

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 56 of 2025
& I.A. No. 235 of 2025**

[Arising out of Order dated 24.10.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court Room No.1, Mumbai Bench in IA No.4168 of 2024 in C.P.(IB)/1318(MB)2022]

IN THE MATTER OF:

Maharashtra State Electricity Distribution Company Ltd. & Anr. ...Appellant

Versus

Ravi Sethia Resolution Professional of Morarjee Textiles Ltd. ...Respondents

Present:

For Appellant: Mr. Pulkit Doera, Mr. Anup Jain and Ms. Sneha Singh, Advocates.

For Respondents: Mr. J. Rajesh, Mr. Dhruvad Vaghani, Mr. Yashwardhan Agarwal and Mr. Arsalan Ahmed, Advocates.

J U D G M E N T
(24th February, 2025)

Ashok Bhushan, J.

This Appeal by Maharashtra State Electricity Distribution Company Ltd. & Anr. has been filed challenging the order dated 24.10.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court Room No.1, Mumbai Bench in IA No.4168 of 2024 filed by the Resolution Professional. The Adjudicating Authority has allowed the IA filed by the Resolution Professional, aggrieved by which order this Appeal has been filed.

2. Brief facts necessary to be noticed for deciding the Appeal are:-

2.1. The Corporate Debtor- 'Morarjee Textile Limited' had been granted electricity connection for running its textile mill by the Maharashtra State Electricity Distribution Company Ltd.. On 05.02.2024, electricity bill for the month of January 2024 of Rs.4,78,27,140/- was raised by the Appellant towards unpaid electricity bills. On 09.02.2024, CIRP was initiated against the Corporate Debtor on an application filed by Axis Bank Limited. IRP issued public announcement in response to which Appellant filed its claim of Rs.4,78,27,140/- in Form B towards unpaid bills of electricity supply prior to CIRP. The Appellant issued various electricity bills dues for CIRP period. Appellant issued notices under Section 56 of the Electricity Act 2003 informing that if current electricity dues of the corporate debtor are not paid, the Appellant shall disconnect their electricity supply. On 26.06.2024, the Appellant disconnected the electricity connection on account of non-payment of outstanding dues for the month of April and May, 2024. The electricity was reinstated upon the assurances to pay the electricity dues. Again on 28.08.2024, electricity supply was disconnected due to non-payment. The Resolution Professional sent a letter on 28.08.2024 informing that as per Section 14(2), the electricity shall not be terminated. An IA No.4168 of 2024 was filed by the Resolution Professional praying for various reliefs including directions to restore the electricity supply. On 03.09.2024, the Adjudicating Authority passed an interim order directing the Appellant to restore the electricity supply of the corporate debtor for 15 days. The electricity supply was connected, however, the bills were not cleared and only an amount of Rs.50 lakhs was paid on 05.09.2024 by the Resolution Professional. Again

notice was issued. On 15.10.2024, the Adjudicating Authority observed that to ensure the continuance of supply of electricity services during CIRP, Respondent has to clear the bills. Appellant asked the Resolution Professional to comply with the directions dated 14.10.2024. The Appellant filed a reply to IA No.4168 of 2024. IA No.4168 of 2024 has been allowed. Aggrieved by the impugned order this Appeal has been filed.

3. Counsel for the Appellant challenging the order contends that the corporate debtor is running a textile mill which consumes substantial electricity and under Section 14(2A), it is obligatory for the corporate debtor to pay the current bills during the CIRP period. The Adjudicating Authority has ignored the mandate of Section 14(2-A) while directing the Appellant to restore the electricity but no direction has been issued regarding payment of electricity dues during the CIRP period. The Respondents were obliged to pay the dues during moratorium period. The Respondent despite acknowledging its liabilities and giving assurances for clearances failed to make the payment. There is no prohibition or bar imposed by the IBC towards payment of dues arising from essential services supply during CIRP period. It is submitted that as per latest profit and loss statement of the corporate debtor for the year 2022-23, Rs.8,922 lakhs have been mentioned as manufacturing expenses which includes a cost of Rs.4,166.19 Lakhs towards power and fuel expenses. It is submitted that the Respondent has also filed Contempt Application before the Adjudicating Authority against the Appellant alleging non-compliance of the impugned order.

