

SL. No.3

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 02.02.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1131/2023 in CP(IB) No.40/7/HDB/2017
NAME OF THE COMPANY	Sri Gangadhara Steels Limited
NAME OF THE PETITIONER(S)	PEC Limited
NAME OF THE RESPONDENT(S)	Sri Gangadhara Steels Limited
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/1131/2023

Orders pronounced, recorded vide separate sheets. In the result, the Application is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-II**

**IA.No.1131 of 2023 in
CP (IB) No.40/7/HDB/2017**

*[Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016 r/w Rules 11 of the NCLT Rules, 2016]*

In the matter of M/s. Sri Gangadhara Steels Limited

Between:

M/s.R.E.C. Ispat Private Limited
D.No.9-13-35/4, C.B.M Compound
East Extension, VIP Road,
Visakhapatnam-530003
Email: recispatpvtltd@yahoo.com

...Applicant

Versus

M/s.Eastern Power Distribution Company
of Andhra Pradesh Limited
Chief General Manager,
Commercial & DM,
APEPDCL, Corporate Office,
P&T Colony, Seethammadhara,
Visakhapatnam-530013.

...Respondent

Date:02.02.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Date:02.02.2024

Counsel/Parties present:

For the Applicant : Mr. Y. Suryanarayana, Mr.NN Sarma,
and Mr. Sachin Sharma, Advocates
For the Respondent : Mr. G. Saiprasen, Advocate

Per: Rajeev Bhardwaj, Member (Judicial)

ORDER

1. The question involved in the present IA No.1131 of 2023 is whether the person who has purchased the Corporate Debtor as a going concern is liable to pay the electricity charges prior to its purchase.
2. M/s. PEC Limited, Financial Creditor has filed petition under section 7 of IBC against M/s. Sri Gangadhara Steels Limited, Corporate Debtor and this petition was admitted vide order dated 20.09.2017. Mr. Vikram Kumar was appointed as Interim Resolution Professional (IRP), who was subsequently appointed as Resolution Professional (RP).
 - 2.1 In response to Expression of Interest, resolution plans were received by the RP. The Committee of Creditors (CoC) had rejected the resolution plans and decided for liquidation of the Corporate Debtor.
 - 2.2 The liquidation order was passed on 11.12.2018 and Mrs. G. Kalpana was appointed as liquidator of the Corporate Debtor. Thereupon, the liquidator issued notice dated 25.12.2021 for sale of the Corporate Debtor and the applicant was declared as the successful bidder by paying an amount of Rs.14,72,00,000/-. The sale certificate was issued on 01.04.2022 and vide order dated 30.09.2022, liquidation process was closed.
 - 2.3 After passing of the order dated 30.09.2022, the applicant wrote a letter dated 14.12.2022 informing that the Corporate Debtor was acquired as a going concern by the applicant and asked for a new connection. However, the respondent vide letter dated 22.12.2022 asked the applicant to send copy

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of the order dated 30.09.2022 which was accordingly supplied vide letter dated 23.12.2022.

- 2.4 Instead of providing new connection, the respondent sent a letter dated 27.03.2023, informing that the electricity service to the Corporate Debtor was disconnected on 11.10.2019 on receipt of letter dated 04.10.2019 from the liquidator and billing was stopped with effect from 11.02.2020. The applicant was directed to pay the sum of Rs.3,75,16,555/- towards the arrears and new service connection.
- 2.5 The applicant again requested the respondent and sent letters dated 27.04.2023 and 20.05.2023 for providing new service connection but the respondent has not responded to this request. Therefore, the applicant has filed the present application praying for new power connection or restoring the old power connection of the Corporate Debtor, M/s. Sri Gangadhara Steels Limited without demanding any past dues.
3. In the Counter, the respondent has not denied about the purchase of the Corporate Debtor by the applicant but submitted that the latter was the continuous defaulter in making payments of the dues.
- 3.1 The service agreement was terminated on 31.12.2016 due to non-payment of consumption charges amounting to Rs. 4,43,87,695/- and thereafter on the representation of the Corporate Debtor, the electricity was restored subject to payment of arrears in instalments. When the payment was not made, the service was again disconnected on 17.09.2017.
- 3.2 In terms of the order dated 08.02.2018 in CA.No.10 of 2018 in CP(IB) No.40/7/HDB/2017, the power supply was restored. In the meanwhile, the arrears also increased and arrears escalated to Rs.6,07,70,161/- as on 26.04.2018.
- 3.3 After the liquidation of the Corporate Debtor on 11.10.2018, the respondent submitted a claim amounting to Rs 8,64,97,141/- to the liquidator. Then the liquidator asked the respondent vide letter dated 09.10.2019 for disconnection of the power supply and accordingly the power supply to the Corporate Debtor was stopped on 11.10.2019.

