

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CA No. 248/2019

in

CP (IB) No. 30/Chd/Pb/2017

**Under Section 10 of the
Insolvency & Bankruptcy Code,
2016**

In the matter of:

F.M. Hammerle Textiles Limited

...Corporate Debtor

And in the matter of CA No. 248/2019

**Mr. Rajeev Goel,
Resolution Professional
FM Hammerle Textiles Limited**
having its registered office at
BDO Restructuring Advisory LLP,
The Palm Spring Plaza
Unit No. 1501 to 08
Sector-54, Golf Course Road,
Gurgaon-122001, Haryana

...Resolution Professional/Applicant

Vs.

Maharashtra State Electricity Distribution Company Limited,
Through the Superintending Engineer,
Administrative Building, 1st Floor, Tarabai Park,
Kolhapur-416003, Maharashtra

...Respondent/Non-Applicant

Judgment delivered on: 24.02.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present :

For the Applicant : Mr. Yashpal Gupta, Advocate

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For the Respondent : Mr. SS Brar, Advocate

Per: Subrata Kumar Dash, Member (Technical)

JUDGMENT

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In the present application, the applicant is seeking direction against the respondent to waive off the interest charges to the tune of Rs. 5,01,216.38/- in respect of electricity connections bearing Consumer Nos. 251019007760 and 251019053220. Further, seeking direction against a respondent to not bill for minimum charges for the period of temporary disconnection of electricity connection, i.e., from 09.08.2018 till the date of re-connection, i.e., 05.01.2019 to the tune of Rs. 32,57,169/- during which no supply of electricity was effected by the MSEDCL, and to restrain the respondent from disconnecting the electricity supply at the plant.

2. In the instant matter, CIRP was initiated vide order dated 27.06.2017 of this Adjudicating Authority. The respondent temporarily disconnected the electricity connection on 09.08.2017 because of non-payment of electricity charges since January 2018 to the tune of Rs. 72,63,160/-. Further, in this connection, the applicant filed an application CA No. 445/2018, praying to pass direction against the respondent for restoration of electricity at the plant. The same has been restored vide order dated 18.12.2018 of this Adjudicating Authority. The relevant extract of the above orders is as follows:

"The learned counsel for the Resolution Professional submits, on Instructions, that after the workers have joined their duties, there is likelihood of profits being earned by the company. In view of the

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aforesaid position, we direct the electricity department to immediately invoke the bank guarantee and get the amount adjusted from the bank guarantee towards the present outstanding electricity charges and in that event to immediately restore the electricity connection without insisting upon the balance amount of electricity reconnection charges. The balance charges may be added in the future electricity bills. The compliance be made by the electricity department, State Bank of India and the Resolution Professional within a week of the receipt of this order with direction to the Resolution Professional to keep depositing the electricity bills including the balance amount of the current outstanding bill relating to the period post CIRP process, regularly. This is without prejudice to the merits of the application for liquidation of the corporate debtor filed by the Resolution Professional Late payment charges included in the electricity bill are also waived."

3. It is submitted by the applicant that the respondent has restored the electricity in view of the directions passed in the above order dated 18.12.2018. In spite of the directions passed by this Adjudicating Authority in the said order, the respondent had not waived off the interest levied by them due to reason of delayed payment, the interest levied by the respondent since April 2018 is as follows, as per the February 2019 electricity bills:

Sr. No.	Electricity Connection Details	Interest Charges (in Rs.)
1.	251019053220	2,27,735.28
2.	251019007760	2,73,481.10

4. It is further submitted by the applicant that bill pertaining to the period from 09.08.2018 to 05.01.2019 is as follows:-

Connection No.251019007760						
Month	August	September	October	November	December	Total
Bill for the month	322999	420000	420000	420000	420000	200299

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Connection No.251019053220						
Month	August	September	October	November	December	Total
Bill for the month	202770	262850	262850	262850	262850	1254170

5. It is stated by the applicant that the respondent has issued the notices to the Corporate Debtor for the disconnection of the electricity supply demanding Rs.3519099.95 and Rs.1771635.94, pertaining to connection No.251019007760 and connection No.251019053220 respectively.

