

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**ALLAHABAD BENCH AT ALLAHABAD**

**COMPANY APPLICATION NO. 88/ALD/2018**  
**IN**  
**COMPANY PETITION NO. (IB) 23/ALD/2017**

*SECTION 35(1) (n) OF I.& B. CODE,2016  
 APPLICATION TO THE ADJUDICATING  
 AUTHORITY FOR NECESSARY  
 ORDERS/DIRECTIONS FOR THE  
 LIQUIDATION OF CORPORATE DEBTOR.*

**IN THE MATTER OF**

**Raman Ispat Private Limited, a company incorporated under the Companies Act, 1956 having its registered office at 7<sup>th</sup> KM, Meerut Road, Muzaffarnagar, through its Liquidator Shri Parveen Bansal**

..... Applicant/Liquidator of Corporate Debtor

**VERSUS**

**Executive Engineer**  
**Paschimanchal Vidyut Vitran Nigam Limited**  
 Electricity Urban Distribution Division-1, Town Hall, Muzaffarnagar. U.P.-251001.

..... **RESPONDENT NO. 1**

And

District Collector, Muzaffarnagar, in the State of U.P.

..... **RESPONDENT NO. 2**

And

Tehsildar, Office of Tehsildar Sadar, Muzaffarnagar, in the State of U.P.

..... **RESPONDENT NO. 3**

**JUDGMENT/ORDER DELIVERED ON 21.08.2018**

**CORAM : SH. V.P SINGH, MEMBER (J)**  
**MS. SAROJ RAJWARE, MEMBER (T)**

**For the Applicant: Shri Anil Kumar, (PCS)**  
**For the respondents: Shri Chandan Agrawal, Advocate**

**Per Se: Sh. V.P SINGH, MEMBER (J)**

**ORDER/JUDGMENT**

1. This company application has been filed by the Liquidator in the case of Raman Ispat Pvt Ltd. Vs **Executive Engineer**, Paschimanchal Vidyut Vitran Nigam Ltd. & the District Collector ,Muzaffarnagar and Tehsildar Muzaffarnagar to release the attached property of Raman Ispat Private Limited (“Corporate Debtor”) and for issuing direction to the Paschimanchal Vidyut Vitran Nigam Limited for submitting their claims to the liquidator of the corporate debtor appointed under Section 33 of the Insolvency and Bankruptcy Code, 2016 in respect of outstanding dues for supplies of electricity, in Form C prescribed under Insolvency and Bankruptcy Code (liquidation Process) Regulations, 2016. Applicant Mr Praveen Bansal is the liquidator appointed by order dated 31<sup>st</sup> January 2018. The corporate debtor had an agreement dated 11<sup>th</sup> February 2010 with Paschimanchal Vidyut Vitran Nigam Limited (from now on will referred as P.V.V.N.L) for supply of electrical energy. Clause 5 of the agreement provides that “The outstanding dues will be a charge on the assets of the company. Before sale is made the outstanding dues will be cleared and in the alternative, the deed to agreements/sale will specifically mention the outstanding dues and the methods of its payment.”
2. The applicant contends that the Electricity Distribution Urban Division 1, Muzaffarnagar raised bills for supply of electrical energy to the corporate debtor from time to time to which corporate debtor was unable to pay due to losses suffered by the corporate debtor. As per the final bill dated 27<sup>th</sup> January 2017, total arrears works out to R. 4,32,33,883/-.
3. Since P.V.V.N.L. has provided electrical energy to the corporate debtor, therefore, it is an operational creditor within the definition provided under Section 5(20) and 5(21) of the I.B. Code, 2016.
4. The properties owned by the corporate debtor have been attached by District Collector, Muzaffarnagar vide its Order No. 1048 dated 12 January 2016 and Tehsildar, Muzaffarnagar vide its order 1423F dated 23.1.2016

and has prohibited the transfer of property by sale, donation or any other mode and create charge due to outstanding dues for supply of electrical energy by P.V.V.N.L. **Agreement provides that outstanding dues will be a charge on the assets of the company. Therefore, P.V.V.N.L may be considered as secured operational creditor within the definition provided under Section 2 (30) and 2(31) of the I.B. Code, 2016.**

