

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

IA 1415 of 2022

In

CP (IB) 3171 of 2018

Under section 60(5) of the Insolvency and
Bankruptcy Code, 2016 and the Provisions of
the Rule 11 of the NCLT Rules, 2016

IN THE MATTER OF

Surendra Kumar Bansal

... Applicant

V/s.

**Maharashtra State Electricity Distribution
Company Limited**

M.S.E.B. Jalgaon Circle Office, Ayodhya
Nagar, Old MIDC, Jalgaon, Maharashtra –
425003.

... Respondent No. 1

Tulsi Extrusion Limited

Through its Liquidator,

Amit C. Poddar

... Respondent No. 2

IN THE MATTER OF

Punjab National Bank

... Financial Creditor

V/s.

Tulsi Extrusion Limited

... Corporate Debtor

Order delivered on :- 19.12.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Applicant : Adv. Agam H Maloo
For the Respondent No. 1 : Adv. Palak Gupta
For the Respondent No. 2 : Adv. Rahul Pillai

ORDER

Per: - Coram.

1. The present Interlocutory Application is filed by Surendra Kumar Bansal under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('the Code') and the Provisions of the Rule 11 of the NCLT Rules, 2016 against Maharashtra State Electricity Distribution Company Limited and others.

Facts of the Case:

2. The Applicant is the successful bidder of the E-Auction process conducted for the sale of the Corporate Debtor as a going concern on 20 May 2021. Letter of Intent dated May 21, 2021, was issued in favour of the Applicant by the Liquidator. The present Application is filed before this Hon'ble Tribunal for seeking reliefs in form of certain permissions and approvals from this Hon'ble Tribunal.
3. The Corporate Insolvency Resolution Process ("CIRP) was initiated against the Corporate Debtor on December 28, 2021, on an application of the Punjab National Bank under Section 7 of the Insolvency Bankruptcy Code, 2016 ("Code"). The Liquidation Process was initiated against the Corporate Debtor vide order dated February 20th, 2021, and Mr. Amit C Poddar was appointed as the Liquidator vide

order dated 02nd March 2020, by this Hon'ble Tribunal.

4. Pursuant to the above, the Liquidator has opted to sell the Corporate Debtor as a going concern under Regulation 32 (e) of the IBBI (Liquidation process) Regulations, 2016 ("Liquidation Process Regulation") and the E-Auction Process Memorandum for the sale of Corporate Debtor was published by the Liquidator on May 10th, 2021. The Applicant submitted the bid before the Liquidator by depositing an Earnest Money Deposit equivalent to 10% (Ten Percent) of the Reserve Price (i.e., INR 1,90,00,000/- (Indian Rupees One Crore Ninety Lakhs Only) on May 18th, 2021.
5. The Applicant's bid of INR 20,32,00,000/- (Indian Rupees Twenty Crores Thirty - Two Lakhs Only) ("Sale Consideration") was higher than other bidders. Subsequent to the Letter of Intent dated May 21st, 2021 issued by the Liquidator in favour of the Applicant, the Applicant deposited a further sum being 100% (Hundred percent) of the sale consideration from time to time between May 18th, 2021 and August 18th, 2021.
6. It is the case of the Applicant that he is not liable for the arrears of electricity dues claimed by the Respondent No.01 in respect of the properties of the Corporate Debtor acquired by him in e-auction on a sale as a going concern during liquidation of the Corporate Debtor.

Reply on behalf of the Respondents:

7. It is submitted that the IA has been filed by the Applicant who has acquired the property of Corporate Debtor Tulsi Extrusion Limited wherein the said property is situated at Addl. MIDC Area, Taluka and Dist. Jalgaon. The said property is divided into three units as follows:

- i. Unit I – Plot No. N 99, N 100, N 109 and N 108
- ii. Unit II – H-16 and H-17
- iii. Unite III – G-51 and G-52

Though there are non-agricultural freehold lands bearing CS No. 1289 divided in 4 parts which has also been transferred as a part of transaction by Corporate Debtor, same is not the subject matter in present IA and hence, is not mentioned.