6. The respondent has filed his written submissions vide diary No.1348 dated 18.02.2020, wherein it is stated that the applicant choose not to raise the present relief in the earlier CA No.445/2018, therefore, the present application is barred by the principal under Order 2 Rule 2 of CPC. Further, the applicant choose not to seek a waiver of interest so levied in the CA No.445/2018 and thus cannot claim such a relief which ought to have been claimed in the earlier application.

7. It is submitted by the respondent that the charge of interest and the late payment charges are separate and distinct charges from each other. Interest is being charged on the unpaid amount of the previous bills, which is categorized as arrears, whereas delayed payment charges are imposed for non-payment of the bill till the cut-off date scheduled for payment of the bill. The same is provided under Regulation 15.5.4 of MERC (Electricity Supply Code and other Conditions of Supply) Regulation, 2005. The same is extracted herein below for reference purpose:-

“15.5.4 A consumer who neglects to pay his bill is liable for levy of the late and interest on arrears in accordance with relevant orders of the

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commission, appropriation of security deposit and/or disconnection of supply in accordance with the provisions of the act and these Regulations."

8. It is further submitted by the respondent that the Adjudicating Authority vide its above order dated 18.12.2018 had only waived late payment charges, which is a different and separate payment category as against the interest charged on arrears. Further, as per Regulation 15.7 of MERC (Electricity Supply Code and other Conditions of Supply) Regulation, 2005, the Ld. State Commission, i.e. MERC, is empowered to pass appropriate orders on the aspect of settlement of arrears as well as late payment charges. The above Regulation is extracted hereinbelow for reference purposes:-

"15.7 Settlement of Arrears in Bil Payments:

15.7.1 The Distribution Licensee may, at its discretion, allow consumers the facility of payment of arrears by way of installments: Provided that the facility of payment of arrears by way of installments shall not affect the liability of the consumers to pay interest and additional charges for delayed payment as per the relevant orders of the commission from time to time, until all arrears have been cleared."

9. The respondent has placed reliance on the judgment of Hon'ble NCLAT in the matter of ***Dakshin Gujarat Vij Co. Ltd. Vs. ABG Shipyard Ltd*** in Company Appeal (AT) insolvency No. 334/17 dated 08.02.2018, wherein it held that supply of essential services, during the moratorium period is subject to payment of their current charges.

10. The respondent has submitted that the levy of minimum charges to the tune of Rs. 8,40,000/- for consumer No.251019007760 and Rs.5,25,700/- for consumer CA No. 248/2019

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No.251019053220 is for temporary power cut supply for the period i.e. November 2018 and December 2018. Further, the applicant is contractually bound to pay for the minimum charges in accordance with clause 11 of the agreement of energy supplied dated 20.03.2010 entered between MSEDCL and the corporate debtor. The said clause 11 states that:-

“if a consumer is temporarily disconnected and later on within six months reconnected with energy supply, then his liable to pay the minimum demand charges from the date of temporary disconnection to the date of the connection of the supply”

11. It is averred by the respondent that if the prayer of waiver of interest and minimum charges is granted, then the liability will be passed on to the end consumers, which eventually results in transferring a burden on society at large.

12. We have heard the learned counsel for the applicant and the respondent and carefully perused the record available.

13. In the case at hand, the disconnection of the electricity took place between 09.08.2018 till 05.01.2019, i.e., after the initiation of the CIRP. As per the order dated 18.12.2018 of this Adjudicating Authority, the relevant part is extracted in para 2 above. The Resolution Professional was to deposit all the electricity dues, including the balance amount of the current outstanding bill relating to the period post-CIRP process.

14. The interest has been charged due to delayed payments during the CIRP period. As the Resolution Professional is expected to pay the electricity charges in time during the CIRP period, a request for non-payment of electricity charges cannot be entertained. It is also noted that this Bench has earlier waived the late payment charges, which is different from the charge of interest for late payment.

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We find the merit of the contention of the respondent that if the charges as per the MERC Regulations 2005 are not paid by the corporate debtor and the same would be passed on to the regular consumers, which will have a general adverse impact on the economic environment. On the same ground, we do not see any reasoning for waiving the minimum charges payable by the corporate debtor as per Clause 11 of the MSEDCL.

15. In the result, the present application fails and is dismissed accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

February 24, 2023

PB/ASH

Sd/-

(Harnam Singh Thakur)
Member (Judicial)