5. The corporate debtor company is under liquidation and the liquidator's duty is to form liquidation estate of the corporate debtor in terms of Section 36(1) of the Insolvency and Bankruptcy Code 2016 and to consolidate claims of creditors in accordance with Section 38 of the Code and then distribute the proceeds of liquidated estate to the creditors in order of priority prescribed under Section 53 of the Code.
6. The liquidator must form liquidation estate regarding Section 36(1) of the I.B. Code, 2016. The liquidation estate includes assets that may or may not be in possession of the corporate debtor including, but not limited to encumbered assets.
7. The District Collector, Muzaffarnagar and Tehsildar, Muzaffarnagar should not continue to attach properties of the corporate debtor as the same belongs to and vest with the liquidator irrespective of the attachment for the benefit of all the creditors.
8. The liquidator has a duty to consolidate claims of creditors in accordance with Section 38 of the I.B. Code, 2016.
9. It is further stated that liquidator intimated to the Tehsildar, office of Tehsildar, Muzaffarnagar with a copy to Executive Engineer, Electricity Urban Distribution Division (1), Muzaffarnagar vide his letter dated 21.2.2018 regarding commencement of liquidation process of the Corporate debtor. It was informed that under the order of this Tribunal, assets of the corporate debtor will be liquidated and liabilities will be settled out of proceeds of sale by Section 53 of the Code. Request was further made to file claim with the liquidator by the Code and for release

of the attached property in favour of liquidator. Since initiation of liquidation, Liquidator has not received any reply or claim form P.V.V.N.L.

10. It is further stated that the liquidator has a power to sale the movable, immovable and actionable claims of the corporate debtor in liquidation subject to Section 52, by public auction or private contract. The power to transfer the said property to any person or body corporate by sale is specified under Section 35(1) (F) of the Code. It is further stated **“that a message is printed on the fronts of wall of the factory of the corporate debtor that By order of the Tehsildar Sadar, Muzaffarnagar with the property of Raman Ispat Private Limited has been attached and purchase of the same is illegal.”**

11. District Collector has issued notice dated 5<sup>th</sup> March 2018 for recovery of outstanding dues of Rs. 2,50,14,080/- for supply of electrical energy by auction of movable and immovable properties located at Khasara No. 0.4710. It is further stated that it is under his powers to sell the property of the corporate debtor.

12. It is further contended that unless the attachment orders of the District Collector, Muzaffarnagar and Tehsildar, Muzaffarnagar are set aside by this Tribunal, no buyer would be willing to buy the property of the corporate debtor because of the uncertainty about the authority of the liquidator to sell the property. The proceeds from the sale of the liquidation assets shall be distributed in the order of priority prescribed under Section 53 of the I.B. Code, 2016 irrespective of anything contained in any other law. The provision of Insolvency and Bankruptcy Code has overriding effect over the inconsistency with the provisions of any other law.

13. It is further stated that on admission of claim of P.V.V.N.L, the same will be classified to priority prescribed under Section 53 of the Code, and the P.V.V.N.L would be entitled for pro-rata distribution of the proceeds along with the other secured creditors from the sale of liquidation assets. The other secured creditor of the corporate debtor is Union Bank of India, Muzaffarnagar, who has already submitted its claim.

14. Petitioner has further stated that directions be issued against the District Collector, Muzaffarnagar and Tehsildar, Muzaffarnagar to withdraw the attachment order and immediate release of the assets of the corporate debtor in favour of the Liquidator.

15. The Respondent No 1 has contended that this application has been preferred for the following relief(s):

- “1. *Direction to the District Collector to withdraw its Orders above and release all the attached assets of the Corporate Debtor and such Assets be vested with the Liquidator.*
2. *Direction to Paschimanchal Vidyut Vitaran Nigam Ltd., for submission their claims in Form C prescribed under Insolvency and Bankruptcy (Liquidation Process) Regulation, 2016.*
3. *Direction to Paschimanchal Vidyut Vitaran Nigam Ltd., to submit an undertaking to Hon’ble Tribunal that it will not withhold new connection to the buyer of properties on the ground of non-payment of the outstanding dues by Corporate Debtor.*
4. *Pass such other/or further order/orders, direction/directions as this Hon’ble Tribunal may deem fit and proper”.*

A perusal of relief 2 and relief 3 discloses that a direction is being sought against Paschimanchal Vidyut Vitaran Nigam Ltd. However, from the array of parties, it is evident that Paschimanchal Vidyut Vitaran Nigam Ltd. is not a party. In the absence of Paschimanchal Vidyut Vitaran Nigam Ltd., being a party to the proceedings, relief 2 and 3 cannot be considered by this Tribunal, nor it can be granted, and as such for the above mentioned reliefs the present application will not be maintainable.

