

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.19785 of 2021

Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
Rep. by its Chief Engineer/Mechanical Coal
Having registered office at NPKRR Maaligai
No.144, Anna Salai, Chennai – 600 002. .. Petitioner

Vs

- 1 Union of India
Department of Law and Justice
Rep. by its Secretary
No.26, Mansingh Road
Jaisalmer House, New Delhi - 110 011.
- 2 South India Corporation Private Limited
Chettinad Towers, No.603, Anna Salai
Chennai – 600 006.
- 3 The Union of India
Through the Ministry of Corporate Affairs
Having its office at Sastri Bhavan
Rajendra Prasad Marg
New Delhi - 110 001.
(R3 Suo motu impleaded
vide order dated 22.10.2021) .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of declaration declaring the provisions of Section 9 of the IBC, 2016 as unconstitutional and void in so far as it extends its application to the disputes arising under the Electricity Act,, 2003.

For the Petitioner : Mr.R.Shunmugasundaram
Advocate-General
for Mr.L.Jaivenkatesh

For the Respondents : Mr.R.Shankaranarayanan
Additional Solicitor-General
for Mr.Rajesh Vivekanandan
for 1st respondent

: Mr.Dhruv Mehta
for Mr.R.Jawahar
for 2nd respondent

ORDER

(Order of the Court was made by Hon'ble Chief Justice)

The issue involved in the present petition is as to whether a company which is substantially owned by a government, is amenable to the jurisdiction of the National Company Law Tribunal in insolvency proceedings.

2. Though the petitioner seeks to suggest that a company which is substantially owned by any government may not be complained against or insolvency proceedings brought against it before the NCLT, there does not appear to be any exemption provided under the Companies Act, 2013 or the Insolvency and Bankruptcy Code, 2016 in such regard.

3. The petitioner also seeks to rely on Section 86(1)(f) of the Electricity Act, 2003 and submits that Tangedco, the petitioner herein, being the generator and distributor of electricity under the aegis of the State Government in the State of Tamil Nadu would be amenable to the Act of 2003 and since the matter pertains to the generation of the electricity, the Act of 2003 as a special statute will prevail over the Acts of 2013 and 2016.

4. The assessment of one Act being regarded as a special Act qua another arises when there is a possibility of a conflict or, in fact, when there is an unavoidable conflict. In the present case, no such scenario arises as the principal respondent has taken the petitioner herein before the NCLT claiming to be a creditor of the petitioner

herein and citing the perceived inability of the petitioner herein to pay its debts. The provision that the petitioner refers to from the Act of 2003 – Section 86(1)(f) – pertains to disputes between the licensees and distributing companies. Though the petitioner is a distributing company, the second respondent is certainly not a licensee and its legal status will be that of a trade or operational creditor.

5. The petitioner, however, accepts that the second respondent has a right to approach the NCLT, but asserts that the petitioner has a right to raise legitimate disputes qua the claim. Indeed, it is the petitioner's case that the petitioner has a counter-claim and there is no net amount that can be said to be payable to the second respondent herein.

6. It is certainly within the domain of the NCLT to adjudicate upon any dispute raised by a debtor in any insolvency proceedings brought by a creditor. Indeed, the NCLT is obliged to decide such issue before the NCLT can arrive at a conclusion that the perceived debtor company is insolvent.

7. Accordingly, since the petitioner seeks leave to raise all disputes pertaining to the claim of the second respondent before the National Company Law Tribunal, W.P.No.19785 of 2021 is permitted to be withdrawn with liberty to the petitioner to raise permissible disputes in accordance with law before the National Company Law Tribunal. However, the petitioner will not question the authority of the National Company Law Tribunal to receive the petition.

W.M.P.No.21059 of 2021 is closed. There will be no order as to costs.

(S.B., CJ.)

(P.D.A., J.)

08.11.2021

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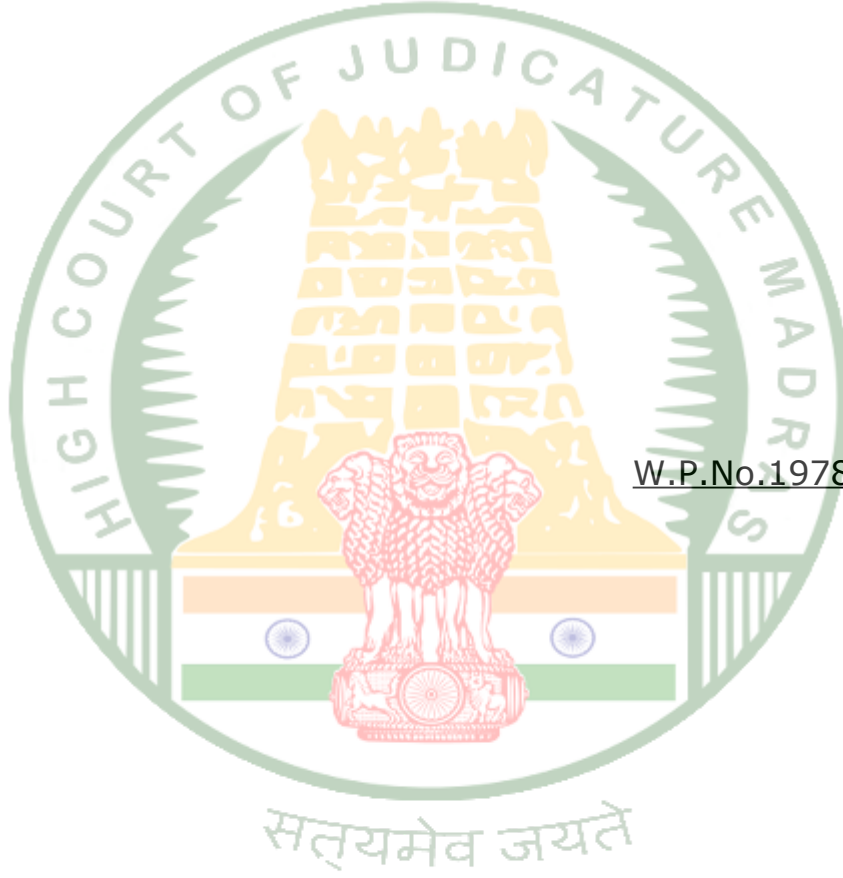
To:

- 1 The Secretary
Union of India
Department of Law and Justice
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THE HON'BLE CHIEF JUSTICE
AND
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