

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 19 of 2022

(Arising out of the Order dated 01.11.2021 passed by the National Company Law Tribunal, Principal Bench, New Delhi in IA NO. 2785 OF 2021 in C.P. (IB) No. 863/PB/2020.

U.P. Jal Vidyut Nigam Limited

Pipri, P.O. Turra District: Sonebhadra

Uttar Pradesh -231221

...Appellant

Versus

Mr. Ashish Chhawchharia

(IBBI/IPA-001/IP-P00294/2017-18/10538)

Resolution Professional of Essar Power M.P. Limited

Grant Thornton 10 C Hungerford Street

Kolkata - 700017

...Respondent

Present

For Appellants:

Mr. Krishnendu Datta, Sr. Advocate along with Ms. Pallavi Kumar, Ms. Priya Chauhan, Ms. Kavya Jha, Ms. Niharika Sharma, Mr. Harsh Gurbani, Mr. Harshit Chaudhary, Advocates.

For Respondent:

Mr. Ritin Rai, Sr. Advocate along with Mr. Diwakar Maheshwari, Ms. Pratiksha Mishra & Mr. Vishnu Shriram, Advocates for R-1.

Mr. Sandeep Singhi, Ms. Ruby Singh Ahuja, Mr. Vishal Gehrana, Ms. Aakriti Vohra, & Ms. Varsha Himatsingka, Advocates for R-2.

J U D G E M E N T

(11.12.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e., U.P. Jal Vidyut Nigam Limited (**‘UPJVNL’**) who is an operational creditor of Essar Power M.P. Limited under Section 61 of the Insolvency and Bankruptcy Code, 2016 (**‘Code’**) against the Order dated 01.11.2021 ("**Impugned Order**") passed by the National Company Law Tribunal, Principal Bench ("**Adjudicating Authority**") in I.A. No. 2785 of 2021 in C.P. (IB) No. 863/PB/2020.

Mr. Ashish Chhawchharia, who is the Resolution Professional of Essar Power M.P. Limited (**‘Corporate Debtor’**) is the Respondent No.1 herein.

Adani Power Limited, is the Respondent No.2 herein.

2. The Appellant submitted that it is a hydro-electric generating company established by the Government of Uttar Pradesh exclusively for the development of small hydroelectric power in the state. The Appellant contended that on October 23, 2009, it entered into a binding Agreement with Corporate Debtor for the supply of water from upstream of Rihand Reservoir to Corporate Debtor 's thermal power plant in Singrauli District, Madhya Pradesh, at rates specified in the Office Memorandum dated February 03, 2001. The Appellant further submitted that Corporate Debtor commenced drawing water pursuant to the Agreement, triggering payment obligations under Clause 9, which mandates billing at the end of each calendar month with payment due within 30 days, and

a surcharge of seven paise per hundred rupees per day on overdue amounts, without prejudice to disconnection rights after 15 days' notice.

3. The Appellant contended that invoices were duly raised from April 2012 to October 2020 for water drawl, late payment surcharges from August 2013 to November 2020, and generation loss charges, supported by reminder letters dated April 3, 2013; September 28, 2013; August 6, 2014; October 10, 2014; January 28, 2015; and June 11, 2020. The Appellant further submitted that the Corporate Debtor cleared invoices up to February 2013 but defaulted thereafter, including April-November 2012 dues, leaving crystallized operational debt of Rs. 12,08,64,637 as on September 29, 2020.

4. The Appellant submitted that the Agreement expired on October 22, 2019, yet at Corporate Debtor 's request, it permitted continued water drawl, with Corporate Debtor seeking renewal vide letters dated September 17, 2019, and October 3, 2019, for a further 10-year term from October 23, 2019, thereby extending the Agreement by mutual conduct. The Appellant contended that monthly invoices continued post-expiry based on meter readings, reflecting ongoing usage and liability, with total post-CIRP dues reaching Rs. 5,74,61,202 up to November 2021. The Appellant further submitted that letters dated June 2, 2014; August 14, 2014; December 18, 2014; and January 28, 2015, warned Corporate Debtor of violations and demanded payment for escalating dues till June, November, and December 2014 respectively.

5. The Appellant contended that Corporate Debtor's past payments till February 2013 unequivocally acknowledge water drawl from Rihand Reservoir under the Agreement, negating any subsequent denial. The Appellant submitted that rising meter readings in sequential invoices irrefutably prove consumption, as water quantity is measured via meters installed and controlled by the Appellant per Clause 7(a) of the Agreement.

6. The Appellant submitted that upon public announcement post Adjudicating Authority's CIRP initiation order dated September 29, 2020, it filed Form B on December 28, 2020, claiming Rs.12,08,64,637 as operational creditor, annexed with invoices and records. The Appellant contended that supplementary claims followed via letters dated March 10, 2021 (Rs. 4,10,63,874 till February 2021); May 25, 2021 (Rs. 5,07,60,568 till April 2021); and June 14, 2021 (Rs. 5,17,21,063 till May 2021), with ongoing invoices till November 2021. The Appellant further submitted that the RP's letter dated November 5, 2020, explicitly recognized water supply as an essential service under Section 14 of the Code and Regulation 32 CIRP Regulations, requesting uninterrupted continuity to run the Corporate Debtor as a going concern.

7. The Appellant contended that this admission of the RP contradicts Corporate Debtor 's Writ Petition (W.P. No. 12331/2020) before Allahabad High Court challenging invoices from December 5, 2012, to May 1, 2020, and removal notice dated January 16, 2020, with no interim relief granted despite listings from August 14, 2020, and pending amendment application dated May 13, 2021.

8. The Appellant submitted that creditor lists dated February 24, 2021, and May 11, 2021, wrongly admitted the claim of the Appellant at Rs.1 as contingent, citing the Writ Petition under Note 2, despite full documentation and RP's own acknowledgment. The Appellant contended that vide objection letter dated April 6, 2021, it highlighted: (i) unpaid invoices per Clause 9 (ii) past payments (iii) increasing meter readings and (iv) RP's admission, demanding full admission and revised list, yet RP replied on May 25, 2021, reiterating contingency. The Appellant further submitted that RP overstepped by adjudicating, exceeding collation/verification powers under the Code & Regulations. The Appellant contended that RP lacks quasi-judicial/adjudicatory authority, possessing merely administrative powers to verify/collated claims, as held by Supreme Court in ***Swiss Ribbons Pvt. Ltd. v. Union of India*** [(2019) 4 SCC 17].