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- 3.4 This Authority vide order dated 30.09.2022 passed the order for closure of the liquidation process and granted various reliefs to the applicant including that ***“all the past liabilities and consequential actions of corporate debtor which are in relation in any period prior to the date of acquisition will be written off in full and shall stand permanently extinguished.”***
- 3.5 It is claimed that the respondent is unaware of any order passed with respect to the past dues vide order dated 30.09.2022. It is submitted that power connection will be restored subject to payment of Rs.3,75,16,555/- and the order dated 30.09.2022 is without jurisdiction and ultra-vires the provisions of Insolvency & Bankruptcy Code, 2016.
- 3.6 The respondent has submitted that there are two stages of Insolvency applicable to a company. The first being the CIRP under Section 31 of IBC and the second is when no resolution plan is submitted, the liquidation process is initiated in terms of section 33 of IBC.
- 3.7 Section 32 of IBC relates to extinguishment of past claims and liabilities in relation to a company undergoing CIRP process, but there is no such provision pertaining to the liquidation process. As such, this Authority wrongly assumed the power to extinguish the past liabilities. Therefore, the order dated 30.09.2022 in IA.No.733 of 2022 in CP(IB) No.40/7/HDB/2017 is a *per incuriam*.
- 3.8 The respondent has also referred to Electricity Reforms Act, 2003 (Act 36/2003) to say that in terms of Para No.8.4, the seller of the property should clear all the dues to the Company before selling such property and therefore the respondent is not bound for restoration of electricity power or entitled for new connection unless past liability is paid.
- 3.9 The respondent has also referred to the decision of Hon'ble NCLAT, Principal Bench, New Delhi in ***M/s. Visisth Service Limited versus S.V.Ramani and others, Company Appeal No.896 of 2020, decided on 11.01.22*** wherein it was held that as per the Regulation 32 (a) of IBBI (Liquidation Process) Regulations, 2016, sale as a 'Going Concern' means sale of assets as well as liabilities and not assets sans liabilities.

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4. Heard. We have also gone through the entire records.
5. The liquidation process of the Corporate Debtor was closed vide order dated 30.09.2022 in IA.No.733 of 2022 in CP(IB) No.40/07/HDB/2017. The relevant para of the order is 26 and 29(e) which are reproduced below:

“26. With the above background, liquidator sold the assets of the Corporate Debtor during Liquidation in the modes stated in Regulation 32 of the IBBI Liquidation Process Regulation 2016 and the Liquidator sold the CD as a going concern in Liquidation.

29(e). We direct that all the past liabilities and consequential actions of corporate debtor which are in relation to any period prior to the date of acquisition will be written off in full and shall stand permanently extinguished.”
6. In the context of passing order dated 30.09.2022, Ld. Counsel for the applicant has submitted that the respondent has not issued new connection or restored electricity supply to the Corporate Debtor. He has referred to the decision of the Hon'ble NCLAT in *M/s.Eastern Power Distribution Company of Andhra Pradesh Limited versus M/s. Maithan Alloys Limited, Company Appeal No.961/2021*, decided on 26.05.2022, wherein it was held that the entire pre-CIRP and post CIRP dues cannot be recovered from the successful auction purchaser.
7. On the other hand, learned counsel for the respondent has submitted that there is no provision for extinguishment of such dues when the Corporate Debtor is in liquidation process like in case of CIRP and he has also relied upon the decision of the Hon'ble NCLAT *M/s. Visisth Service Limited (supra)* to bring home his point that past dues can't be allowed to be extinguished.
8. The point of non-payment of such dues was in issue in many cases before the Hon'ble Supreme Court and NCLAT. Hon'ble NCLAT in *M/s. Paschimanchal Vidyut Vitran Nigam Limited versus HSA Traders and others, Company Appeal No. 527/2023, dated 05.12.2023* has meticulously addressed the facts and issues akin to those in the present case, providing clarity on the stance that Successful Bidder cannot be insisted on the

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payment of arrears and that these arrears are to be settled in accordance with the waterfall mechanism under IBC for granting of electricity connection.

9. The NCLAT's rationale in the case of *M/s. Paschimanchal Vidyut Vitran Nigam Limited (Supra)* is supported by the precedent established by the Hon'ble Supreme Court in the matter of *Tata Power Western Odisha Distribution Limited (TPWODL) & Anr. versus Jagannath Sponge Private Limited," Civil Appeal No. 5556 of 2023*. In this case, the Hon'ble Supreme Court has explicitly stated that "*Tata Power cannot insist on payment of arrears for granting electricity connection.*"
10. In another case of *M/s Shiv Shakti Inter Globe Exports Pvt. Ltd versus M/s KTC Foods Private Limited (Company Appeal (AT) (Insolvency) No. 650 of 2020 decided on 25.02.2022* , it was decided 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
11. The Hon'ble Supreme Court in *Ghanshyam Mishra & Sons Pvt. Ltd. versus Edelweiss Asset Reconstruction Company Ltd. & Ors., Civil Appeal No. 8129 of 2019* and in *CoC of Essar Steel India Ltd. versus 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'.
12. The reliance of respondent on the judgment of Hon'ble NCLAT in *M/s. Visisth Service Limited (Supra)* dealt with the EMD amount and the amount paid towards the Bid Purchase document which is clearly distinguishable in the facts of the present case and in view of judgments as discussed above.
13. Above all, this Authority cannot sit as an Appellate Authority or review its own order i.e. order dated 30.09.2022. The proper course was to challenge

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the said order, otherwise the respondent is bound to follow the same in letter and spirit.

14. In consideration of the aforementioned observations and a series of judicial precedents, we believe that the argument put forth by the learned counsel for the respondent that the Corporate Debtor, subsequent to the sale as a going concern, is obligated to settle the outstanding electricity dues, which were liabilities of the former Corporate Debtor, and that the electricity connection cannot be reinstated without the settlement of said dues is not in consonance with the statutory framework of the Insolvency and Bankruptcy Code (IBC).
15. Hence, we hereby direct the respondent to issue a new power connection or restore the previous power connection without requiring settlement of any outstanding past dues and it is clarified that the successful bidder shall not be exempted from paying any other charges, apart from the aforementioned past dues, for the acquisition of the new connection.
16. As a result, the present application is allowed.

Sd/-

**(SANJAY PURI)
MEMBER (TECHNICAL)**

Sd/-

**(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)**

R.K.
Apoorva