4. Counsel appearing for the Respondent refuting the submissions of the Counsel for the Appellant submits that the electricity is essential supply as contemplated by Section 14(2) of the IBC. Counsel for the Respondent relied on Regulation 32 of the CIRP Regulations to support his submission that electricity being identified as essential supply it cannot be disconnected during moratorium period and the Appellant was obliged to continue the electricity of the corporate debtor. It is submitted that as per Regulation 31, the electricity dues during CIRP period are CIRP costs and Appellant is entitled for CIRP costs in priority as per the provisions of the IBC. It is submitted that the order passed by the Adjudicating Authority is in conformity with the provisions of Section 14(2) of the IBC and need no interference. It is submitted that the Resolution Professional has paid the partial payment during the CIRP. The CoC has also passed a resolution to obtain Rs.2.55 Crore for part payment towards outstanding electricity dues. It is submitted that the Resolution Professional has also informed Appellant that textile subsidy is to be received by the Government shall also be paid. It is submitted that the corporate debtor has to be run as a going concern and keeping the corporate debtor as a going concern, electricity supply is essential. It is submitted that the expression 'essential supply' used in Section 14(2) and the expression "supply of goods or services critical to protect and preserve the value of the corporate debtor" are two different expressions and 'supply of goods or services critical' as contemplated under Section 14(2-A) is different from essential goods or services as referred in Section 14(2). The electricity dues during CIRP period are CIRP costs which are payable as CIRP

costs in accordance with IBC and the Appellant cannot insist for payment during CIRP period.

5. Counsel for both the parties have placed reliance on various judgments of the Hon'ble Supreme Court and this Tribunal which we shall hereinafter refer while considering the submissions in detail.

6. The order impugned has been passed in IA No.4168 of 2024 which was filed by the Resolution Professional. The prayer in IA has been quoted in paragraph 1 of the order which is as follows:-

“a. To direct the Respondents to comply with the provisions of Section 14 of the Code read with Regulation 32 of the CIRP Regulations and reinstate the electricity supply and continue to provide electricity to the factory/manufacturing plant of the Corporate Debtor situated at Plot No.G-2, MIDC, Industrial Area. Post - Salaidhaba Via Hingna. Nagpur-441 122, Maharashtra.

b. During the pendency or disposal of this Application direct the Respondents to reinstate the electricity supply and continue to provide electricity to the factory/manufacturing plant of the Corporate Debtor situated at Plot No. G-2, MIDC, Industrial Area, Post Salaidhaba Via Hingna, Butibori, Nagpur - 441122, Maharashtra.

c. During the pendency or disposal of this Application direct the Respondents not to take any action or discontinue the supply of electricity provided to the Corporate Debtor in any manner or take any coercive

steps which affect the status of the Corporate Debtor as a going concern;

d. To direct the Respondents to increase the contract demand load from 3500 KVA to 4300 KVA for the Corporate Debtor's connection in order to increase production to generate additional cash flow, in turn, to keep the Corporate Debtor remain as a going concern.”

7. Thus, we need to first notice the relevant statutory provisions before entering into respective submissions of the parties. Section 14 deals with Moratorium. Section 14(2) and 14(2A) which are relevant for the issues which have arisen in this Appeal are as follows:-

“14. Moratorium. *-(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.*

[(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.]”

8. Regulations 31 and 32 of the CIRP Regulations has been relied by the parties. Regulation 31 deals with ‘insolvency resolution process costs’. Regulation 31 is as follows:-

“31. Insolvency resolution process costs.

“Insolvency resolution process costs” under Section 5(13)(e) shall mean

(a) amounts due to suppliers of essential goods and services under Regulation 32;..”

9. Regulation 32 defines ‘essential supplies’ which is to the following effect:-

“32. Essential supplies.- *The essential goods and services referred to in section 14(2) shall mean-*

(1) electricity;

(2) water;

(3) telecommunication services; and

(4) information technology services, to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

Illustration-Water supplied to a corporate debtor will be essential supplies for drinking and sanitation purposes, and not for generation of hydro-electricity.”