9. The Appellant submitted that Section 14(2) of the Code and Regulation 31 CIRP Regulations mandate RP to make payment for essential services on month-to-month basis to sustain going concern, not free supply. The Appellant contended that this Appellate Tribunal in the matter of ***Dakshin Gujarat Vij Co. Ltd. v. ABG Shipyard Ltd.*** (CA(AT)(Ins.) 334/2017) held that current charges for essential services like water/electricity form Insolvency Resolution Process costs, payable without moratorium bar, waiving surcharges conditionally but affirming liability.

10. The Appellant contended that generation loss is legitimate as per Clauses 7-8, as Rihand Reservoir water constitutes stored energy, with Appellant

incurring upkeep costs, charged at 189.256198 gallons per rupee (2009-2013, escalating 10% every five years) as per Office Memorandum formula from April 3, 1999, meeting.

11. The Appellant submitted that Adjudicating Authority lacked jurisdiction over pre-CIRP contractual dispute, sub-judice in Allahabad High Court, erring in directing 12-month water supply/land use continuation or till High Court decision, foisting renewal on unwilling Appellant. The Appellant contended this contravenes Supreme Court rulings: *Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd.* [(2021 SCC OnLine SC 253)] prohibiting resolution plan alterations to statutory contracts sans governmental consent per Regulation 37 CIRP Regulations; and *Sangyong Engineering & Construction Co. Ltd. v. NHAI* [(2019) 15 SCC 131] on public policy limits. The Appellant further submitted that impugned order overlooked records proving drawl and therefore, clear liability of the Corporate Debtor to make payments to the Appellant.

12. Concluding his arguments, the Appellant requested this Appellate Tribunal to allow the present appeal.

13. Per contra, the Respondent No.1 denied all averments made by the Appellant as misleading and baseless.

14. The Respondent No. 1 submitted that the Appellant has alleged irregularities in the classification of its claim as "contingent," the Corporate Debtor's failure to make payments for water drawn from Rihand Reservoir during

the CIRP, and the concessions in the Approved Resolution Plan lacking continuation of pre-CIRP arrangements for 12 months or until disposal of the Writ Petition. However, these averments are bereft of merit, as the claim's contingent nature stems from ongoing sub-judice proceedings before the Hon'ble High Court of Allahabad, rendering any interference by the Adjudicating Authority or even by this Appellate Tribunal an usurpation of judicial jurisdiction.

15. The Respondent No. 1 submitted that the Appellant's claim pertaining to the pre-CIRP period is admittedly contingent. The Corporate Debtor has challenged the legality and validity of invoices raised by the Appellant from 05.12.12 till 01.05.2020 (Impugned Invoices) before the Hon'ble High Court of Allahabad vide Writ Petition (Civil) No. 12331 of 2020 (Writ Petition), first listed for hearing on 14.08.2020, prior to the Admission Order dated 23.07.2020. Notice in the Writ Petition has been issued to the Appellant, and the matter remains sub-judice since issuance of the Admission Order. The Respondent No. 1 had filed an application before the Allahabad High Court praying for urgent listing of the Writ Petition.

16. The Respondent No. 1 submitted that Regulation 14(1) of the CIRP Regulations, provide: "Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him." Based on

information/documents available, the legality and validity of the Impugned Invoices are sub-judice before the Allahabad High Court. Accordingly, the question of the Corporate Debtor's liability to make payments under the Impugned Invoices is contingent on the outcome of the Writ Petition. The Hon'ble Supreme Court in Essar Steel (supra) has upheld the conduct of a Resolution Professional in admitting such claims at a notional value of Rs. 1 and classifying balance as "contingent." Thus, in the instant case, the Respondent No. 1's conduct in recording the Appellant's claim against the Corporate Debtor as the best estimate that could be arrived at.

17. The Respondent No. 1 submitted that even if assuming (and not conceding) that the averments in the Appeal in entirety are correct, a plain reading thereof does not make out any ground whatsoever for granting the relief prayed for by the Appellant i.e., treatment of its claims as crystallised claim, as doing so would usurp the jurisdiction of the Hon'ble Allahabad High Court.

18. The Respondent No. 1 submitted that the State of Madhya Pradesh was allocated 5.25 MAF water from the Son River under the terms of the Bansagar Project Agreement dated 16.11.1973 (Bansagar Project) entered into amongst the States of Madhya Pradesh, Bihar, and Uttar Pradesh. Out of this share, the State of Madhya Pradesh could utilise 0.78 MAF water from the Rihand Reservoir, which was under the control of the State of Uttar Pradesh. Under the terms of the Bansagar Project, no allocation was made to the State of Uttar Pradesh from the Rihand Reservoir.

19. The Respondent No. 1 submitted that subsequently, the Corporate Debtor was allocated 0.058 MAF per annum of water by Madhya Pradesh Water Resources Department (**MPWRD**) from Rihand Reservoir on 27.07.2006 against Government of Madhya Pradesh's share of water in Rihand Reservoir, which is under the control of the Appellant. Therefore, merely due to the control of the Appellant on the Rihand Reservoir, in order to enable the Corporate Debtor to draw water from the reservoir by building intake pump house in the submergence area in Uttar Pradesh, the Appellant entered into the Agreement dated 23.10.2009 with the Corporate Debtor to enable the Appellant to be able to construct the pump and draw water from the said Rihand Reservoir.

20. The Respondent No. 1 contended that subsequently in April 2012, the Corporate Debtor started drawing water out of the share allocated to it by the State of Madhya Pradesh from the Rihand Reservoir. Between January 2013 to May 2015, the Appellant addressed various correspondences raising invoices on the Corporate Debtor for the water drawn by it from the Rihand Reservoir under various heads, including charges for drawl of water, loss of power generation, late payment surcharge etc. The Corporate Debtor, in response, addressed correspondences in the said period calling upon the Appellant to cancel the invoices raised by it considering that it was drawing water from the share of the State of Madhya Pradesh in the Rihand Reservoir. As such, the claim of Appellant under the said invoices remained in dispute from the very first day.

21. The Respondent No. 1 submitted that it is evident that there are some pre-existing disputes between the Appellant and the Corporate Debtor relating to the locus of the Appellant to levy charges on the water drawn from Rihand Reservoir as the water allocation is from the share of the State Government of Madhya Pradesh and accordingly, the charge for the same is being levied by the Government of Madhya Pradesh under the terms of the Agreement for Supply of Water to Industrial/Power Plant dated 16.02.2010 for the water being utilised by the Corporate Debtor under the said Agreement, and the charges are being regularly paid to the Government of Madhya Pradesh by the Corporate Debtor in terms of the said 16 February Agreement.