The Agreement for supply of electrical energy in favour of the Corporate Debtor dated 11.02.2010 was executed. Page 32 of the application clearly shows that the agreement is between the Paschimanchal Vidyut Vitaran Nigam Ltd., and M/s. Raman Ispat Private Ltd.

The Paschimanchal Vidyut Vitaran Nigam Ltd., through its authorised signatory Mr Mahesh Chandra, Executive Engineer and of M/s. Raman Ispat Private Ltd through its authorised signatory Mr Ram Pal Singh executed the

agreement. Following paragraph of the agreement being relevant for the purpose is being quoted herein below:

- “1. *The Licensee is, inter-alia, engaged in the business of supplying electricity and has been granted a license under the Indian Electricity Act,1910 and is presently a deemed licensee under Section 14, 1<sup>st</sup> provision of the Electricity Act,2003 (hereinafter referred to as the Act) for distribution and /or retail supply and/or bulk supply of energy to various consumers within its licensed areas.*”
- “3(I) *Consumer shall abide and be bounded by all the terms and conditions of the Electricity Supply Code-2005 (hereafter referred to as the ‘Code’) approved by the Commission, and the amendments/ revisions thereto, and the provisions of the Act together with the rules framed under the act and Indian Electricity Rules,1956 including any modifications thereof in so far as they are applicable to the Consumer.*”
- “8. *This agreement shall be governed by the Electricity Act,2003 with all its amendments, various other laws of India for the time being in force, but not limited to various regulations of UPERC, as applicable to the State of U.P. and shall be subject to the jurisdiction of the Court subordinate to High Court of Judicature of Allahabad.*
9. *That the both parties do hereby agreed that the outstanding electricity dues will be first charged on the assets of the company (consumer)”*

The direction prayed for is contrary to the Electricity Supply Code,2005 which has been framed under the provision of Section 50 of the Electricity Act,2003. From a perusal of Paragarph-23 of the application read with Paragraph-24 of the application it is evident that the field for supply of electricity stands occupied by the Electricity Act,2003 and accordingly the conditions mentioned in Clause 4.3 (f)(i) of Electricity Supply Code,2005 forms an integral part of Section 50 of the Electricity Act,2003. Thus the said provision is to give effect to the provision contained under the Electricity Act,2003 and to enable and effectuate the smooth operation of distribution of electricity which may not hamper the electricity supply or the structure of the grant of licenses under the Electricity Act,2003.

In so far as the structure of the distribution of electricity through grant of licenses and enforcement of the provision under the Electricity Act are concerned, the field is specifically occupied by the Electricity Act, 2003 and there is no provision contained in the statute of 2016 which either encroaches the said field or comes into play in order to override the said field. Under the circumstances, the licensee cannot be compelled to go beyond the Electricity Act on the axis of which it works and move in space for an Insolvency Law which is outside the purview of distribution of electricity. Hence prayer no.3 is in effect seeking a direction to violate the provision of Electricity Act, 2003 by the licensee and to act contrary to law which is wholly impermissible and no such direction can be issued. The prayer is totally misconceived and cannot be granted.

We have heard the argument of both parties and perused the record. Admittedly the Corporate Debtor entered into an agreement dated 11-02-2010 with Paschimanchal Vidhyut Vitran Nigam Ltd. Clause 5 of the agreement provided that the outstanding dues will be a charge on the assets of the Company. Paschimnchal Vidhyut Vitran Nigam Ltd. raised a final bill of Rs. 4,32,33,883/- dated 27.01.2017 for supply of electricity to the corporate debtor, Arrears of the security deposit amounting to Rs. 64,43,000/-. The property owned by the Corporate Debtor has been attached by the District Collector, Muzaffarnagar vide its order no. 1048 dated 12-01-2016 and Tehildar, Muzaffarnagar vide its order no. 1423F dated 23-01-2016 and has prohibited to transfer the property by sale, donation or any other and create charge due to outstanding dues for supply of electrical energy by PVVNL.