10. Electricity is included as essential supply with rider to the ‘extent these are not a direct input to the output produced or supplied by the corporate debtor’. The corporate debtor is running as textile mill which is engaged in manufacturing activity. Counsel for the Appellant has submitted that the textile industry utilised electricity which is essential component for running machines and manufacturing process. The expression used in Regulation 32

is the essential supplies enumerated therein to the extent that these are not a direct input to the output produced or supplied by the corporate debtor. There is nothing on the record to indicate that the electricity is a direct input to the output produced or supplied by the corporate debtor. Ofcourse, textile manufacturing uses electricity for running its machines and for other process for manufacturing of yarn and cloth but there being nothing to prove that electricity is a direct input to the output produced. Electricity supply has to be treated as essential supply within the meaning of Section 14(2) read with Regulation 32 of the CIRP Regulations.

11. The submission which has been advanced by the Counsel for the Appellant centre around Section 14(2A). Section 14(2A) was inserted by Act 1 of 2020 w.e.f. 28.12.2019. Sub-section (2A) contemplates that where the interim resolution professional or resolution professional 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 when 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. The goods or services which are critical to protect and preserve the value of the corporate debtor is thus dependent on the decision taken by the IRP and the resolution professional. Sub-section (2) and (2A) uses two expressions i.e. 'essential goods or supply' (which may be specified). The word 'specified' has been defined in sub-section (32) of Section 3 in following manner:-

“3. Definitions. – (32) *“specified” means specified by regulations made by the Board under this Code and the term “specify” shall be construed accordingly;*”

12. The essential supply thus has need to be specified by the Board as per Regulation and Regulation 32 of the CIRP Regulations specified the ‘essential supplies’. Thus, essential supplies have to be treated in a manner and to the extent as provided in Regulation 32. It is thus clear that the electricity which is not a direct input to the output produced is essential supply within the meaning of Section 14(2) read with Regulation 32 of the CIRP Regulations and it is clearly covered by the protection extended by legislature under Section 14(2).

13. Counsel for the Appellant has contended that the use of two different expressions in Section 14(2) and 14(2A) cannot be treated to be the same and both the expressions connote the different ideas.

14. Counsel for the Respondent has placed reliance on the judgment of the Hon’ble Supreme Court in **“The Member, Board of Revenue vs. Arthur Paul Benthall- AIR 1956 SC 35”**. The Hon’ble Supreme Court in the above case had occasion to consider two different expressions in Indian Stamp Act. Following was laid down in paragraph 4 of the judgment: -

“4. We are unable to accept the contention that the word “matter” in Section 5 was intended to convey the same meaning as the word “description” in Section 6. In its popular sense, the expression “distinct matters”

would connote something different from distinct “categories”. Two transactions might be of the same description, but all the same, they might be distinct. If A sells Black-acre to X and mortgages White-acre to Y, the transactions fall under different categories, and they are also distinct matters. But if A mortgages Black-acre to X and mortgages White-acre to Y, the two transactions fall under the same category, but they would certainly be distinct matters. If the intention of the legislature was that the expression ‘distinct matters’ in Section 5 should be understood not in its popular sense but narrowly as meaning different categories in the Schedule, nothing would have been easier than to say so. When two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense, and the conclusion must follow that the expression “distinct matters” in Section 5 and “descriptions” in Section 6 have different connotations.”

15. Counsel for the Respondent has also relied on the judgment of the Hon’ble Supreme Court in **“Rajendra K Bhutta vs. Maharashtra Housing and Area Development Authority and Anr.- (2020) 13 SCC 208”** where the Hon’ble Supreme Court had occasion to consider expression used in Section 14 and in the said judgment, the Hon’ble Supreme Court has preferred and relied earlier judgments of the Hon’ble Supreme Court where different expressions were construed differently. It is useful to extract paragraph 17 of the judgment which is as follows:-

“17. Likewise, in Kailash Nath Agarwal v. Pradeshiya Industrial & Investment Corpn. of U.P. Ltd. [Kailash Nath Agarwal v. Pradeshiya Industrial & Investment Corpn. of U.P. Ltd., (2003) 4 SCC 305] , this Court referred to Section 22(1) of the Sick Industries Companies (Special Provisions) Amendment Act, 1994 and applied the aforesaid Latin maxim to the words “suit” and “proceeding” as follows : (SCC pp. 313-15, paras 20 & 26-28)

“20. There is an apparent distinction between the expressions “proceeding” and “suit” used in Section 22(1). While it is true that two different words may be used in the same statute to convey the same meaning, that is the exception rather than the rule. The general rule is that when two different words are used by the same statute, prima facie one has to construe these different words as carrying different meanings. In Kanhaiyalal Vishindas Gidwani [Kanhaiyalal Vishindas Gidwani v. Arun Dattatray Mehta, (2001) 1 SCC 78] , this Court found that the words “subscribed” and “signed” had been used in the Representation of the People Act, 1951 interchangeably and, therefore, in that context the Court came to the conclusion that when the legislature used the word “subscribed” it did not intend anything more than “signing”. The words “suit” and “proceeding” have not been used interchangeably in SICA. Therefore, the reasons which persuaded this Court to give the same meaning to two different words in a statute cannot be applied here.