22. The Respondent No. 1 contended that on 20.06.2013, the Corporate Debtor addressed a letter to the Appellant intimating that both the Appellant and the MPWRD have been raising invoices on the Corporate Debtor for the same quantum of water drawn from the Rihand Reservoir. Accordingly, the Corporate Debtor requested the Appellant to cancel the invoices raised by the Corporate Debtor in relation to the water drawn from the Rihand Reservoir.

23. The Respondent No. 1 submitted that additionally, on 21.11.2013, the Corporate Debtor addressed a letter to the Appellant intimating that the Corporate Debtor has raised the issue referred to in the above sub-paragraph with the State of Madhya Pradesh. Further, the Corporate Debtor annexed a cheque for an amount of Rs. 10,51,227 towards the invoices raised by the Appellant and

categorically stated that said payments are being made to the Appellant under protest.

24. The Respondent No. 1 contended that furthermore, the Respondent No. 1 states that in relation to the foregoing, the Corporate Debtor had filed Writ Petition No. 1724 of 2015 before the Hon'ble Madhya Pradesh High Court on 02.02.2015 wherein it had challenged the levy of water charges by the Appellant since the water is allocated from the share of the State of Madhya Pradesh and the charge for the same is levied by the Government of Madhya Pradesh. The Respondent No. 1 submitted that the Hon'ble Madhya Pradesh High Court vide an order dated 30.03.2015 had granted a stay against any coercive action after hearing the Corporate Debtor's argument at length. The Respondent No. 1 contended that on 27.02.2020, the First Writ Petition was disposed of by the Hon'ble High Court of Madhya Pradesh only on the ground of territorial jurisdiction with liberty to pursue remedy before the appropriate jurisdiction.

25. The Respondent No. 1 submitted that the interim protection granted by the Madhya Pradesh High Court vide order dated 30.03.2015 had been in operation till 27.02.2020. As such, the Appellant has been aware that the Corporate Debtor had, at all material times, objected to the liability to make payments towards Impugned Invoices and that issue concerning legality of the said invoices were sub-judice, and continues to be so even thereafter.

26. The Respondent No. 1 contended that consequently, the Corporate Debtor has filed the Writ Petition before the Allahabad High Court wherein the Corporate

Debtor has inter alia challenged the right of the Appellant to levy and recover charges for drawl of water and for loss of power generation from the Corporate Debtor under the Agreement. The Respondent No. 1 submitted that the said Writ Petition was first listed for hearing on 14.08.2020 i.e., before the Admission Order of the Adjudicating Authority and has been sub-judice before the Allahabad High Court since then. In other words, the Writ Petition was already sub-judice as on the date of the Admission Order.

27. The Respondent No. 1 contended that subsequently, pursuant to appointment of the Respondent No. 1 as the Resolution Professional of the Corporate Debtor, vide a letter dated 05.11.2020 had called upon the Appellant to not interrupt the supply of water to the Corporate Debtor during the CIRP as being essential for the continued existence of the Corporate Debtor as a going concern, and to submit its claim with proof for the pre-CIRP period.

28. The Respondent No. 1 submitted that the Corporate Debtor has always maintained a consistent stand and disputed any liability under the Impugned Invoices. However, the Appellant continued raising invoices for generation loss during the CIRP purportedly in terms of the 23 October, 2019 Agreement, which had already expired. As stated above, the Appellant had no right or authority to claim generation loss from the Corporate Debtor since the water being drawn by the Corporate Debtor belonged to the portion allocated to the State of Madhya Pradesh. In any case, the Appellant's right to claim such charges is pending

adjudication before the Hon'ble High Court of Allahabad and the Appellant could not have unilaterally issued invoices on the Respondent No. 1 for generation loss.

29. The Respondent No. 1 contended that on 10.03.2021, the Appellant wrote a letter to the Respondent No. 1 claiming that a sum of Rs. 4,84,53,332/- pertaining to the charges for drawl of water by the Corporate Debtor between October 2020 till February 2021 which is outstanding and is payable.

30. The Respondent No. 1 contended that in view of the fact that the liability towards Appellant has always been disputed, and that the payment is being consistently made to MPWRD, the question of payment to the Appellant for the same quantum of water drawn during CIRP or pre-CIRP admittedly from the share of water allocated to Madhya Pradesh would not arise. The Respondent No. 1 submitted that further, the issue of entitlement of the Appellant to claim any amount in relation to the water drawn by the Corporate Debtor is already subject-matter of adjudication before the Allahabad High Court.

31. The Respondent No. 1 contended that it is also apparent that the Order dated 01.11.2021 pronounced by the Adjudicating Authority has already considered all the submissions made herein by the Appellant. It was only after examining the offers of resolution plan and the fact that Allahabad High Court is seized of the issue concerning validity of the Impugned Invoices, for which the charges have already been paid to MPWRD,

32. The Respondent No. 1 submitted that further, on the issue of reliefs and concessions that was sought by the SRA, the Adjudicating Authority found that

use of water and land plays a vital role in resolution and thus, relying upon the judgement of the Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors.*, Writ Petition (Civil) No. 99/2018, allowed the concession for continuation of the arrangement between the Corporate Debtor and the Appellant during the moratorium period, for a period of 12 months or until disposal of the Writ Petition, whichever is earlier (Concession) as approved by the Adjudicating Authority vide its Impugned Order, which is in conformity with the provisions of the Code read with the CIRP Regulations.

33. Concluding his pleadings, the Respondent No.1 requested this Appellate Tribunal to dismiss the appeal with cost.

34. The Respondent No.2 also denied all averments made by the Appellant as frivolous.

35. The Respondent No. 2 submitted that the contingent classification of the Appellant's claim, denial of payments for alleged services during the CIRP of Essar Power M.P. Limited (Corporate Debtor), and the concession for continued water drawl and land use in the Approved Resolution Plan, is devoid of merit and liable to dismissal in limine. The Respondent No. 2 contended that the Appellant's grievances arise from the sub-judice recoverability of its claim before the Hon'ble High Court of Judicature at Allahabad in Writ Petition No. 12331 of 2020, instituted prior to CIRP admission on 23.07.2020, precluding any adjudication herein as an encroachment on superior judicial jurisdiction.