8. The said properties got transferred to the present owner i.e. Applicant vide e-auction proceedings under SARFAESI Act, wherein the Corporate Debtor Company named Tulsi Extrusion Ltd. transferred it's assets along with plant machinery to Applicant through IP (Insolvency Liquidator).
9. There were 5 electricity connections which were provided on the said property comprising 3 Units. The details of electricity connections provided to the three units in mentioned herein below:

<u>Sr. No.</u>	<u>Unit</u>	<u>Owner of Electricity Meter</u>	<u>No. of Meter Connections</u>
1.	Unit I – Plot No. N 99, N 100, N 109 and N 108	Tulsi Extrusions	2
2.	Unit II – H-16 and H-17	Tulsi Extrusions	1
3.	Unite III – G-51 and G-52	Narmada Industries Limited and Gopal Krishi Udyog	2

10. It is further submitted that out of 5 of electricity connections, only 3 were registered in the name of Corporate Debtor – Tulsi Extrusion Limited which were being provided to Unit I and Unit II of the property. Due to non-payment of electricity dues, these connections were disconnected in the year 2017-18. The details of 3 electricity connections registered in the name of Tulsi Extrusion which were disconnected is as follows:

<u>Consumer No.</u>	<u>Sta tus</u>	<u>Date of Disconne ction</u>	<u>Date of Connection</u>	<u>Name of Consumer</u>	<u>Adress</u>
110019001380	PD	01.10.2017	10.01.2002	M/s Tulsi Extrusion Ltd.	Plot No. N-99 & 100
110019004930	PD	01.07.2018	17.01.2009	M/s Tulsi Extrusion Ltd.	N-108
110019001410	PD	01.12.2018	02.02.2002	M/s Tulsi Extrusion Ltd.	Plot No. H – 16 & 17

11. Thereafter the Respondent No. 1 deducted the pending dues/arrears from security deposit which was submitted with Respondent No. 1 by Tulsi Extrusion while taking electricity connection for Unit I and Unit II.

12. As on today, Corporate Debtor i.e. Tulsi Extrusion Limited is not having any dues pending with Respondent No. 1 regarding the 3 electricity connections of Unit I and Unit II registered in its name.

13. Thereafter, in the year 2022-23, an Application was made in the name of the Corporate Debtor Tulsi Extrusion Ltd. at Unit I and Unit II for

the purpose of new electricity connection wherein same has been duly provided. The details of the new live electricity connections provided in the name of Tulsi Extrusion at Unit I and Unit II are as follows:

<u>Consumer No.</u>	<u>Status</u>	<u>Date of Connection</u>	<u>Name of Consumer</u>	<u>Address</u>
110019009850	Live	09.08.2022	M/s Tulsi Extrusion Ltd.	Plot No. N-99 & 100
110019009730	Live	11.04.2022	M/s Tulsi Extrusion Ltd.	N-108
110019010060	Live	10.06.2023	M/s Tulsi Extrusion Ltd.	Plot No. H – 16 & 17

14. It is pertinent to record here that Applicant has not come before this Hon'ble Court with clean hands. They have not apprised the court with appropriate fact related to the case. The sale certificate dated 30.12.2021 clearly signifies that all the properties belonging to Unit I and Unit II were transferred in the name of Applicant in the year 2021. However, in the year 2022-23 a new connection was applied for in the name of Corporate Debtor Tulsi Extrusion Limited. It is noteworthy here that the said Application was not made for re-connection of the same electricity connection but, it was for provision of new connection which was duly provided by Respondent No. 1. At Unit III, 2 electricity connections were registered in the name of M/s Narmada Industries and M/s Gopal Krishi Udyog respectively. These electricity connections were also disconnected by Respondent No. 1 in 2018 due to the pending dues of electricity which were never cleared. The description of electricity dues of two electricity connections at Unit No.