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26. *Apart from the semantic difference between the words “suit” and “proceeding” there is the absence of expansive words “or the like” which appear after the expression “proceedings”, after the word “suit”. The exclusion of such “omnibus expression” after the word “suit” must be given some weight in interpreting the word. As held by this Court in LIC v. Escorts Ltd. [LIC v. Escorts Ltd., (1986) 1 SCC 264] : (SCC p. 313, para 63)*

‘63. ... The distinction made by Parliament ... in the several provisions of the same Act cannot be ignored or strained to be explained away by us. That is not the way to interpret statutes. The proper way is to give due weight to the use as well as the omission to use the qualifying words in different provisions of the Act. The significance of the use of the qualifying word in one provision and its non-use in another provision may not be disregarded.’

27. *Since the legislature has expressly chosen to make a distinction between the suits for recovery of the money and enforcement of guarantees and proceedings for the recovery of money, that must be given effect to.*

28. *Furthermore, Parliament must be taken to be aware of the decision in Maharashtra Tubes [Maharashtra Tubes Ltd. v. State Industrial & Investment Corpn. of Maharashtra Ltd., (1993) 2 SCC 144] and the fact that the word “proceeding” used in Section 22(1) had been widely construed to include proceedings for recovery of dues by the State Financial Corporation as arrears of land revenue.*

The deliberate choice of the word “suit” in the circumstances would indicate that Parliament intended to limit the ambit of the amendment introduced to particular modes for the recovery of money or enforcement of guarantees.”

16. The Hon’ble Supreme Court again in **“Madanlal Fakir Chand Dudhediya vs. Shree Changdeo Sugar Mills Ltd. and Ors.- AIR 1962 SC 1543”** had held that first rule of construction is that the words used in the section must be given their plain grammatical meaning and the two sub-sections must be read as parts of an integral whole and an attempt should be made in construing them to reconcile them. Paragraph 17 of the judgment is as follows:-

“17. In construing Section 76(1) and (2), it would be necessary to bear in mind the relevant rules of construction. The first rule of construction which is elementary, is that the words used in the section must be given their plain grammatical meaning. Since we are dealing with two sub-sections of Section 76, it is necessary that the said two sub-sections must be construed as a whole “each portion throwing light, if need be, on the rest”. The two sub-sections must be read as parts of an integral whole and as being inter-dependent; an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy. If repugnancy cannot possibly be avoided, then a question may arise as to which of the two should prevail. But that question can arise only if repugnancy cannot be avoided.”

17. The judgment of the Hon'ble Supreme Court in "**Sandeep Khaitan, Resolution Professional for National Plywood Industries Limited vs. JSVM Plywood Industries Limited and Anr.- (2021) 9 SCC 401**" has been relied by the Counsel for the Respondent where Hon'ble Supreme Court had occasion to consider the provisions of Section 14(2) as well as Regulation 32 of the CIRP Regulations. It is useful to extract paragraphs 26, 27 and 28 of the judgment: -

"26. Section 14 is emphatic, subject to the provisions of sub-sections (2) and (3). The impact of the moratorium includes prohibition of transferring, encumbering, alienating or disposing of by the corporate debtor of any of its assets. Sub-section (2) of Section 14 reads as follows:

"14. (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."

27. Essential goods and services referred to in Section 14(2) have been defined by the Regulations. Regulation 32 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, reads as follows:

"32. Essential supplies.—The essential goods and services referred to in Section 14(2) shall mean—

- (1) electricity;*
- (2) water;*
- (3) telecommunication services; and*

(4) information technology services, to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

Illustration.—Water supplied to a corporate debtor will be essential supplies for drinking and sanitation purposes, and not for generation of hydro-electricity.”