36. The Respondent No. 2 contended that the principal issues raised by the Appellant, that is, mandatory full admission of the claim, entitlement to CIRP-period payments, and illegality of the 12-month or till-Writ-disposal concession, do not arise from the facts but constitute a contrived narrative of the Appellant. The Respondent No. 2 submitted that the Resolution Professional rightly classified the claim as contingent under Regulation 14 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as the Corporate Debtor challenged the Appellant's levy of water drawl and generation loss charges through Writ Petition No. 1724 of 2015 before the Hon'ble High Court of Madhya Pradesh, obtaining interim relief on 30.03.2015. The Respondent No. 2 contended that the said petition was disposed on 27.02.2020 solely on jurisdictional grounds, directing recourse to the Allahabad High Court, where the matter remains pending, rendering recoverability contingent on its outcome.

37. The Respondent No. 2 submitted that even if reclassified as operational debt, the Appellant's entitlement under the Resolution Plan dated 11.05.2021 (Approved Resolution Plan) is Nil, with operational creditors subject to uniform haircuts. The Respondent No. 2 contended that the Form B filed on 28.12.2020 claimed Rs. 12,08,64,637/- for April 2012 to September 2020, but the portion from April 2012 to November 2017 is barred by limitation under Article 137 of the Limitation Act, 1963, and thus inadmissible in CIRP. The Respondent No. 2 submitted that on 27.07.2006, the Government of Madhya Pradesh allocated

0.058 MAF water from Rihand Reservoir to the Corporate Debtor from its 5.25 MAF share under the Bansagar Project Agreement dated 16.09.1973, with payments duly remitted to the Madhya Pradesh Water Resources Department, negating any duplicate liability to the Appellant notwithstanding its reservoir control.

38. The Respondent No. 2 contended that to facilitate drawl via intake infrastructure in the Uttar Pradesh submergence area, the Appellant entered the Agreement dated 23.10.2009, allowing construction and use subject to prescribed charges and restricted under Clause 6(b) to plant operations and colonies; however, this Agreement expired unrenewed on 22.10.2019, well before CIRP initiation on 29.09.2020. The Respondent No. 2 submitted that disputes over the Appellant's levy locus existed ab initio, with the Corporate Debtor protesting dual invoicing on 20.06.2013 and paying Rs. 10,51,227 under protest on 21.09.2013, while consistently settling dues with Madhya Pradesh. The Respondent No. 2 contended that the Madhya Pradesh High Court granted stay against coercive action from 30.03.2015 until 27.02.2020, apprising the Appellant of the contested nature of its claims on Madhya Pradesh-allocated water.

39. The Respondent No. 2 submitted that post-expiry, the Appellant's unilateral invoicing for generation loss during CIRP lacks legal foundation, as water supply qualified as essential under Section 14(2) Code to preserve the Corporate Debtor's going-concern status; the Resolution Professional's letter dated 05.11.2020 sought non-interruption and pre-CIRP claim submission, which

the Appellant ignored without substantiating charges. The Respondent No. 2 contended that for October 2020 to February 2021, the monthly bills aggregated Rs. 46,34,274/-, contra the Appellant's exaggerated demand of Rs. 4,84,53,332/- vide letter dated 10.03.2021, revealing inflated arrears; likewise, March to November 2021 bills totalled Rs. 90,07,870/- with irregular escalations, limiting any viable CIRP claim to Rs. 1,36,42,144/- at best, subject to Allahabad High Court resolution and precluded by prior Madhya Pradesh remittances.

40. The Respondent No. 2 submitted that the Impugned Order dated 01.11.2021 evaluated submissions, confirming the Appellant's operational creditor status, recognizing CIRP-period claims and abstaining from jurisdiction over sub-judice matters. The Respondent No. 2 contended that no CIRP payment default subsists, as charges were directed to the appropriate authority, and the Adjudicating Authority correctly deferred to the Allahabad High Court on the underlying dispute. The Respondent No. 2 submitted that the concession of the Impugned Order, permitting continuation of moratorium-period arrangements for 12 months or until Writ disposal (whichever earlier), aptly underscores water and land's pivotal role in revival, consonant with *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17, and Section 31(2) IBC.

41. The Respondent No. 2 contended that the Approved Resolution Plan entails infusion of Rs. 1,102 Crores, repayment of Rs. 2,500 Crores to secured creditors, and remediation of defaults as per Schedule 2, Serial No. 3; leveraging its stature as India's largest private thermal power producer with 12,450 MW

capacity, the Respondent No. 2's implementation expertise necessitates such interim safeguards to optimize value and avert operational halts. The Respondent No. 2 submitted that the concession advances public interest by forestalling disruptions, faithful to the Code's rehabilitative mandate, without impinging on the Appellant's Writ entitlements.

42. Concluding arguments, the Respondent No. 2 requested this Appellate Tribunal to dismiss the appeal.

Findings

43. We have noted the submission of both the parties in detail above. To understand the context of the pleadings, it is important to note the background of the case. We note that the Financial Creditor M/s ICICI Bank filed an application bearing C.P. (IB) No. 863/PB/2020 under Section 7 of the Code for initiation of CIRP against the Corporate Debtor i.e., Essar Power M.P. Limited ('Corporate Debtor') which was admitted by the Adjudicating Authority on 29.07.2020. Subsequently, the then RP made a public announcement in Form A on 10.10.2020 in terms of Regulation 6(1) of IBBI (Insolvency Resolution Process for Corporate Person), Regulation, 2016.

44. It is important to note the financial background of the case in terms of claim filed, admitted claims and the claim provided in the Resolution Plan. We note that Secured Financial Creditors filed total claims of Rs. 12,439 Crores (approx..) out of which claims of Rs. 12,012 Crores (approx.) were admitted. The

Resolution Plan provide for Rs. 2,500 Crores which is 20.69% of the amount claimed.

Similarly, we note that Unsecured Financial Creditor filed claims for Rs. 497.59 Crores out of which claims of Rs. 545.91 Crores were admitted. The Resolution Plan provide for NIL which is 0% of the amount claimed.

We further note that Operational Creditors filed claim of Rs. 7,272 Crores out of which claims of Rs. 6,560 Crores were admitted. The Resolution Plan provide for NIL which is 0% of the amount claimed.

Thus, the grand total of claims made by all creditors was Rs. 20,209 Crores admitted claims was Rs. 12,736 Crores (approx.). The Resolution Plan provide Rs. 2,500 Crores (approx.) which is 12.37% of the amount claimed.