III is as given below:

Consumer No.	Status	PD date	Date of Connection	Name of Consumer	Address	Total Arrears
110010010489	PD	05.01.2018	06.04.1992	M/s Narmada Industries	G52 MIDC Jalgaon	3,76,100
110010010471	PD	08.08.2018	28.10.1993	M/s Gopal Krishi Udyog	Plot No. G/51 MIDC Jalgaon	7,42,170

15. The dues of electricity provided at Unit No. III comprising of plots bearing No. G 51 and G 52 for which the total outstanding arrears for plot no. 3 are Rs. 11,18,870 which does not include interest.
16. It appears that Unit No. II comprising of plots bearing No. G 51 and G 52 have been acquired by Applicant from Corporate Debtor Tulsi Extrusion and Applicants have inquired for a new electricity connection in respect of the said properties. After inquiry and getting to know that there are pending dues on same, Applicant never made further follow up.
17. Further, the duty to supply electricity under Section 43 of Electricity Act 2003 is only with respect to the owner or occupier of the premises and not the premises as it is the owner or occupier who has the statutory right to demand electricity for the premises under their use or occupation. Further it is the Applicant who has to fulfil all the statutory conditions to become entitled to get supply of electricity to their premises. The Applicant has to pay the necessary charges, dues and comply with all terms and conditions as determined by the appropriate

commission for the supply of electricity.

18. Hence, the Applicant is devoid of merits and is liable to be dismissed with costs.

FINDINGS

19. We have heard counsel for the parties and have gone through the records.
20. Counsel for the Applicant submits that the Respondent No.01 i.e., the Maharashtra State Electricity Board should have filed its claim before the Liquidator (i.e., the Respondent No.02) in respect of the claims due from the Corporate Debtor so that they would have been paid as per the waterfall mechanism contemplated under the provisions of Section 53 of the IBC, 2016. However, despite public notice issued by the Liquidator in two newspapers regarding commencement of liquidation proceedings against the Corporate Debtor, the Respondent No.01 had failed to file its claim. Further, the Applicant was never informed during the liquidation process about any liability of the Respondent No.01 or any other liability on the Corporate Debtor other than the list of claimants available online on IBBI portal.
21. The Learned Counsel for the Applicant submits that upon the sale of Corporate Debtor as a going concern, all the prior liabilities of the Corporate Debtor remaining unpaid after the distribution of proceeds of sale of the Corporate Debtor shall stand extinguished. The Learned Counsel for the Applicant argues that it has never been the intention of the Code that the purchaser of the Corporate Debtor as a going concern would be liable to past or contingent liabilities of the Corporate Debtor. The Counsel for the Applicant states that in view of the clean slate theory, the claims of the Respondent No.01 cannot be

foisted upon the Applicant. The Learned Counsel for the Applicant further submits that the clean slate theory propounded by the Hon'ble Apex Court in Ghanshyam Mishra & Sons Pvt Ltd v/s Edelweiss ARC Ltd (Civil Appeal No. 8129 of 2019) and the CoC of Essar Steel India Ltd v/s Satish Kumar Gupta reported in (2020) 8 SCC 531, applies not only to the CIRP but also equally applies to the sale of the entity as a going concern at the liquidation stage. In this regard, the ld. Counsel for the Applicant has placed reliance upon the Judgment of Hon'ble NCLAT in M/s. Shiv Shakti Inter Globe Exports Pvt Ltd. v/s KTC Foods Pvt Ltd.

22. The Ld. Counsel for the Applicant lastly submits that if the clean slate theory is applied, then the dues of the Respondent no.01 prior to the issuance of sale certificate shall stand extinguished and the Applicant is entitled to the power connection from Respondent No.01 without having any need to clear the arrears of electricity of the Corporate Debtor prior to the sale of its entity as a going concern. It is also pointed out by the Counsel for the Applicant that a going concern sale in liquidation has to be distinguished from a going concern sale in general. In case of a sale of an entity as a going concern in liquidation, Counsel for the Applicant submits that there cannot be a question of liabilities being a part of the undertaking, as that will be a case of business transfer and not a case of liquidation. Lastly, the Learned Counsel for the Applicant has argued that if this Hon'ble Tribunal does not intercede and allows the Respondent No.01 to recover its past dues of the Corporate Debtor from the Applicant, then it would not only defeat the clean slate theory propounded by the Hon'ble Apex Court but also impede the process of Corporate Debtor achieving effective revival after its sale as a going concern.

