, a successful Resolution Applicant cannot subsequently be faced with "undecided" claims after approval of the resolution plan.
8. In this present case, despite receiving several reminders, the Respondent has failed to submit its claim in the prescribed form for the period prior to CIRP. Thereafter, this Hon'ble Adjudicating Authority vide order dated 24.11.2020 approved the resolution plan of the Corporate Debtor. Hence, the claim of the Respondent for the period prior to initiation of CIRP which is not part of the resolution plan shall stand extinguished.
9. Reliance may be placed on the decision of *Committee of Creditors of Esser Steel India Limited Through Authorized Signatory V. Satish Kumar Gupta & Ors.; Civil Appeal No. 8766-67 of 2019, (para 67)* wherein the Hon'ble Supreme Court of India held that a successful resolution applicant cannot suddenly be faced with undecided claims after the resolution plan is admitted. All claims must be submitted to and decided by the Resolution Professional so that a prospective Resolution Applicant knows exactly what has to be paid to take over and run the business of the Corporate Debtor.
10. It is apposite to refer to the decision of the Hon'ble Supreme Court of India in *Ghanashyam Mishra and Sons Private Limited through Authorized Signatory V. Edelweiss Asset Reconstruction Company through the Director & Ors.; Civil Appeal No. 8129 of 2019 (para 71, 77, 95)* wherein it has been clarified and settled that once a resolution plan is duly approved by the Hon'ble Adjudicating Authority under Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the creditors including statutory authorities, employees and guarantors. Further, on the date of approval of the Resolution Plan, all such claims which are not part of resolution plan, shall stand extinguished.
11. That the Respondent was given several opportunities to submit its claim for the period prior to initiation of CIRP, however the Respondent ignored or avoided to do so. Hence, in this present circumstance, the claim of the Respondent is deemed to stand extinguished as the Resolution Plan has already been approved by this Hon'ble Adjudicating Authority. In light of the aforementioned judgments and the stated position of law, the Respondent is at liberty to raise invoice for the period of CIRP i.e., from 09.12.2019 to 24.11.2020 and monitoring period after reconciling the same with the JSERC order dated 21.09.2020.
12. That in terms of JSERC order, the Applicant recalculated the dues and the pending dues should only amount to Rs. 14,39,024.80/- for the CIRP period, which stands paid by the Resolution Applicant. For the period of Monitoring i.e. from December, 2020 to June, 2021 the Respondent has been adding the pre-CIRP dues which cannot be made part as the same stands extinguished and the Respondent is required to raise bills for the monitoring period, without including the pre-CIRP dues. That the Applicant on the basis of the excel sheet provided by the Respondent, sent various emails including an email dated 13.06.2021 to the Respondent requesting them to confirm the amount pertaining to the period during the CIRP i.e., Rs. 14,39,025/- and amount pertaining to Monitoring Period, i.e., December 2020 to May 2021 which is totalling to Rs. 12,86,865/-. However, till date the said amount is not confirmed by the Respondent.
13. That it is pertinent to mention that the legal representative of the Respondent sent an email dated 28.06.2021 to the Applicant wherein, the Respondent had provided bifurcated outstanding dues i.e., for the period during the CIRP and during the monitoring period. That the Applicant in reply to the e-mail dated 28.06.2021 sent a detailed e-mail dated 30.06.2021 to the Respondent and to the legal representative of the Respondent, again providing the details of the CIRP and the total amount due against the Corporate Debtor pertaining to the CIRP Period which amounts to Rs. 14,39,025/-. The Applicant further informed that Rs. 14,39,025 has been paid as CIRP Costs on 29.06.2021. That the Respondent herein has submitted to the Applicant copies of "all the remaining dues" / "cumulative pending dues"

IA-1520/2021 In

IB - 848/ND/2019

3

(with previous dues/ penalties for previous dues/ outstanding dues for a period prior to CIRP arbitrarily added, despite various requests to provide bill for the ACTUAL CONSUMPTION during the CIRP/ Monitoring period), to which the Applicant many times requested the Respondent to recalculate the dues in accordance with the order passed in Suo Moto Case No. 15 of 2020. Further, the Applicant had also many times sent a reconciled and re-calculated statement of the outstanding amount to the Respondent, however the Respondent has ignored to change the computation of the outstanding dues

14. In view of the aforesaid submissions, the Applicant is praying that the application be allowed, and the Respondent be directed to issue actual consumption bills for the CIRP period as well Monitoring Period in accordance with law as settled by the Hon'ble Supreme Court, without including the pre-CIRP dues or any arrears thereon prior to the CIRP (including DPS which is still being charged till date on the pre-CIRP amount). That the Respondent was given several opportunities to submit its claim for the period prior to initiation of CIRP, however the Respondent ignored or avoided to do so, and no claim was filed until the Approval of the Plan, thus the claim of the Respondent is deemed to stand extinguished as the Resolution Plan has already been approved by this Hon'ble Adjudicating Authority.