45. We need to take into consideration that the claims of Unsecured Financial Creditor of Rs. 497.59 Crores as well as claims of Operational Creditors of Rs. 7,272 Crores have been completely wiped out and nil payment has been provided. Here, we would like to note that the total claims of the Appellant was Rs. 12.09 Crores (Approximately), which is in percentage **terms a very minicular zize of 0.0006% of total claim.** At this stage, we would like to state that all claims are required to be equally important, however, the claims are considered w.r.t. Resolution Plan amount approved by CoC and Adjudicating Authority and in this context the Resolution Plan provide nil payment to the Appellant alongwith all Unsecured Financial Creditor and Operational Creditor.

46. We take note that the total fair value of the Corporate Debtor was disclosed as Rs. 2657.2 Crores and the liquidation value of the Corporate Debtor was disclosed as Rs. 1733.4 Crores.

47. We also note that several I.A.'s were filed by various objectors opposing the Resolution Plan proposed by the CoC during adjudication for approval of Resolution Plan by the Adjudicating Authority. The Appellant herein also filed an I.A. No. 2785 of 2021 for his claims. In the said I.A. 2785 of 2021, the following reliefs were sought by the Appellant :-

- (i) Direct the Resolution Professional of the Corporate Debtor to admit the entire amount claimed by the Applicant i.e. an amount of INR 12,08,64,637 (Rupees Twelve Crore Eight Lac Sixty Four Thousand Six Hundred Thirty Seven Only), being the total outstanding amount payable till September 29, 2020 i.e, the date of commencement of CIRP;*
- (ii) Direct the Resolution Professional to revise and update the list of creditors uploaded on the website of the Corporate Debtor as per Form B submitted to the Respondent; and*
- (iii) Direct the Resolution Professional to admit the outstanding claim amount of Rs. 5,17,21,063 (Rupees Five Crore Seventeen Lakhs Twenty One Thousand Sixty Three Only) for the period of October 2020 to May 2021 and immediately release payments for the same.*
- (iv) Direct the Resolution Professional of the Corporate Debtor to pay month to month charges to the Applicant towards the drawl of water; and*

(v) *Pass any other or further order(s) as this Hon'ble Tribunal may deem fit and necessary in the facts and circumstances of the given case."*

(Emphasis Supplied)

48. We take into consideration the relevant portion of the Impugned Order dated 01.11.2021 with reference to the I.A. No. 2785 of 2021 which reads as under :-

"54. That the necessary of going into the Prayer (i) and (ii) made by U.P Jal Vidyut Nagar Limited is not required since undisputedly the U.P Jal Vidyut Nagar Limited, is falling under the category of the Operational Creditor. That irrespective of the claim amount the Operational Creditor are awarded 'nil' value in the resolution plan.

55. That with respect to Prayer (iii) and (iv) the U.P Jal Vidyut Nagar Limited has raised its claim which as per it is arising during the CIRP Period.

64. That in our view the dispute with regard to the charges levied by UPJVNL existed between the Corporate Debtor, UPJVNL and State of Madhya Pradesh, much prior to the initiation of CIRP. Further the litigation went to the Hon'ble High Court of Madhya Pradesh, by filing Writ Petition, which got dismissed on the jurisdictional ground. Further the Writ Petition was filed before the Hon'ble Allahabad High before the commencement of the CIRP.

65. Here it is not the case where no payment, whatsoever made by the Corporate Debtor during the CIR Process for using the water, as the payment has been made to the Madhya Pradesh Government. Since the right of UPJVNL to levy

charges for supplying water to the Corporate Debtor is already under challenge, prior to the initiation of the CIRP before the Hon'ble Allahabad High Court, therefore we are of the considered view that this Adjudicating Authority has no jurisdiction to adjudicate the dispute or any claim arising out of such transaction which is subject matter of Writ Petition before the Hon'ble Allahabad High Court.

66. That Accordingly we are of the view that Prayer (iii) and (iv) made in IA 2785 of 2021 requires no consideration. Hence IA 2785 of 2021 is dismissed.”

(Emphasis Supplied)

49. At this stage, it is sufficient to note that the prayers of the Appellant herein were not considered favourable by the Adjudicating Authority and against which the Appellant has filed the present appeal before us.

50. In the present appeal, following relief has been sought:-

“In view of the facts mentioned in paragraph 7 above, points in dispute and questions of law set out in paragraph 8, the Appellant most respectfully prays that this Hon'ble Appellate Tribunal be pleased to:

(a) To set aside the Impugned Order dated November 01, 2021, passed by the Hon'ble National Company Law Tribunal in I.A. No. 2785 of 2021 in Company Petition (IB) No. 863/PB/2020;

(b) Direct the Resolution Professional to admit the entire amount claimed by the Appellant i.e. and amount of INR 12,08,64,637 (Rupees Twelve Crore Eight Lac Sixty Four Thousand Six Hundred Thirty Seven Only), being the total outstanding amount

payable till September 29, 2020 i.e. the date of commencement of CIRP;

(c) Direct the Resolution Professional to admit the outstanding claim amount of Rs. 5,17,21,063 (Rupees Five Crore Seventeen Lakhs Twenty One Thousand Sixty Three Only) for the period of October 2020 to May 2021 and immediately release payments for the same.

(d) Direct the Resolution Professional to pay month to month charges to the Appellant towards the drawl of water;

(e) Pass an order awarding cost of the present Appeal;

(f) Pass such other orders as this Hon'ble National Company Law Appellate Tribunal may deem fit and proper in the circumstances of the case and thus render justice.”

(Emphasis Supplied)

51. Thus, we note that the Appellant is not seeking to set aside the whole Impugned Order but has requested this Appellate Tribunal to set aside the Impugned Order 01.11.2021 passed in I.A. No. 2785 of 2021. The other prayers are related with the same i.e., direction to RP to admit the entire claims of Rs. 12,08,64,637/- and also to admit outstanding claims of Rs. 5,17,21,063/- for the period from October 2020 to May 2021.

52. The Appellant raised the issue primarily on the account that the then RP decided to categorised the claims of the Appellant as contingent and admitted only Rs. 1 against Rs. 12,08,64,637/- filed by the Appellant. The Appellant is also aggrieved that the Corporate Debtor did not make other payment and payment

made were “under protest”. It is also the case of the Appellant that Impugned Order failed to appreciate the fact of drawl of water which is stated to have been admitted by the RP and further pointed out that contention of Corporate Debtor i.e., Corporate Debtor is not drawing water from U.P. Jal Vidyut Nigam Limited is contrary to the record.