23. Per contra, the Counsel for the Respondent No.01 submits that the power supply in respect of the three electricity connections was disconnected for non-payment of electricity dues. The arrears of electricity bills were adjusted against the security deposit and as on date, no amount is outstanding in respect of these three connections. The Sale of Corporate Debtor as a going concern took place vide Sale Certificate dated 30.12.2021. Thereafter, in the financial year 2022-23, the Applicant made an application in the name of Corporate Debtor for issuance of three new connections. Accordingly, three new connections were issued by Respondent No.01 to the Applicant in the name of the Corporate Debtor. Ld. Counsel for the Respondent No.01 submits that the clean slate theory will not apply to the three newly issued connections post sale of Corporate Debtor as a going concern and it is only the Applicant who is liable to pay for the arrears of electricity arising out of the three new connections.
24. Respondent No.02 i.e. the Liquidator has filed his affidavit-in-reply apprising the Tribunal of the facts and praying that the Hon'ble Tribunal may pass such appropriate orders in this matter as it deems fit.
25. We have examined the merits of the matter and have considered the rival submissions led by the counsels on both the sides.
26. On careful scrutiny of facts, we find that the Applicant has acquired the Corporate Debtor by way of an e-auction in pursuance of sale of the entity as a going concern which inter-alia includes the property of the Corporate Debtor divided into three units viz. Unit I (Plot Nos. N-99, N-100, N-109 and N-108), Unit II (Plot No. H-16 and H-17) and Unit-III (Plot No. G-51 and G-52). The aforesaid property was provided with five electricity connections, out of which three were

registered in the name of the Corporate Debtor-Tulsi Extrusion Ltd which were being provided only to Unit I and II of the property. The details of the five electricity connections are as follows:

<u>Sr. No.</u>	<u>Unit</u>	<u>Owner of Electricity Meter</u>	<u>No. of Meter Connections</u>
1.	Unit I – Plot No. N 99, N 100, N 109 and N 108	Tulsi Extrusions	2
2.	Unit II – H-16 and H-17	Tulsi Extrusions	1
3.	Unit III – G-51 and G-52	Narmada Industries Limited and Gopal Krishi Udyog	2

27. Due to non-payment of electricity dues, the three power connections registered in the name of the Corporate Debtor were disconnected whose details are as follows:

<u>Consumer No.</u>	<u>S t a t u s</u>	<u>Date of Disconnection</u>	<u>Date of Connection</u>	<u>Name of Consumer</u>	<u>Address</u>
110019001380	P D	01.10.2017	10.01.2002	M/s Tulsi Extrusion Ltd.	Plot No. N-99 & 100
110019004930	P D	01.07.2018	17.01.2009	M/s Tulsi Extrusion Ltd.	N-108
110019001410	P D	01.12.2018	02.02.2002	M/s Tulsi Extrusion Ltd.	Plot No. H – 16 & 17

28. The Respondent No.01 deducted the arrears of electricity bills from the security deposit of the Corporate Debtor with the Respondent No.01.

The Respondent No.01 has submitted on affidavit-in-reply that as on the date of filing the affidavit i.e. 21st August, 2023, there were no arrears/dues in respect of the electricity bills pending with the Respondent No.01. We also find that thereafter, in the year 2022-23, the Applicant had obtained three new electricity connections in the name of Corporate Debtor, whose details are stated in the table below:

<u>Consumer No.</u>	<u>Status</u>	<u>Date of Connecti on</u>	<u>Name of Consumer</u>	<u>Address</u>
110019009850	Live	09.08.2022	M/s Tulsi Extrusion Ltd.	Plot No. N-99 & 100
110019009730	Live	11.04.2022	M/s Tulsi Extrusion Ltd.	N-108
110019010060	Live	10.06.2023	M/s Tulsi Extrusion Ltd.	Plot No. H – 16 & 17

It is also not out of place to mention that the application to the Respondent No.01 was not made by the Applicant for re-connection of the electricity connections that were disconnected, but it was for provision of three new connections which was duly provided by the Respondent no.01. Therefore, as for the arrears of electricity connections, referred to in the table above, obtained after the date of sale certificate, the Applicant is liable to pay.

