Serial No. 03
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 238 of 2023

Date of Decision: 05.06.2024

1. M/s Reliance Infratel Limited
   Having its registered office at
   H Block, 1st Floor,
   Dhirubhai Ambani Knowledge City,
   Navi Mumbai, Maharashtra, 400710
2. Manish Nath, Authorised signatory of RITL
   Having it office at RITL, H Block, 1st Floor,
   Dhirubhai Ambani Knowledge City,
   Navi Mumbai, Maharashtra, 400710. **…Petitioner(s)**

- Versus –

1. State of Meghalaya represented by its
   Chief Secretary to the Government of
   Meghalaya, Shillong.
2. Meghalaya Power Distribution Corporation
   Limited through its Chairman Cum Managing Director
   Shri S. Goyal, Lumjingshai, Short Round Road
   Shillong-793001. **… Respondent(s)**

3. M/s Reliance Jio Infocomm Limited
   Having its registered office at
   Office 101, Saffron Nr. Centre Point,
   Panchwati 5 Rasta, Ambawati,
   Ahmedabad, Gujarat-380006.
4. M/s Summit Digitel Infrastructure Limited
   Having its registered office at
   Unit-2, 9th Floor, Tower-4, Equinow,
   Business Park, LBS Marg, Kurla (W)
   Mumbai City, Maharashtra-400070

…. Proforma Respondent(s)

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. V.V.V. Sastry, Adv. with
Mr. H. Abraham, Adv.

For the Respondent(s) : Mr. A. Kumar, AG with
Ms. R. Colney, GA (For R 1&2)

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT AND ORDER

1. The petitioner No. 1 namely; Reliance Infratel Limited (formally Reliance Telecom Limited) a company that operates over 43,000 Mobile Towers in India of which 157 are situated in Meghalaya, was admitted to insolvency with effect from 07.05.2019. A resolution plan was then submitted by Reliance Projects and Property Management Solutions Ltd. (RPPMSL), for takeover of the petitioner, and on the same being approved by the National Company

Law Tribunal (NCLT) and thereafter by the Supreme Court, RPPMSL took over the petitioner company on 22.12.2022.

2. The respondent No. 2 namely; Meghalaya Power Distribution Corporation Ltd. had vide letter dated 12.06.2023 sought recovery of electricity dues from the petitioner for the periods prior to the takeover under the Insolvency Code, and also from the affiliates of the petitioner No. 1 (i.e. the respondents No. 3 & 4) by threatening to disconnect the existing electricity connections for the mobile towers, and further refused to provide new electricity connections to the petitioner and its affiliates. Aggrieved thereby, the writ petitioners by way of the instant writ petition have therefore put a challenge to the impugned letter/Demand Notice dated 12.06.2023, issued by the respondent No. 2 to the extent that it pertains to dues of the petitioner No. 1, prior to 22.12.2022.

3. Mr. V.V.V. Sastry, learned counsel for the petitioner has submitted that the petitioner is highly aggrieved, inasmuch as, the respondents Nos. 1 & 2, are seeking to recover and realize electricity

dues from the writ petitioners for the periods much prior to 22.12.2022, i.e. the effective date of takeover. Learned counsel submits that the legal issues raised in the instant case are no longer res integra, in view of the judgment rendered by the Supreme Court, in the case of ***Tata Power Western Odisha Distribution Ltd. (TPWODL) & Anr. vs. Jagannath Sponge Pvt. Ltd.,*** wherein it was held that a power distribution company, cannot insist on payment of arrears which would negate the clean slate principle, if the successful resolution applicant is asked to pay the arrears payable by the corporate debtor. It is also submitted that by this decision, the Supreme Court has clarified that in the event any statutory authorities, or creditors have any claim, such person may approach the NCLT, but that in the instant case the respondents are seeking to recover the dues, without approaching the NCLT.

4. The learned counsel submits that the admitted position is that on the resolution plan being approved, the successful resolution applicant had taken over the petitioner No. 1 on 22.12.2022, which is the effective date, which also has been recorded in the order of the

NCLT Mumbai dated 11.05.2023. As such, he submits in view of the approved resolution plan, which has provided that all claims, debts and liabilities of the petitioners, including the Government and other statutory authorities, in relation to the period upto the effective date standing extinguished, the action of the respondent No. 2, in issuing the impugned Demand Notice and further refusing to provide electricity connections, is arbitrary and unreasonable.