53. The Appellant is also aggrieved by the fact that the Impugned Order failed to consider that the Corporate Debtor was liable to make payment for “loss of generation” on account of drawl to water and further the Appellant was not bound to supply water in view of the failure of the Corporate Debtor to make the payment.

54. The Appellant has also challenged that the RP did not have any adjudication power and thus, categorisation of his claims as contingent claims was not in accordance with law.

55. Since, these issues are inter-connected, inter-related and inter- dependent, we shall discuss these issues in conjoint matter in the following discussions.

56. As regard, the contentions of the Appellant that the RP did not have adjudicating power in relation to admission of claims, we need to take into consideration the provisions as provided in Section 18 of the Code along with Regulation 10 and 13 (1) of CIRP Regulation. These reads as under :-

“ Section 18 of the Code : Duties of interim resolution professional.

**18. The interim resolution professional shall perform the following duties, namely:—*

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—

(i) business operations for the previous two years;

(ii) financial and operational payments for the previous two years;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(b) receive and collate all the claims^{J2} submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

(c) constitute a committee of creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

- (iii) tangible assets, whether movable or immovable;
- (iv) intangible assets including intellectual property;
- (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;
- (vi) assets subject to the determination of ownership by a court or authority;
- (g) to perform such other duties as may be specified by the Board.

Explanation.—For the purposes of this ¹[section], the term “assets” shall not include the following, namely:—

- (a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;
- (b) assets of any Indian or foreign subsidiary of the corporate debtor; and
- (c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

Regulation 10: Substantiation of claims.

10. The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.

Regulation 13: Verification of claims.

13. (1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors

along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

Regulation 14: Determination of amount of claim.

14. (1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.

(2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.

(Emphasis Supplied)

57. Thus, Section 18 of the Code r/w Regulation 10, 13(1) and 14 of CIRP Regulations described the role of the RP to collate and verify based on documents available. It implies that RP is not to adjudicate on the legality or otherwise of the claims filed by any creditors.

58. At this stage, we will like to take into consideration the ratio of Hon'ble Supreme Court of India in the matter of ***Swiss Ribbons Private Limited and Ors v. Union of India and Ors*** [(2019) 4 SCC 17] where it was categorically held that while verifying and admitting the claims, a resolution professional has been conferred only with administrative powers and not with quasi-judicial powers. The power to "adjudicate" has been conferred only on the adjudicating authority.

Similar observations were also made by the Hon'ble Supreme Court in the matter of *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.*, Civil Appeal No. 8766-67/2019.

59. Having noted above, it will also important to understand the implication of Regulation 14 of CIRP Regulation, which we have already noted above and according to Regulation 14, where the amount claimed by the creditor is not precise due to any contingency or other reason, the RP shall make the best estimate of the amount of the claim based on information available to him.

60. In this connection, we note that the Appellants claim pertains to the pre-CIRP which was sub-judice before Allahabad High Court contingent. In the Appeal, the Appellant admits that the Corporate Debtor has challenged the legality and validity of the invoices raised from 5 December 2012 till | May 2020 by the Appellant before the Allahabad HC vide writ petition being Writ Petition (Civil) No. 12331 of 2020. The said Writ Petition was first listed for hearing on 14 August 2020 i.e., before the Admission Order and the Allahabad High Court has already issued notice to the Appellant. Therefore, the matter has been sub-judice before the Allahabad HC since then.

61. It has been brought out by the Respondents that based on information and documents available with the then RP as taken into consideration that the legality and validity of the invoices raised by the Appellant were sub-judice before the Allahabad High Court.

62. Thus, it become clear that the issue whether the Corporate Debtor was liable to make payments as claimed by the Appellant with relation to impugned invoices or not, was contingent on the outcome of the pending writ petition before the Allahabad High Court. We reiterate that the total claim of the Appellant is Rs. 12,08,64,637/- and against which the then RP admitted claim of the Appellant as Rs. 1/- as contingent claim.

63. We would like to take into consideration the said treatment which reads as under : -

Annexure A-2

Eaton Power M P Limited

List of Creditors under clause (a) of sub-regulation (2) of regulation 12 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016
(Version 3: Pursuant to claims received and updated as on 24-02-2021)

Sl No.	Category of Creditor	Summary of Claim Received		Summary of Claim Admitted		Amount Contingent Claims	Amount of claims not admitted	Amount of claims under verification	Details in Annexure	Remarks if any
		No. of Claims	In INR	No. of Claims	In INR	In INR	In INR	In INR		
1	Secured financial creditors belonging to any class of creditors	-	-	-	-	-	-	-	1	
2	Unsecured financial creditors belonging to any class of creditors	-	-	-	-	-	-	-	2	
3	Secured financial creditors (other than financial creditors belonging to any class of creditors)	5	124,301,359,888	5	120,129,831,967	-	4,261,526,118	-	3	
4	Unsecured financial creditors (other than financial creditors belonging to any class of creditors)	6	4,875,551,504	4	545,937,816	-	4,430,013,688	-	4	
5	Operational creditors (Workmen)	-	-	-	-	-	-	-	5	
6	Operational creditors (Employees)	240	181,558,167	240	142,475,437	-	39,078,731	-	6	
7	Operational creditors (Government Dues)	8	31,645,329,721	8	4,288,211,303	26,973,881,333	552,126,677	31,108,209	7	
8	Operational creditors (other than Workmen and Employees and Government Dues)	162	28,561,324,588	144	500,214,935	26,325,398,969	2,754,084,655	1,625,000	8	
9	Other creditors, if any, (other than financial creditors and operational creditors)	-	-	-	-	-	-	-	9	
Total		421	190,975,623,665	401	125,440,671,057	53,259,261,133	12,636,834,948	32,733,209		

Notes:

- The Security Interest against the claimed amount are in the process of further review and may undergo change in case the Resolution Professional comes across any additional evidence/document, warranting such change as per Regulation 14 of CIRP Regulations.
- Where the amount claimed by a creditor is not proved due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him. The interim resolution professional or the resolution professional, as the case may be, shall review the amount of claims admitted, including the estimate of claims made under sub regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.
- Amounts under verification are being reconciled with the books of accounts and records available with the corporate debtor. Revisions, if any, will be updated post verification. Also amount admitted may undergo change in case the Resolution Professional comes across any additional evidence/document, warranting such change in admitted amount.
- The Official Exchange rate published by RBI on 29 September 2020 has been considered as the reference exchange rate for claims denominated in foreign currency.