FILED THROUGH:

Abhishek Anand
LAW OFFICES OF A. ANAND
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AMAR COLONY, LAJPAT NAGAR -IV
NEW DELHI - 110024
+91-8800343000, 9811003550
EMAIL: abhishek.anand@aanandlaw.com

DATE: 25.02.2022
PLACE: NEW DELHI

IA-1520/2021 In

IB - 848/ND/2019

Written submissions filed by Respondent: -

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI BENCH-V, AT NEW DELHI
IA NO. 1520 OF 2021
IN
CP (IB) NO. 848 (ND) OF 2019

IN THE MATTER OF:
INDUSTRIAL ASSET RECONSTRUCTION
COMPANY PRIVATE LIMITED FINANCIAL CREDITOR
Vs.
SWASTIK AQUA LIMITED, CORPORATE DEBTOR
IN THE MATTER OF:
MS. POOJA BAHRY
(MONITORING PROFESSIONAL FOR
SWASTIK AQUA LIMITED) APPLICANT
Vs.
JHARKHAND BILJI VITRAN NIGAM LIMITED RESPONDENT

WRITTEN SUBMISSION ON BEHALF OF THE RESPONDENT

A. PROMOTERS SUBMITTING THE RESOLUTION PLANS UNDER PRETEXT OF RIVALRY OF THE CORPORATE DEBTOR HAS SHREWDLY EXTINGUISHED THE CLAIMS OF RESPONDENT

1. The Promoters/Successful Resolution Applicant have intentionally and with the oblique motive have suppressed the pending dues of the Respondent from the Applicant and the same was not incorporated in the Information Memorandum, being very well aware of the fact that once the resolution plan being approved by this Hon'ble Tribunal all it shall be binding on all the stakeholders. Therefore, under the garb of Insolvency and Bankruptcy Code, 2016 the promoters/Successful Resolution Applicants had tried to regain their own stressed company in throw away price by extinguishing the rights of the Respondent, being government body and other stakeholders to whom dues are owed by the corporate debtor. Moreover, the conduct of the Promoters/Successful Resolution Applicant is quite evident that prior to CIRP of the corporate debtor, the promoters were unable to pay the electricity bills on regular intervals and further, requested the Respondent to pay the arrears of electricity bills. Subsequently which was granted by the Respondent vide Letter No. 3707/ESE/Ranchi, dated 02.08.18. Therefore, in view of the aforesaid facts the Promoters/Successful Resolution Applicant shall not be entitled for any immunity as envisaged under section 31 of the code. (Kindly refer to page No.27 of the reply of the Respondent).

B. APPLICANT/ RESOLUTION PROFESSIONAL OUGHT TO HAVE PROVISIONED THE CLAIM OF THE RESPONDENT UNDER CLAUSE OF CONTINGENT CLAIMS.

2. The Respondent on several occasion via electronic communication apprised the Applicant of the consolidated claim amount due to corporate debtor and further requested to consider their claim. The Applicant despite knowing the fact has erred by not considering the claim of the Respondent that the claim of Respondent is valid, being Jharkhand Bilji Vitran Nigam Limited. Moreover,

IA-1520/2021 In

IB - 848/ND/2019

the Applicant has not even provisioned the claim of the Respondent under the clause of contingent claim in the information memorandum.

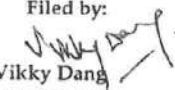
C. INFORMATION MEMORANDUM CONTAINING ALL INFORMATION RELATED TO THE CORPORATE DEBTOR WAS INCOMPLETE.

3. It is pertinent to mention that based on the information provided by the promoters of corporate debtor to the Applicant, thereafter, the Applicant has prepared the Information Memorandum. Wherein the Promoters in the due process had very shrewdly concealed the material information with respect to arrears of electricity department/ Respondent herein with the Applicant. Therefore, IM prepared was incomplete and eventually the resolution plan submitted by the Promoters/ Successful Resolution Applicant on the basis of misleading IM is erroneous and in blatant violation of the provisions of the Code and Regulations. Thereafter, the plan was approved by the CoC and ultimately by the Adjudicating Authority.
4. Since the Resolution plan is submitted by the Promoters/ Successful Resolution Applicants and the plan is nothing, but an eye-wash and under the pretext of reviving the corporate debtor whereby the interest of the stakeholders/ Respondent is adversely affected.

D. THE CONDUCT OF THE PROMOTERS/SUCCESSFUL RESOLUTION APPLICANTS RAISES CONCERN OVER MANAGING THE AFFAIRS OF THE COMPANY EVEN AFTER THE APPROVAL OF RESOLUTION PLAN.