The law provides that the liquidator has a duty to form liquidation estate of the assets of the corporate debtor in accordance with **section 36(1)** of the Insolvency and Bankruptcy Code, 2016, consolidate claims of creditors in accordance with section 38, and distribute the proceeds of liquidated assets of creditors in the order of priority prescribed under **section 53**; further clause (b) of subsection 3 of section 36 states that **the even the encumbered assets of corporate debtors forms a part of Liquidation estate**. The liquidator has power as per section 35 (1) (f) to sell the immovable and movable property and actionable claims of corporate debtor in such a manner as may be specified.

That the provisions of Insolvency and Bankruptcy Code 2016, has an overriding effect and is inconsistent with the provisions of any other law, as per **section 238 of Insolvency and Bankruptcy Code, 2016.**

That there exists a direct inconsistency between the provisions for liquidation of a corporate debtor provided in Chapter III of Insolvency and Bankruptcy Code, 2016 and the provision for attachment of assets for recovery of dues for supply of electrical energy under UP Electricity Supply Code, 2015 / U P Government Electrical Undertaking (Dues Recovery) Act, 1956 / U P Revenue Code, 2006. This is because a property, which is attached and forms the part of liquidation estate under section 36(3) of the Insolvency and Bankruptcy Code, 2016 is available for the benefit of all creditors as per section 36(2) of the Code. If attachment continues, the property would become available for the benefit of the Respondent. The Respondent is a secured operational creditor and ranks equally with other secured financial creditors of the corporate debtor under section 53 of Insolvency and Bankruptcy Code, 2016. In the matter of Solidare India Limited v. Fair Growth Financial Services Private Limited &Ors. (2001) 3 SCC 71, wherein it has been conclusively held that where two statutes contain non-obstante clause, later statute would prevail. Therefore the IBC, 2016 would override the provisions of Electricity Act 2003 as **both being a special statute and IBC, 2016 is a later statute with a non-obstante clause** there are two statutes both containing non-obstante clauses, the later one would prevail.

There exists a direct inconsistency between the provisions for liquidation of a corporate debtor provided in Chapter III of the IBC and clause 4.3(f) (i) of UP Electricity Supply Code, 2016. Section 53 of I B Code 2016 provides for order of priority, in which proceeds from the sale of the liquidation estate shall be distributed. Section 36(2) provides that the liquidator shall hold the liquidation estate as a fiduciary for the benefit of creditors. The liquidation value of assets of corporate debtor is lower than the claim amount of Union Bank of India and PVVNL.



Assuming both parties are secured creditors, proceeds from the sale of liquidation assets after deduction of liquidation expenses will be distributed among Union Bank of India and PVVNL by section 53(1)(b) of IBC, 2016. Accordingly, both creditors will get the benefit in compliance of IBC, 2016. Clause 4.3(f) (i) of UP Electricity Supply Code, 2016 provides that both seller and purchaser will be either/or, jointly and severally liable to pay the outstanding electricity dues. In case the clause is implemented the realizable value of the assets will be liquidation value LESS outstanding electricity dues. Assuming both parties are secured creditors, proceeds from the sale of liquidation assets after deduction of liquidation expenses and outstanding electricity dues will be distributed among Union Bank of India and PVVNL by section 53(1)(b) of IBC, 2016. In this process, PVVNL will be able to realise more than what is entitled for distribution by section 53(1)(b) of IBC, 2016 at the cost of Union Bank of India. Hence, there is a direct inconsistency between the provisions for liquidation of a corporate debtor provided in Chapter III of the IBC and clause 4.3(f) (i) of UP Electricity Supply Code, 2016. The Clause 4.3(f) (ii) provides that before sale of a premise is made, the outstanding dues will be cleared and, in the alternative, the deed to agreement/sale will specifically mention the outstanding dues and the method of its payment.

There are inconsistencies between the provisions of IBC, 2016 and clause 4.3(f) (ii) of UP Electricity Supply Code 2005, because outstanding dues cannot be cleared before sale of premises is made. Further, mentioning of outstanding electricity dues in the deed of agreement/sale will not be logical because the entitlement for payment will be uncertain at the time of sale of assets and will vary with sale consideration.

Given the provision of **section 48 of the Transfer of Property Act, 1882**, Union Bank of India, have created first charge on all the properties of corporate debtor on 16-07-2009, which was created before the agreement dated 11-02-2010 under provisions of Uttar Pradesh Electricity Supply Code, 2005, for supply of electrical energy.