Such dispute has been dealt elaborately by the Hon'ble Supreme Court of India in the matter of ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.***, and the relevant para No. 155 reads as under :-

“155. So far as Dakshin Gujarat Vij Co. (Respondent 11 in Civil Appeal Diary No. 24417 of 2019), State Tax Officer (Respondent 12 in Civil Appeal Diary No. 24417 of 2019), Gujarat Energy Transmission Corporation Ltd. (Respondent 17 in Civil Appeal Diary No. 24417 of 2019) and Indian Oil Corporation Ltd. (Respondent 18 in Civil Appeal Diary No. 24417 of 2019) are concerned, the resolution professional admitted the claim of the abovementioned respondents notionally at INR 1 on the ground that there were disputes pending before various authorities in respect of the said amounts. However, NCLT through its judgment dated 8-3-2019³ directed the resolution professional to register the entire claim of the said respondents. NCLAT in paras 44, 45 and 201 of the impugned judgment upheld⁷ the order passed³ by NCLT as aforesaid and admitted the claim of the abovementioned respondents. We therefore hold that this part of the impugned judgment deserves to be set aside on the ground that the resolution professional was correct in only admitting the claim at a notional value of INR 1 due to the pendency of disputes with regard to these claims.”

(Emphasis Supplied)

66. In terms of the above judgement, the RP is required to admit the claims of the Appellant notionally @ Rs. 1/- on the ground that disputes are pending before

various authorities irrespective of the amount claims. In the present case, although amount claims by the Appellant is Rs. 12,08,64,637/-, however, the then RP admitted claim at nationally at Rs. 1/- as contingent claim and reflected amount as contingent liability.

We need to take into consideration the fact that since vires and legality of the claims of the Appellant is admittedly subjudice before the Allahabad High Court for the adjudication and outcome therefore, remain uncertain. Thus, we are of opinion that the then RP had no choice but to admit the claims of the Appellant as contingent claims. In view of these facts and law laid down by the Hon'ble Supreme Court of India, we do not find any error in treating the Appellant's claims as discussed above.

67. We carefully consider the submission of Respondent No.1 that even if assuming (and not conceding) that the averments made in the Appeal in entirety are correct, the plain reading of the averments in the Appeal still does not make out any ground whatsoever for granting the relief prayed for by the Appellant i.e., treatment of its claims as a crystallised claim, as doing so would usurp the jurisdiction of the Hon'ble Allahabad HC, and therefore, the Appeal deserves to be dismissed in *limine*. We find force in the logic in the argument of the Respondent no. 1, thus we are not able to align ourselves with the pleadings of the Appellant on this ground.

68. During, hearing it has been brought to our notice that the State of Madhya Pradesh was allocated 5.25MAF water from the Sone River under the terms of

the Bansagar Project Agreement dated 16 September 1973 ("Bansagar Project") entered into amongst the States of Madhya Pradesh, Bihar and Uttar Pradesh. Out of this share, the State of Madhya Pradesh could utilise 0.78 MAF water from the Rihand Reservoir which was under the control of the state of Uttar Pradesh. It is relevant to note that under the terms of the Bansagar Project, no allocation was made to the state of Uttar Pradesh from the Rihand Reservoir.

69. Subsequently, the Corporate Debtor was allocated 0.058 MAF per annum of water by Madhya Pradesh Water Resource Department ("MPWRD") from Rihand Reservoir on 27 July 2006 against Government of Madhya Pradesh's share of water in Rihand Reservoir which is under the control of Appellant. Therefore, merely due to the control of the Appellant on the Rihand Reservoir, in order to enable the Corporate Debtor to draw water from the reservoir by building intake pump house in the submergence area in Uttar Pradesh, the Appellant entered into the Agreement dated 23 October 2009 (23 October Agreement) with the Corporate Debtor to enable the Appellant to be able to construct the pump and draw water from the said Rihand Reservoir. Subsequently in April 2012, the Corporate Debtor started drawing water out of the share allocated to it by the State of Madhya Pradesh from the Rihand Reservoir. Between January 2013 to May 2015, the Appellant addressed various correspondences raising invoices on the Corporate Debtor for the water drawn by it from the Rihand Reservoir under various heads, including charges for drawal of water, loss of power generation, late payment surcharge etc. The Corporate Debtor in response, addressed

correspondences in the said period calling upon the Appellant to cancel the invoices raised by it considering that it was drawing water from the share of the State of Madhya Pradesh in the Rihand Reservoir. As such, the claim of Appellant under the said invoices remained in dispute from the very first day.

70. Thus, it is the case of the Respondent No.1 that there were some pre-existing disputes between the Appellant and the Corporate Debtor relating to the locus of the Appellant to levy charges on the water drawn from Rihand Reservoir as the water allocation is from the share of the State Government of Madhya Pradesh and accordingly, the charge for the same is being levied by the Government of Madhya Pradesh under the terms of the Agreement for Supply of Water To Industrial /Power Plant dated 16 February 2010 ("16 February Agreement") for the water being utilised by the Corporate Debtor under the said Agreement and the charges are being regularly paid to the Government of Madhya Pradesh by the Corporate Debtor in terms of the said 16 February Agreement.

71. We have noted submission of the Respondent No.1 that in relation to the foregoing the Corporate Debtor had filed Writ Petition No. 1724 of 2015 before the Madhya Pradesh High Court on 2 February 2015 wherein it had challenged the levy of water charges by the Appellant since the water is allocated from the share of the State of Madhya Pradesh and the charge for the same is levied by the Government of Madhya Pradesh. The Madhya Pradesh High Court vide an order dated 30 March 2015 had granted a stay against any coercive action after hearing

the Corporate Debtor's argument at length. The Respondent No.1 states that on 27 February 2020, the Writ Petition was disposed of by the Madhya Pradesh High Court only on the ground of territorial jurisdiction with a liberty to pursue remedy before the appropriate jurisdiction. It is further case of the Respondent No. 1 & 2 that the interim protection granted by the Madhya Pradesh High Court vide order dated 30 March 2015 had been in operation till 27 February 2020. As such, the Appellant has been aware that the Corporate Debtor had, at all relevant times, objected to the liability to make payments towards Impugned Invoices and that issue concerning legality of the said invoices were sub judice, and continues to be so even thereafter. We find force in contentions of the Respondents No. 1 & 2.