28. *Also, undoubtedly sub-section (2-A) of Section 14 of the Insolvency and Bankruptcy Code, 2016 provides as follows:*

“14. (2-A) *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.”*

This provision was inserted with effect from 28-12-2019. No doubt under this provision goods or services not covered by Section 14(2) are also covered. The call however is to be taken by the IRP/RP. Raw material supply could fall within the provision. The IRP/RP must take a decision guided purely by the object of the IBC and the provisions and the factual matrix.”

18. The Hon'ble Supreme Court laid down in the above case that under Section 14(2A) goods or services not covered by Section 14(2) are covered. The above judgment of the Hon'ble Supreme Court clearly laid down that the scope of Section 14(2) and Section 14(2A) are different. Counsel for the Appellant has relied on the judgment of this Tribunal in **“Shailesh Verma, Resolution Professional of Lavasa Corporation Limited and Ors. vs. Maharashtra State Electricity Distribution Company Ltd.- 2022 SCC OnLine NCLAT 4321”** decided on 02.09.2022 where this Tribunal after considering Section 14(2) and Section 14(2A) has held that the corporate debtor was liable to pay current electricity charges. In the above case, corporate debtor had taken a decision that supply of electricity is necessary to make the value of corporate debtor as was specifically pleaded. In the above case, the Resolution Professional has relied on Section 14(2A) and on account of reliance of resolution professional on Section 14(2-A), this Tribunal took the view that the payment of electricity dues was necessary. In paragraphs 11, 12, 13 and 14 following was laid down:-

“11. When we look into the Statement of Objects and Reasons as extracted above, one of the object as expressly recorded was “in order to fill the critical gaps in the corporate insolvency framework”. Explanation to sub-Section (1) of Section 14 and insertion of sub-section (2-A) of Section 14 was with the object to fill the critical gap in the corporate insolvency framework. Section 14, sub-section (2) as contained in the Code only provided for supply of essential goods or services to the Corporate Debtor contained an indication that

supply of essential goods or services to the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period, brought a substantive provision that when Interim Resolution Professional or Resolution Professional consider the supply of goods or services critical to protect and preserve the value of the Corporate Debtor, the same shall not be terminated or suspended or interrupted during the period of moratorium except where Corporate Debtor has not paid such dues arising from such supply during the moratorium period. The insertion of sub-section (2-A) in the Section 14 has been brought with a purpose and object. Section 14, sub-section (1) explanation also clarifies that 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 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 same. The scheme delineated by Section 14(1) explanation as well as Section 14(2-A) is same, that is, all benefits, which were enjoyed by the Corporate Debtor given by Government or authority should be continued, but subject to condition that there is no default of payment of current dues. Sub-section (2-A) also envisage continuation of the essential supply and provides for such termination, suspension or extension when payment has not been made for the such supply during the moratorium.

12. *Sub-section (2) of Section 14 has to be read with the legislative intent, which is now reflected by Explanation to Section 14(1) and 14(2-A). In the facts of the present case, when Corporate Debtor took a decision that supply of electricity is necessary to make the value of Corporate Debtor as has been specifically pleaded in IA No. 1661 of 2021 as noticed above, the Corporate Debtor is obliged to make payment*

13. *The submission of learned Counsel for the Appellant is that payment of electricity dues cannot be demanded by Respondent, since they are part of the CIRP cost and can be paid only at the conclusion of CIRP process, that is, after approval of the Resolution Plan. The above submission is clearly in conflict with the legislative scheme as delineated by Section 14(1) Explanation and Section 14(2-A). When the Corporate Debtor has opined that supply of electricity is essential and is to be continued by the Respondent, it is also under obligation to make payment of electricity dues of the CIRP period and direction issued by the Adjudicating Authority to make the payment of outstanding dues, cannot be faulted. The direction of Adjudicating Authority to continue the DFA, that is, to continue to supply the electricity was subject to payment of outstanding dues within 90 days as directed by the Adjudicating Authority. The Appellant cannot enjoy the benefit of direction of one part, that is, to continue the DFA and deny the payment of electricity dues of the CIRP period.*

14. *We thus are of the considered opinion that no exception can be taken to direction of the Adjudicating Authority to make the payment of outstanding dues to*

the Respondent during the CIRP period within 90 days. We make it clear that in the event on non-payment of the dues, as per Section 14(2-A), it shall always be open to Respondent to terminate/suspend the supply of such services. We do not find any merit in the Appeal. The Appeal is dismissed. No order as to costs.”