The learned counsel for the respondents have also relied on the provision of UP Electricity Supply Code 2005 and Electricity Act 2003. For ready reference statutory provision of section 238 of IB code and relevant provision of Electricity Act 2003 is given below:

Section 238 of I & B Code 2016 is given below for ready reference.

**238. Provisions of this Code to override other laws.**— *The provisions of this Code shall affect, notwithstanding anything inconsistent in addition to that contained in any other law for the time being in force or any instrument affecting by any such law.*

**Electricity Act, 2003 PART 6 DISTRIBUTION OF ELECTRICITY Provisions with respect to distribution licensees**

**Section 50. The Electricity Supply Code**

**50. The Electricity Supply Code.**—*The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the matter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.]*

It is pertinent to mention that Hon'ble Supreme Court in case of **Kanpur Electricity Supply Co. Ltd. v. LML Ltd., (2010) 6 SCC 165 at page 176 has held that**

**“39. It is apparent that while passing the impugned order, the High Court lost sight of the said order of BIFR and confined itself to the provisions of Clauses 4.41 and 4.49 of the U.P. Electricity Supply Code, 2005 framed under Section 50 of the Electricity Act, 2003. If Respondent 1 Company is to revive, and, thereafter, survive, a certain amount of consideration has to be shown which was fully realised by the petitioners themselves, but they allowed themselves to be tied up in knots over compliance with the provisions of Clauses 4.41 and 4.49 which are rules framed for application in special cases in order to help industries which had fallen on difficult days, to recoup their losses and to bring their finances on an even keel.”**

**In the above mentioned case, the Hon'ble Supreme Court has held that the High Court lost sight of the order of BIFR and confined itself to the provisions of clauses 4.41 and 4.49 of the UP electricity supply code 2005 framed under section 50 of the Electricity Act 2003. Thus it is clear that the provision of UP electricity supply code 2005 does not have override in effect over all other laws. The above mentioned case Hon'ble Supreme Court has specifically held that the High Court passed the order only after considering the provision of UP electricity code 2005 but the High Court last sight of the order of the BIFR.**

Though the proceeding under the sick industrial Companies (special provisions) repeal act 2003 was not, having overriding effect over other laws. But section 238 of the Insolvency And Bankruptcy Code 2016 specifically provides that the provisions of this Court shall effect, notwithstanding anything inconsistent in addition to that contained in any other law for the time being in force or any instrument affecting by any such law.

Since the provision of Insolvency and Bankruptcy Code, 2016 has an overriding effect, and there exists a direct inconsistency between the provisions of liquidation as provided in Chapter 3<sup>rd</sup> of the I.B. Code, 2016 with the provision for attachment of assets for recovery of dues for supply of electrical energy under the U.P. Electricity Supply Code, 2005/ U.P. Government Electrical Undertaking (dues recovery) Act, 1956, therefore provisions of IB code shall prevail.

The attached property is also a part of liquidation estate, under the purview of liquidation estate , which is available for benefit of all creditors as per provision of Section 36 (2) of the Code. If the attachment continues, the property would become available for the benefit of the respondents only, who are also secured operational creditors and ranks equally with other secured financial creditors under the Provisions of Section 53 of the Insolvency and Bankruptcy Code, 2016. Therefore, the property of the creditor which have been attached by the District Magistrate, Muzaffarnagar and Tehsildar, Muzaffarnagar is a part of liquidation estate. Since under liquidation process, it has to be sold and after that realised value will be distributed regarding provision of Section 53 of I.B. Code, 2016. It is also on record that by order of District Magistrate a notice board is on display at that attached property, which show that sale of the attached property is prohibited by order of the District Magistrate. In such situation, liquidator can never find any buyer to purchase the property.

Therefore, we allow this company application and pass an order to the District Magistrate and Tehsildar Muzaffarnagar for immediate release of the attached property in favour of liquidator, so that he may sell the property, and after realisation of the value of the property it may be distributed in accordance with the relevant provisions of the I&B. Code, 2016. It is also to make clear that P.V.V.N.L also comes under the definition of secured operational creditor, who can realize their dues in the liquidation proceedings as per law after submitting their claim before the liquidator.

**SAROJ RAJWARE**  
Member (Technical)

**V.P.SINGH**  
Member (Judicial)

Date : 21.08.2018