5. It is further submitted that the Resolution Professional by a letter dated 25.07.2019, had duly informed the State Electricity Board of the commencement of the proceedings and had also requested submissions of any claims against the corporate debtor to be made, but the respondent No. 2 did not file any claims at the relevant point of time, which therefore, made the Demand Notice untenable and unsustainable. The learned counsel contends that by the operation of the approved resolution plan therefore, the petitioner is not liable for any dues that were payable before the effective date. It is further contended that Section 238 of the Insolvency Code would override any other law which would include the provisions of the

Electricity Act and the Rules, and Regulations made thereunder. In support of his submissions, the learned counsel has placed the following decisions:

i) ***Ghanshyam Mishra vs. Edelweiss Asset Reconstruction Co. Ltd.*** *reported in* ***(2021) 9 SCC 657*** (Para 95 to 149)

ii) ***Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar*** reported in ***(2019) SCC Online SC 1478***

iii) ***Ruchi Soya Industries vs. Union of India*** reported in ***(2022) 6 SCC 343*** (Paras 4-6, 10, 11)

iv) ***Dimension Steel and Alloys Ltd. vs. Damodar Valley Corporation*** reported in ***(2022) SCC Online Cal 995*** (Paras 1, 7, 30, 32, 33)

v) ***West Bengal State Electricity Distribution Company vs. Sri Vasavi Industries*** reported in ***(2022) SCC OnLine Cal 1918*** (Para 2, 6-9, 17 and 25)

vi) ***Paschimanchal Vidyut Vitran Nigam Limited vs. Raman Ispat Pvt. Ltd*** passed in ***Civil Appeal No. 7976 of 2019***

vii) ***Southern Power Distribution Company of Andhra Pradesh Limited vs. Gavi Siddeswara Steels (India) Pvt. Ltd. & Anr.*** arising out of ***Diary No. 9229 of 2013*.**

viii) ***Tata Power Western Odisha Distribution Limited (TPWODL) & Anr. vs. Jagannath Sponge Private Limited*** passed in ***Civil Appeal No. 5556 of 2023***

6. The learned counsel in closing his arguments, submits that the writ petitioners are seeking a writ of mandamus, in view of the arbitrary actions on the part of the respondents in not providing electricity connections, which is interfering with their rights to carry on trade and business, and also for not acting in terms of the approved resolution. The plea that the respondents have not participated in the resolution process, he submits cannot now be taken as a pretext to take coercive measures against the petitioners as has been done. On the question of alternative remedy, the learned counsel submits that writ jurisdiction is being invoked, as the writ petitioners are seeking the enforcement of their fundamental rights as the actions of the respondents is wholly arbitrary and without jurisdiction.

7. In reply to the submissions made by the counsel for the petitioners, the learned Advocate General appearing for the respondents has raised the following grounds: First, that a resolution plan that ignores statutory dues is invalid and not binding, secondly, the resolution plan does not provide for waiver of statutory dues, thirdly, electricity dues are statutory in nature and the liability does

not cease and fourthly, that the writ petition is not maintainable due to the presence of effective alternative remedy, and is based on the disputed question of facts, as orders under challenge are against the proforma respondents Nos. 3 & 4.

8. With regard to the first submission, the learned Advocate General contends that, a resolution plan ignoring any statutory dues payable to any State Government or Legal authority, would be in contravention of the provisions contained in the Insolvency and Bankruptcy Code, 2016, and the electricity dues being the statutory obligations of the petitioners, there is no restriction placed on the appropriate authority to recover such dues. Reliance has been placed in the case of ***State Tax Officer vs. Rainbow Papers Limited*** reported in (***2022) SCC OnLine SC 1162***, wherein he submits, it has been held that any resolution plan which overrides statutory duties is invalid and not binding. It has been further submitted that this decision has been upheld by the Supreme Court in a subsequent decision namely; ***Sanjay Kumar Agarwal vs. State Tax Officer & Anr.*** (and other connected matters) reported in

2023 SCC OnLine SC 1406, wherein review was sought of the earlier judgment i.e. ***State Tax Officer vs. Rainbow Papers Limited*** *(supra)*.

9. On the second submission, the learned Advocate General has argued that the resolution plan relied upon by the petitioner does not take away the right for the respondent No. 2 to realize the statutory obligations from the petitioners. This he submits is because the NCLT while approving the resolution plan vide order dated 03.12.2020, had observed that the approved resolution plan in no way would amount to waiver of statutory dues. On his third submission, it has been contended that electricity dues are statutory in nature and subsequent owners are liable to pay the same. Reference on this point has been made to the decision of the Supreme Court rendered in the case of ***Telangana State Southern Power Distribution Company Ltd. & Anr. vs. Srigdhaa Beverages*** reported in ***(2020) 6 SCC 404***, wherein it has been held that electricity dues where they are statutory in character under the Electricity Act cannot be waived in view of the provision of Section 56 of the Act itself. It is submitted that electricity dues being statutory dues, the subsequent purchasers are therefore

liable for the same. The learned Advocate General on this point has also referred to the case of ***K.C. Ninan vs. Kerala SEB, 2023 SCC OnLine SC 663*** in support of this argument.