19. The same view was expressed by this Tribunal in two subsequent judgments namely— **“Sanskriti Allottee Welfare Association (Reg.) Through its General Secretary Lalit Chauhan and Ors. vs. Gaurav Katiyar and Anr.- 2024 SCC OnLine NCLAT 825”** and **“Noida Power Company Limited vs. Mr. Gaurav Katiyar- 2024 SCC OnLine NCLAT 1133”**. In the above two judgments also reliance was placed on Section 14(2-A) for electricity supply, hence, this Tribunal took the view that the payment of dues was also required to be made as required by Section 14(2-A) failing which the electricity can be disconnected.

20. The present is a case where Resolution Professional has not relied on Section 14 (2-A) rather has placed reliance on Section 14(2). In this context, we may refer to letter dated 28.08.2024 which is brought on the record as Annexure A6 written by the Resolution Professional to the Office of the Superintending Engineer where following was stated by the Resolution Professional: -

“Respected Sir,

We refer to your arbitrary action threatening to disconnect the electricity being consumed by the

Corporate Debtor at plot no. G1 and G2 MIDC, Butibori, Nagpur ("said property") for its day to day business.

We once again reiterate that the Corporate Insolvency Resolution Process ("CIRP") with respect to Morarjee Textiles Limited was initiated under the Insolvency and Bankruptcy Code, 2016 read with all the rules and regulations framed thereunder ("Code") by the Hon'ble National Company Law Tribunal, Mumbai Bench ("NCLT") vide order dated 9th February 2024 ("Insolvency Commencement Date") and the undersigned has been appointed as the interim resolution professional ("IRP").

The Committee of Creditors ("CoC") of the Corporate Debtor in its 3rd CoC meeting held on 15th May 2024 unanimously resolved to appoint the undersigned as the resolution professional ("RP") and from the date of the above mentioned CIRP order, the management of the affairs of the Company has vested in the RP and the powers of the board of directors of the Company stands suspended and are being exercised by the IRP as per the provisions of the Code and the applicable regulations.

The undersigned states that in response to various notices issued by you, threatening to disconnect the electricity at the said property, the undersigned has time and again informed you that by virtue of Section 14 (2) of the Code read with Regulation 32 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), the supply of essential goods or services to the Corporate Debtor shall not be terminated,

suspended or interrupted during the moratorium period. The same has been enunciated in various judgements passed by the competent courts. The undersigned states that essential services include electricity, therefore, your illegal action of threatening to disconnect the electricity is in complete breach of the Code.”

21. In the end of letter, following was stated by the Resolution Professional:-

“In light of the above, it is stated that your actions of threatening to disconnect the electricity due to non-payment of electricity dues are in contravention of Section 14 (2) of the Code. The undersigned reserves his right to take appropriate steps before the competent court/tribunal in case any action is undertaken by you with respect to disconnection of electricity at the said property of the Corporate Debtor.

Thanking You.

Yours faithfully,

Mr. Ravi Sethia

Resolution Professional of Morarjee Textiles Limited”

22. Thus, present is a case where Resolution Professional has categorically placed reliance on Section 14(2) and no reliance has been placed on Section 14(2A). The judgment of this Tribunal in **“Shailesh Verma”** (supra) and other two judgments noticed above are distinguishable. It is also relevant to notice that the resolution professional has also written to the Appellant that the outstanding electricity dues shall be paid and an amount of Rs.50 Lakhs was

also admittedly paid by the resolution professional. In this context, reference is made to the letter dated 05.09.2024 written by the resolution professional to the Chairman and CMD of the Appellant that the corporate debtor will pay energy bills regularly. It is useful to extract the last paragraph of the letter dated 05.09.2024 which is filed as Annexure A-9 to the Appeal:-

*“To,
Chairman and CMD,
MSEDCL, Prakashgad
Mumbai, Maharashtra*

**SUB: Regarding restoration of HT Power Supply of
M/s. Morarjee Textile Ltd. bearing consumer No.
420819012800**

Respected Sir,

With reference to disconnection of power supply on 28.08.2024, we would request you to kindly look at our critical situation, where we are keeping our operations live in spite of severe cash deficit and poor market scenario.