29. With respect to the arrears of electricity for Unit No. III, we notice that two electricity connections were registered in the name of M/s. Narmada Industries and M/s. Godavari Krishi Udyog. The description of the above two electricity connections at Unit III are given in the table below:

<u>Consumer No.</u>	<u>Sta tus</u>	<u>PD date</u>	<u>Date of Connection</u>	<u>Name of Consumer</u>	<u>Address</u>	<u>Total Arrears</u>
110010010489	PD	05.01.2018	06.04.1992	M/s Narmada Industries	G52 MIDC Jalgaon	3,76,100
110010010471	PD	08.08.2018	28.10.1993	M/s Gopal Krishi Udyog	Plot No. G/51 MIDC Jalgaon	7,42,170

These electricity connections were disconnected by the Respondent No.01 in 2018 due to the non-payment of electricity dues. Since these dues are not in the name of the Corporate Debtor and also given the fact that the electricity dues pertain to the period prior to the date of sale certificate, the liability for the same cannot be now foisted upon the Applicant. If at all, these dues were recoverable from the Corporate Debtor, the Respondent No.01 should have filed its claim before the Liquidator of the Corporate Debtor. However, admittedly, no claim was filed before the liquidator by the Respondent No.01 in respect of the aforesaid dues. Therefore, we are of the considered view that the arrears of electricity bills in respect of Unit III referred to in the table above cannot be recovered from the Applicant.

30. The Hon'ble NCLAT in M/s. Shiv Shakti Inter Globe Exports Pvt Ltd. v/s KTC Foods Pvt Ltd. vide Judgment dated 25th February, 2022 in Company Appeal (AT) (Insolvency) No. 650 of 2020 has held at Para 21 and 22 as follows:

“21. Adverting to the contention of the Learned Counsel for the Appellant that the Adjudicating Authority has erred in denying the sale of the ‘Corporate Debtor’ as a ‘going concern’ to the Appellant without including any contingent liabilities, we hold that it is a settled law that when the sale proceeds of a Corporate Debtor’ are duly distributed in the Order of priority and in the

manner prescribed under Section 53 of the Code, claims of any other Creditor cannot be entertained contrary to the provisions entailed under Section 53; subsequent to the distribution of sale proceeds under Section 53 no other entity including any Government entity can claim any past unpaid or outstanding dues against the Appellant who has purchased the 'Corporate Debtor Company' as a 'going concern'. It is significant to mention that the second Respondent / Liquidator has specifically submitted that even these claims by the Uttar Haryana Bijili Vitran Nigam were not submitted in the prescribed form either during the CIRP Process or at the Liquidation stage. **We are of the considered view that at this stage subsequent to the sale of the 'Corporate Debtor Company' as a 'going concern', these claims cannot be foisted upon the Appellant. The scope and objective of the Code is to extinguish all claims specifically the ones which were not even made during the CIRP or in the Liquidation stage, to aid the purchaser of the Company as a 'going concern' to start on a 'clean slate'. The Hon'ble Supreme Court in 'Ghanshyam Mishra & Sons Pvt. Ltd.' Vs. 'Edelweiss Asset Reconstruction Company Ltd. & Ors.', Civil Appeal No. 8129 of 2019 and in 'CoC of Essar Steel India Ltd.' Vs. 'Satish Gupta & Ors.' (2020) 8 SCC 531 has laid down the proposition that the purchaser of the Company even in the Liquidation stage cannot be burdened with past liabilities when it is not mentioned in the 'Sale Notice'.**