5. That it is on record that the Applicant had paid the amount of Rs. 14,39,025/- to the Respondent for rendering the essential services to the corporate debtor during the CIRP to keep the corporate debtor as going concern. However, the Promoters/ Successful Resolution Applicant had even failed to pay the dues of the Respondent prior to initiation of CIRP against the Corporate Debtor (Refer page No. 17-27 of the reply of the Respondent) and even pursuant to the approval of resolution plan of the Promoters/ Successful Resolution Applicants, they have failed to pay any amount till date and has been seeking time to make arrear payments towards the services already availed by the company to the Respondent. Therefore, I humbly submit to the Hon'ble Tribunal to dismiss this present application and direct the Promoters/ Successful Resolution Applicants to make the arrears payments of the Respondent, which is due and payable by the Promoters/ Successful Resolution Applicant to the Respondent from pre CIRP period to till date.

Filed by:


Adv. Vikky Dang
vikkydang@gmail.com
9953790538

3. The Learned Counsel appearing for the applicant has raised all the facts and law referred to in the application and the written submissions. Similarly, the Learned Counsel appearing for the respondent has also raised all facts and law referred to in the reply and the written submissions.

IA-1520/2021 In

IB - 848/ND/2019



4. On perusal of the averments made in the application, reply, rejoinder and written submissions filed by the respective parties, we observe that the main grievances of the applicant is that the respondent Jharkhand Bijli Vitran Nigam Ltd., though, had not submitted any claim, in respect of the electricity bill, prior to the initiation of the CIRP is still claiming the said amount as a CIRP cost.


5. On the basis of averments made in the application and submissions of the applicant, we further observe that the applicant is ready to pay the current bill during the period of CIRP, which according to the applicant, should be amount to Rs. 14,39,024.80/- for the post CIRP period. We further observe that the respondent had sent an email claiming outstanding due of Rs. 32,92,014/- pending upto December, 2020.

6. We further observe that the contention of the applicant is that since the respondent has not submitted their claim, therefore, the respondent is not entitled to claim the amount prior to the initiation of the CIRP. On the other hand, the contention of the respondent is that the promoters had submitted the resolution plan and their resolution plan has also been accepted, and approved by the Adjudicating Authority too. Therefore, the promoters should have been dealt with the dues which accrue prior to the CIRP.

7. It is further claimed by the Respondent that the Corporate Debtor had been availing electricity facility since 06 May, 2005 and during this period, the Corporate Debtor had executed an agreement on 25th August, 2014 and 02nd August, 2018 raising the instalment amount to Rs. 21,22,831/- which shows

IA-1520/2021 In

IB - 848/ND/2019



that the promotor who is also the successful resolution applicant is aware of the amount, which is due and payable by the Corporate Debtor but knowingly that has not been included in the resolution plan. It is further contended by the Respondent that the respondent has on several occasions provided the consolidated amount due to be furnished by the applicant. It is further contended that vide email dated 22nd February, 2021, the Respondent had provided the complete breakup of the meter reading for the CIR period and in support of that, he referred to Annexure D placed at page 50, which is email dated 22nd February, 2021 sent by the Electrical supply circle, Ranchi, which shows that the billing statement for the period November, 2019 to December, 2020 was sent. The respondent has also referred to the email dated 28th June, 2021 placed at page 52 of the reply. The scanned copy of the email dated 22nd February, 2021 placed at page 50 of the reply and email dated 28th June, 2021 placed at page 52 of the reply are reproduced below: -

IA-1520/2021 In

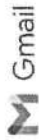
IB - 848/ND/2019



50

ANNEXURE - D

7/22/2021 Gmail - Billing Statement of the Consumer M/s Swastic Aqua Pvt. Ltd bearing Consumer No-TT4195. Ranchi Electric Circle Ranchi <ranchicircle.ese@gmail.com>



Billing Statement of the Consumer M/s Swastic Aqua Pvt. Ltd bearing Consumer No-TT4195.

Ranchi Electric Circle Ranchi <ranchicircle.ese@gmail.com> Mon, Feb 22, 2021 at 5:13 PM
To: rp_swastikaque@gmail.com

Sir/ Maam, In light of the resolution plan approved by the Hon'ble NCLT in the matter of M/s Swastika Aqua Ltd, Please find enclosed the Billing Statement of the noted consumer for the period of November-2019 to December-2020.

Billing Statement of Consumer No-TT4195.xlsx 22K

<https://mail.google.com/mail/u/0/?ui=1937647651&view=pt&as=att&permmsgid=msg-f%3A%673382512777864925&siml=reg-a%3A%673382512777864925> 1/1

IA-1520/2021 In
IB - 848/ND/2019

True copy

52



JHARKHAND BIJLI VITRAN NIGAM LIMITED

Regd. Office:-Engineer Building ,J.I.E.C. Dhurwa, Ranchi-834004

(CIN:140108J170135G001702)

Electric Supply Circle, Ranchi.