We have been paying the pending electricity bills, but In the month of February 2024 company taken under NCLT. The pending amount of power bill has been considered in claim to be submitted to NCLT and we are running the plant under NCLT where we have paid March 24, Apr 24 and partially more than 70% of May'24 bill. MSEDCL has deducted 7.5% duty approx. 45 Lacs in the bills of Apr, May, and June'24 which MSEDCL need to adjust in power bill.

Also Rs 2.0 Crores of Textile Subsidy for 02 months i.e. Jan 2019 and Feb 2019 is still pending at the level of honourable Textile secretary. We are hopeful to receive Subsidy in few months' time and we foresee that it will be adjusted against Outstanding power bill.

Looking to the situation, pending power bill is below 2 Crores. We are seeking your support to re-establish power supply, which will definitely give us boost in tough time. NCLT is working on resolution and we are hoping in few months. If power supply is available we may save the life of more than 1500 employees, which is under threat on account of disconnection of power supply. Each person is head of his family to feed 05 more persons on average this implies that more than 7500 people are affected.

We assure you that we will pay our energy bills regularly within due date and additional 50 Lacs every month of pending arrears. The first 50 Lacs will be paid latest by 10th Sept 2024. Currently there is no power and company is in dark. Earlier also theft incidences took place in the premises affecting us severely. Therefore, kindly arrange to provide the power immediately to enable us protect the life of employees and machinery of the plant.

We will appreciate your kind consideration, Sir for restoration of power, today, to MTL.”

23. We have already noticed Regulation 31 which contemplates amounts due to suppliers of essential goods and services under Regulation 32. Statutory provisions do not contain any prohibition in payment towards supply of essential goods during currency of CIRP. When the corporate debtor

runs as a going concern by the resolution professional, it is open for the resolution professional to make such payment as can be made from funds of the corporate debtor. The assurances given by the resolution professional for the payment towards electricity was in the above end. The fact that payment to essential supplies can be made as per the decision of the resolution professional even during currency of the CIRP when the costs is incurred by the resolution professional. The statutory scheme, however, as contained in Section 14(2) prohibits the supplier of essential goods from terminating/ discontinuing the supply during moratorium period. As per statutory scheme, the corporate debtor is entitled to receive the essential goods and services during moratorium and even the payment is not made of essential goods and services that shall form part of the CIRP costs.

24. We also take notice of the submission which has been advanced by the Appellant that the corporate debtor is a textile industry engaged in manufacturing process and is consuming energy which require to be paid to the appellant who has only distributor of energy. Appellant purchased energy from generating company and distribute it to consumer and, if the appellant not paid its electricity charges, it shall not be able to carry on its business, hence, it is necessary to make the regular payment of electricity dues by the corporate debtor even though it was in insolvency. As noted above, the statutory scheme as of date obliged the appellant to continue supply of the electricity.

25. After we have heard the parties in the present appeal, we have come across to Discussion Paper issued by Insolvency and Bankruptcy Board of

India dated 04.02.2025 on 'Streamlining Processes under the Code: Reforms for Enhanced Efficiency and Outcomes'. The IBBI is a regulatory authority and is empowered to make regulation under Section 240 of the IBC. Power to make regulations encompasses its power to carry on amendments in the regulations. IBBI for streamlining its regulation keeps on issuing amendment from time to time framed under Section 240 to improve working of the regulations and to achieve the object and purpose of the IBC. The Discussion Paper dated 04.02.2025 clearly notices the certain issues and the operational aspects including management of essential services. It is useful to notice the Discussion Paper under the heading "B. Essential Services" which is to the following effect:-

"B. Essential Services

Section 14(2) of the Code states that 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. These services are specified in regulation 32 of the CIRP regulation to cover four categories viz. electricity, water, telecommunication services, and information technology services to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

However, it has been observed that the protection of moratorium is being incorrectly applied to these services even when they are being used as a direct input for production or supply by the CD.

Proposal

In view of the above it is proposed to add certain illustrations in regulation 32. The current illustration regarding water supply is being replaced with a more comprehensive example that better demonstrates the distinction between essential and non-essential services during CIRP as below:

Illustration- Electricity supplied to a corporate debtor for maintaining basic facility upkeep such as lighting and powering computers would constitute essential services. However, if the corporate debtor operates a manufacturing facility, the high-voltage electricity supply required to run the machinery may be considered as critical services by the insolvency professional as it is being used as a direct input for production and current dues for such services must be paid during CIRP to prevent any service discontinuation.”