10. It is then contended that the writ petition is not maintainable for implementation of the resolution plan, as the petitioners have alternate remedy by virtue by Section 60 (5) (c) of the Insolvency and Bankruptcy Code, 2016 and that further Section 63 thereof, provides that no civil court or authority, shall have jurisdiction to entertain any suits or proceedings in respect of any matter, in which the NCLT or NCLAT has jurisdiction under the said Code. In support of this contention, the learned AG has cited the following decisions: -

i) ***Thansingh vs. Superintendent of Tax, Dhubri, AIR 1964 SC 1419***
ii) ***City and Industrial Development Corpn. Vs. Dosu Aardeshir Bhiwandiwala***

11. Arguments have also been advanced that the writ is not maintainable as there exists disputed question of facts, inasmuch as,

the orders under challenge are against proforma respondents Nos. 3 & 4. It is submitted that the petitioner has sought quashing of the recovery notice to proforma respondents Nos. 3 & 4, and that these respondents themselves, have not approached this Court to assail the same, meaning thereby that they are not aggrieved, which would make the instant petition on behalf of the respondents No. 3 & 4, not maintainable in law. It has been further submitted that there are disputed questions of facts, as the petitioner has not quantified the amount payable by the respondents Nos. 3 & 4 before the alleged cutoff date. It is also further submitted, that there is no clarity as to the inter se relation, between the noticee i.e. respondent No. 3 and the petitioner, which makes the writ petition vague and not maintainable. On the point of disputed questions of facts, the learned AG has relied on the following decisions:

i) ***Sanjay Kumar Jha vs. Prakash Chandra Chaudhary (2019) 2 SCC 499 (Para 10)***

ii) ***World Tel Inc. vs. Union of India (2001) 10 SCC 513 (Para 2-4)***

12. The learned Advocate General lastly submits that on facts, there exists no legal right in favour of the writ petitioners to institute the present writ petition, and as such the same is liable to be dismissed.

13. From the submissions and materials that have been placed before this Court, the issue that arises for consideration is only whether the respondent Corporation, is entitled to recover the outstanding amounts from the petitioner No. 1 and its affiliates respondents Nos. 3 & 4, for the periods prior to 22.12.2022 i.e. the effective date when as per the resolution plan, the petitioner No. 1 was taken over. As discussed above, after the petitioner No. 1 was admitted to insolvency, a resolution plan which had been submitted was approved by the National Company Law Tribunal and by the Supreme Court, and Reliance Projects and Property Management Solutions Ltd. (RPPMSL) took over the petitioner No. 1 on 22.12.2022. Section 31 (1) of the Insolvency and Bankruptcy Code, 2016 (I&B Code) which is relevant in this respect, provides that an

approved resolution plan is binding on all creditors. The same is reproduced hereinbelow:-

> ***"31: Approval of resolution plan. - (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan:***
>
> ***Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."***

14. As such, by operation of the above quoted provision, even in cases where the creditors include Central Government and such other authorities to whom statutory dues are owed, they shall be bound by the said resolution. It is seen in the instant case that in accordance with the provisions of the I&B Code, public announcements had been made inviting all creditors of the petitioner No. 1, to submit proof of claims on or before 01.06.2016, and the

same was also published by the Interim Resolution Professional as evidenced by Annexures 3 to 5 of the writ petition. Thereafter, what is more telling, is that by a letter dated 25.07.2019, (Annexure 6 to the writ petition) the Resolution Professional, had addressed a letter to all the State Electricity Boards informing them of the Corporate Insolvency Resolution Process (CIRP) and further, had invited any claims which had not yet been submitted against the Corporate Debtor. The respondent No. 2 it appears, did not submit any claims in respect of their dues as was done by the other creditors. The approval order then on the resolution coming to a close, was passed on 03.12.2020 by the NCLT, wherein as per the approved Resolution Plan the claims, demands and liabilities as the case may be were to stand fulfilled on the deposit of the resolution amount. Though against the approval order, appeals were filed by various persons, the NCLT on an application by the petitioner No. 1 allowed the deposit of the total value of the Restoration Plan into an Escrow account, which would go towards distribution of the said amount to the creditors, which enabled the acquisition and control of the petitioner

No. 1 on a clean slate, as also on all the claims which were lying before the effective date i.e. 22.12.2022.