72. Now we will take another issue raised by the Appellant that the Appellant could not have been asked to continuous supply of water to Corporate Debtor during CIRP without payment. We note that the resolution professional vide his letter dated 5 November 2020 called upon the Appellant to not interrupt the supply of water to the Corporate Debtor during the CIRP as being essential for the continued existence of the Corporate Debtor as a going concern. It has been the case of the Respondent No.1 that the Corporate Debtor has always maintained a consistent stand and disputed any liability under the Impugned Invoices. However, the Appellant continued raising invoices for generation loss during the CIRP period purportedly in terms of the 23 October Agreement, which had already expired. The Respondent No.1 further argued that the Appellant had no

right or authority to claim generation loss from the Corporate Debtor since the water being drawn by the Corporate Debtor belonged to the portion allocated to the state of Madhya Pradesh. In any case, the Appellant's right to claim such charges is pending adjudication before the Hon'ble High Court of Allahabad.

73. The Respondent No.1 emphasized that in view of the fact that the liability towards Appellant has always been disputed, and that the payment is being consistently made to MPWRD, the question of payment to the Appellant for the same quantum of water drawn during CIRP or pre-CIRP admittedly from the share of water allocated to Madhya Pradesh would not arise. The issue of entitlement of the Appellant to claim any amount in relation to the water drawn by the Corporate Debtor is already subject-matter of adjudication before the Allahabad High Court.

74. We find logic in the arguments of the Respondent No. 1 that if the very subject itself was sub-judice, the conduct of the Respondent No. 1 was correct in given circumstances. The main point of disputes and treatment of such claims had already been discussed by us in the preceding paragraphs and shall not repeat the same as the logic remains the same.

75. The Adjudicating Authority has rightly pointed out correct position of law as stated in para 65 of the Impugned Order while recording that It “has no jurisdiction to adjudicate the dispute or any claim arising out of such transaction which is subject matter of a writ petition before the Hon'ble Allahabad High Court". We tend to agree with the observations of the Adjudicating Authority.

76. The Appellant has also pleaded that the agreement expired between the Appellant and the Corporate Debtor on 22.10.2019, however, even after expiry of the said agreement, at the request of the Corporate Debtor, the Appellant allowed the Corporate Debtor to continue to drawl water and accordingly, the Appellant sent invoices for monthly payment and for delayed surcharge. The Appellant further pointed out that the Respondent No. 1 issued letter on 05.10.2020 requesting for continuation of essential services in terms of Section 14 of the Code and as such, the Corporate Debtor should have made the payments to the Appellant of the amount dues.

77. The Appellant also brought out that Appellant issued letter dated 10.03.2021 to the RP to claim balance outstanding of Rs. 4,10,63,874/- for drawl of water by the Corporate Debtor from period between October, 2020 to February 2021. It is further the case of the Appellant that the Appellant issued another letter dated 25.05.2021 and 14.06.2021 to the RP claiming balance outstanding dues of Rs. 5,07,60,568/- and Rs. 5,17,21,063/- respectively for drawl and water by Corporate Debtor between October 2020 till April 2021 and October 2020 to May 2021. The Appellant emphasised that even post the Agreement, the Appellant allowed the Corporate Debtor to draw water from the Rihand Reservoir pursuant to mutual agreement entered into between the Corporate Debtor and the Appellant.

As regards the Appellant's submission that the Corporate Debtor is obliged to make payments towards the invoices raised by the Appellant post the expiry of

the Agreement for drawing water from the Rihand Reservoir, the Respondent No.1 strongly pleaded before us that the water drawn by the Corporate Debtor from the Rihand Reservoir was from the share of water allocated to the State of Madhya Pradesh and not the State of Uttar Pradesh. Furthermore, the Corporate Debtor has been making regular payment to MPWRD for the water drawn by it from the Rihand Reservoir. In any event, the very issue of whether the Corporate Debtor is required to make any payment to the Appellant under the Impugned Invoices is currently sub-judice before the Allahabad HC.

78. The Respondent No.1 reiterated that the sole reason why the Corporate Debtor addressed correspondences to the Appellant requesting not to disrupt the supply of water, being an essential good to the Corporate Debtor was because in spite the water drawn by the Corporate Debtor was from the share allocated to the State of Madhya Pradesh, the Rihand Reservoir wherein the pump house was built by the Corporate Debtor to draw water is under the control of the Appellant.

79. We note that Respondent No.1 has recorded the claim of the Appellant as a contingent claim in accordance with the provisions of Code as well as the law laid down by the Hon'ble Supreme Court from time to time. The Impugned Order has also recorded detailed reasoning while dealing with this subject and justify the continuation of essential services to the Corporate Debtor. We do not find any error in the Impugned Order on this ground.

80. We put a pointed query to the Appellant, that when all Operational Creditor have got nil in the Resolution Plan, how the rights of the Appellant have been

prejudice when he is also getting nil payment. We further asked the Appellant that even if the RP would have admitted his claims in full instead of putting claims as contingent at notional value of Rs. 1, how situation would have changed. It is the case of the Appellant that if its claim would have been reflected in full of Rs. 12,08,64,637/-, perhaps CoC might have taken other decision. We do not find this logic convincing. We have already noted the financial facts and the context of the case earlier. To reiterate, it is pointed out that the total claims filed by Unsecured Financial Creditor and Operational Creditor's are of Rs. 77,698,782,161/- and their entire claim have been wiped out and provided as nil in the Resolution Plan. Keeping this fact and background into consideration, it is quite different to consider the plea of the Appellant that had his claim of Rs. 12,08,64,637/-, would have been provided in full in the list of claims instead as contingent claim @ Rs. 1, fate of the appeal would have been different.

81. We do not find any merit in the argument of the Appellant and reject the same.

82. We further note that in terms of the extend provisions of the Code and the Regulation, creditor is entitled to the extend of maximum as available with reference to the liquidation value. In the present case also on this parameter, the Appellant would have got NIL.

83. Based on above detailed discussions, we do not find any merit on any issue raised by the Appellant. We further hold that the Impugned Order has correctly

dealt the issue raised by the Appellant in I.A. No. 2785 of 2021 in C.P. (IB) No. 863/PB/2020 and we do not find any error in the Impugned Order.

84. Thus, the appeal is devoid of any merit and stand rejected. I.A., if any, are closed. No Costs.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

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