26. The Discussion Paper also proposes amendment in Regulation 32 and proforma of the amendment has been annexed as Annexure to the Discussion Paper. In paragraphs 4 and 5 of the Annexure following has been stated:-

“4. In the principal regulations, in Regulation 32, the following illustration shall be inserted, namely:

Illustration- Electricity supplied to a corporate debtor for maintaining basic facility upkeep such as lighting and powering computers would constitute essential services. However, if the corporate debtor operates a manufacturing facility, the high-voltage electricity

supply required to run the machinery may be considered as critical services by the insolvency professional as it is being used as a direct input for production and current dues for such services must be paid during CIRP to prevent any service discontinuation.

5. *In the principal regulations, in Regulation 32, the following illustration shall be deleted, namely: -*

Illustration-Water supplied to a corporate debtor will be essential supplies for drinking and sanitation purposes, and not for generation of hydro-electricity.”

27. The above Discussion Paper highlights the issue of operational difficulty with regard to supply of electricity under Section 14(2) read with Regulation 32. The illustration which is now sought to be amended, amending the regulation now contemplate that if the corporate debtor operates a manufacturing facility that may be treated as critical service by the insolvency professional for which current dues for such services must be paid. In our judgment in Company Appeal (AT) (Insolvency) No.106 of 2025- ***“M/s Power Mech Projects Ltd. vs. Essar Power (Jharkhand) Ltd. & Anr.”***, we have considered effect and consequences of Discussion Paper. We have already held that the Discussion Paper has no effect on statutory scheme operating in the field and Discussion Paper only can be basis for amending regulation. The Discussion Paper, as noted above, thus highlights the issues and the amendment in statutory scheme, if any, may take place only when the regulation are amended and notified. Thus, as on date the statutory scheme

governed by Section 14(2) and Regulation 32 operates under which the Appellant is obliged to continue electricity supply. We have already noticed above that the Resolution Professional himself issued a letter that the corporate debtor is taking a step to clear the electricity dues and for which CoC has already taken a decision to obtain interim finance and steps are being taken for payment.

28. In view of the foregoing discussions, we are of the view that the direction of the Adjudicating Authority based on Section 14(2) not to disconnect the electricity connection necessary for running the manufacturing facilities cannot be interfered with. It is useful to extract paragraph 15 of the judgment which is as follows:-

“15. Section 14(2) of the Code provides that "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. Further Regulation 32 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that electricity amongst others shall be essential services referred to in Section 14(2) of the Code. If such electricity is not input to the output produced for supplied by the Corporate Debtor. The Corporate Debtor is stated to be engaged in manufacture of textile and the electricity is not direct input to the output produced in the manufacturing process but is required to run the plant machinery. In view of the specific provision under Section 14(2) of the Code read with Regulation 32 of CIRP Regulation we direct

the Respondent MSEDCL not to disconnect the electricity connection necessary for running the manufacturing facilities of the Corporate Debtor and carrying out its business. Accordingly, the Respondent shall refrain from disconnecting the supply and in case if the same has been disconnected the supply shall be reinstated forthwith.”

29. We, however, are of the view that the resolution professional, as assured to the appellant, need to take steps to clear the electricity dues, however, non-payment of electricity dues cannot be a ground to discontinue the electricity which is a clear mandate by Section 14(2). We are of the view that the IBBI has already taken notice of the operational issues and having proposed Regulation 32 of the CIRP Regulations, need to expedite its process and amendment, if any, which may be carried out at an early date to mitigate the hardship of the supplier of essential services.

30. In view of the foregoing discussions, we dispose of this Appeal with following directions:-

(i) The order of the Adjudicating Authority dated 24.10.2024 as contained in paragraph 15 directing Appellant not to discontinue the electricity connection necessary for running the manufacturing facilities of the corporate debtor is not interfered with.

(ii) The resolution professional shall endeavour to pay the electricity dues as assured by it through various letters to the Appellant by taking steps including raising interim finance, if any.

(iii) IBBI in furtherance of its Discussion Paper dated 04.02.2025 which proposes amendment in Regulation 32 may expedite its steps regarding amendment, if any, which amendment may redress several operational issues as noticed by the IBBI itself.

31. Let Registry communicate the copy of this order to Insolvency and Bankruptcy Board of India (IBBI). Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi
Anjali