15. In this backdrop, what unfolded thereafter, was on the application of the petitioner No. 1, for a permanent power connection before the respondent No. 2, the same was declined vide letter dated 29.03.2023, on account of pending dues of the petitioner No. 1, i.e. formally Reliance Telecom, and the petitioner was called upon to clear all dues in order to acquire any new connection. At this juncture, it would be useful to refer to Section 238 of the I&B Code, which provides that this Code shall override other laws. The same is reproduced hereinbelow:-

> ***"238. Provisions of this Code to override other laws.- The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."***

16. This provision is crucial, as a ground had been set up by the respondent No. 2 that electricity dues being statutory in character under the Electricity Act 2003, the same cannot be waived in view of

Section 56 of the said Act. However, though electricity dues admittedly, and as held by the Supreme Court in the case ***Telangana State Southern Power Distribution Company Ltd. & Anr. vs. Srigdhaa Beverages*** (supra) are statutory in character and cannot be waived, the interplay of Sections 31 and 238 of the I&B Code and the circumstances surrounding the case, have to be given due consideration. This observation has been made in view of the fact that the respondent No. 2, did not participate in the resolution process and as such, as per Section 31 is bound by the same. The dues claimed by the respondent No. 1, are for the periods prior to the effective date i.e. 22.12.2022, which on the approval of the Resolution Plan, on no claim being made by the respondent No. 2, would therefore stand extinguished. In the considered view of this Court, Section 56 of the Electricity Act will not be attracted, as it is not a case where the petitioner No. 1, after the effective date, has neglected to pay any charge of electricity, or that any amount is due. For easy reference Section 56 of the Electricity Act, 2003 is reproduced hereinbelow:-

> ***"56. Disconnection of supply in default of payment: -- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company***

in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-

(a) an amount equal 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 disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

As such, the dues not attributable to the petitioner No. 1 after the effective date, and no claim having been made against the Corporate Debtor, and further Section 238 having an overriding effect on all other laws, the stand of the respondent No. 1 that the petitioners are liable to pay in terms of Section 56 of the Electricity Act is therefore, unsustainable.

17. As held in the case of ***Ghanshyam Mishra vs. Edelweiss Asset Reconstruction Co. Ltd*** *(supra),* the legislative intent of making the resolution plan binding after approval, was that the successful resolution applicant, should start with a fresh slate on the basis of the said approved resolution plan, and that it not be faced with surprise claims. Para 102.1, which is very relevant is quoted hereinbelow:-

> ***"102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall***

stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan."

18. Further, the above proposition that is applicable to the instant case, has also been dealt with in the case of ***Southern Power Distribution Company of Andhra Pradesh Limited vs. Gavi Siddeswara Steels (India) Pvt. Ltd. & Anr.*** and ***Tata Power Western Odisha Distribution Limited (TPWODL) & Anr. vs. Jagannath Sponge Private Limited*** (supra) wherein the Supreme Court has held that the clean slate principle will stand negated if the successful resolution applicant is asked to pay the arrears payable by the Corporate Debtor for the grant of an electricity connection in his/her name. The argument put by the respondent No. 1, by placing reliance on the case of ***State Tax Officer vs. Rainbow Papers Ltd.*** (supra) that any resolution plan which overrides statutory dues, is invalid and not binding to the mind of the Court, will have no application in the instant case, as firstly, the respondent No. 2 never filed any claim in accordance with law, and further the said decision was rendered in regular appeals which were preferred under Section 62 of the I&B Code.

19. On the other challenge that the writ petition is not maintainable, due to the availability of alternative efficacious remedy, by virtue of Section 60 (5) (c) of the I&B Code, 2016, this argument is not accepted, as the writ petitioner is clearly seeking a mandamus in view of the actions of the respondents Nos. 1 & 2, where in spite of the binding nature of Section 31 of the I&B Code, are denying the writ petitioners electricity connections by making the same contingent upon the recovery of pending dues not attributable to it. The judgments referred to by the learned Advocate General standing on a different footing are of no assistance and are not discussed herein.

20. Accordingly, as discussed above and in the facts and circumstances of the case, the instant writ petition stands allowed and is disposed of.

21. No order as to costs.

JUDGE

Meghalaya
05.06.2024

VALENTINO LYNDEM
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