Letter No. 1679 /ESE ESC, Ranchi 28 of June 2021.

To,

M/s Sun Resolution professionals Pvt. Ltd
1.A Sanskriti Apartment GH-22 Sector 56,
Gurugram, Haryana-122011,
Email id:- cmaajitjha@gmail.com.

Sub:-In regard of bifurcation of the Energy Bill of the consumer M/s Swastik Aqua Pvt. Ltd. At:-
Tatisilwai bearing Consumer No:- TT4195

Ref:-i>Your mail dtd 23-06-2021.

Sir,

With reference to the referred mail the bifurcation of the Energy Bill of the consumer M/s
Swastik Aqua Pvt. Ltd. At:- Tatisilwai bearing Consumer No:- TT4195 has been done in the three
periods as seeked through mail. The periods are

- Amount Prior to CIRP Period i.e till November-2019.
- Amount accrued during the CIRP period i.e December-2019 to November-2020.
- Amount being assessed after the CIRP.

The period wise details of the amount specified is as below:-

Amount Prior to CIRP Period:-

- Energy Charges:- Rs. 2747633=00.
- Electricity Duty:- Rs. 2236=20.
- D.P.S:- Rs.146302=00.

Total:- Rs. 2896171=20.

(Rs. Twenty Eight Lakh Ninety Six Thousands One Hundred Seventy One and paise Twenty)only.

Amount accrued during CIRP Period:-

- Energy Charges:- Rs. 1538748=00.
- Electricity Duty:- Rs. 6588=80.
- D.P.S:- Rs.827004=29.

Total:- Rs. 2372341=09.

(Rs. Twenty Three Lakh Seventy Two Thousands Three Hundred Forty One and paise Nine) only.

In this regard in reference of the order passed by the JSERC in the Sua Moto No:- 15 of 2020, the
Fixed Charges for 03 months i.e April -2020 to June-2020 is to be waived off and accordingly the DPS
is to rectified. So,

- Less 03 months Fixed Charges Rs.106312=50
- Less DPS on the waived amount till the September-2020- Rs. 10631=25.

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IA-1520/2021 In

IB - 848/ND/2019

8. Now in terms of the aforesaid submissions, we consider the prayer of the applicant. As we have already referred to the prayer of the applicant and on the basis of that, we notice that the applicant is seeking direction to reconcile the fresh bill / invoice or pending amount due during the CIR period and also direct the respondent to reconcile and submit the fresh bill after the conclusion of CIRP period.

9. In terms of the prayer, now we consider the email dated 28th June, 2021 placed at page 52 of the reply and we notice that the same has already been communicated to the applicant by the respondent after the filing of this application along with the reply. Therefore, in our considered view, it is not necessary to give any direction in pursuant of the letter no. 1679 dated 28th June, 2021 sent by the Respondent to the applicant. The applicant is directed to act as per the information furnished by the respondent vide letter no. 1679 dated 28th June, 2021.

10. So far the prayer of the applicant, direct the respondent not to disconnect the electricity connection is concerned, at this juncture, we would like to refer Section 14 of the IBC, 2016 and the same is reproduced below: -

Section 14 of IBC, 2016

14. Moratorium. - (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -



(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

1 [Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;]

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.



2 [(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

1 [(3) The provisions of sub-section (1) shall not apply to —

2 [(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.]

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

11. On perusal of the provision Section 14(2)(A), it is seen that if the Corporate Debtor has not paid the dues arising from supply during moratorium period or in such circumstances as may be specified, in that case, the electricity supply which comes under the supply of essential goods shall be terminated. Admittedly

IA-1520/2021 In

IB - 848/ND/2019

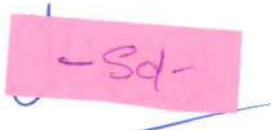


the amount is due and payable during the CIRP period which has not been paid by the applicant, therefore, in terms of Section 14(2)(a) of the IBC, 2016, the electricity supplier is authorized under the law to terminate the service. Now, it is admitted facts that the resolution plan has been implemented, the moratorium under Section 14 is also no more, even the bill amount which was due and payable for the consumption of the electricity during the CIRP period has not been paid as yet.

12. Under such circumstances, we are unable to give any direction to the respondent not to disconnect the electricity connection of the Corporate Debtor.

13. Hence, this prayer of the applicant is hereby rejected.

14. With this the present IA stands disposed off.



**(Hemant Kumar Sarangi)
Member (Technical)**



**(Abni Ranjan Kumar Sinha)
Member (Judicial)**