22. It is no longer Res Integra that while approving a 'Corporate Debtor' sale as a 'going concern' in Liquidation Proceedings without its dissolution in terms of Regulation 32(e) of the Liquidation Process Regulations, 2016, it is essential to see that the 'Corporate Debtor' is not burdened by any past or remaining unpaid outstanding liabilities prior to the sale of the Company as a 'going concern' and after payment of the sale proceeds distributed in accordance with Section 53 of the Code. The Impugned Order in I.A. 889 of 2020 is modified to the extent that the sale of the first Respondent as a 'going concern' is upheld and

the direction sought for in prayer (c) & (e) in CA No. 1189 of 2019 seeking extinguishment of past/remaining unpaid outstanding liabilities including contingent liabilities, prior to the sale as a 'going concern', after payment of sale proceeds distributed in accordance with Section 53 of the Code, is allowed.

This Appel is allowed to the extent indicated above.” (Emphasis Supplied)

31. Counsel for the Respondent No.01 has relied upon the following precedents of the Hon'ble Supreme Court:

- i. K.C. Ninan v/s. Kerala State Electricity Board & Ors. (Judgment dated May 19, 2023 in Civil Appeal Nos. 2109-2110 of 2004);
- ii. Telangana State Southern Power Distribution Company Ltd & Anr. v/s M/s. Srigdhaa Beverages (Judgment dated June 01, 2020 in Civil Appeal Nos. 1815 of 2020);
- iii. Special Officer, Commerce, NESCO v/s M/s. Raghunath Paper Mills Pvt Ltd. (Judgment dated November 09, 2012 in Civil Appeal Nos. 7899 of 2012); and
- iv. Dakshin Haryana Bijli Vitran Nigam Ltd v/s Paramount Polymers Pvt Ltd reported in 2006 (2) UJ SC 1398.

32. On perusal of the above-referred judgments relied upon by the Counsel for the Respondent No.01, we find that none of these judgments are in the context of the Insolvency and Bankruptcy Code, 2016. In the aforesaid precedents, the premises were sold in auction either in pursuance of the enforcement of security interest under the SARFAESI Act, 2002 or sale in liquidation under the Companies Act, where there is no concept of clean slate as contemplated under the IBC, 2016. The above judgments also do not deal with the sale of entity as

a going concern during liquidation under the Insolvency & Bankruptcy Code, 2016. The aforesaid precedents rather deal with the recovery of electricity dues from the auction purchasers under the Electricity Act, 2003. Therefore, the law laid down in aforesaid precedents has no relevance in the present case.

33. In view of the facts and circumstances of the case, in view of the findings and discussions, as above and in view of the law laid down by the Hon'ble NCLAT in M/s. Shiv Shakti Inter Globe Exports Pvt Ltd. v/s KTC Foods Pvt Ltd (supra), we are of the considered view that the application deserves to be partly allowed and accordingly, **I.A. No. 1415 of 2022 is partly allowed** to the extent indicated below:

- a. Respondent No. 1 shall **not** be **entitled** to recover the arrears of electricity dues for the period prior to the Certificate of Sale dated 31st December, 2021 from the Applicant in respect of the two electricity connections having consumer numbers viz. 110010010489 and 110010010471 installed at Unit III of the property of Corporate Debtor. Accordingly, the Respondent No.01 is hereby restrained on aforementioned terms;
- b. The Applicant shall be **liable** to pay the arrears of electricity bills to the Respondent No.01 in respect of the three new connections namely Consumer Nos. 110019009850, 110019009730 and 110019010060 at Unit I & II of the property of Corporate Debtor, for the period after the sale of Corporate Debtor as a going concern vide Certificate of Sale dated 31st December, 2021;
- c. Upon payment of arrears of electricity bills by the Applicant in respect of the three connections referred to in clause (b.) above,

the Respondent No.01 is hereby directed to restore the power supply for Unit Nos. I, II and III of the property of Corporate Debtor subject to the payment of charges for restoration of supply, if any;

d. I.A. stands disposed off on above terms.

Sd/-
ANIL RAJ CHELLAN
Member (Technical)

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)