

EXECUTIVE ENGINEER V. PRADEEP KUMAR KABRA

Executive Engineer

Uttar Gujarat VIJ Company Ltd.

...Appellant

Vs.

Pradeep Kumar Kabra

Liquidator of Pacific Pipe systems Pvt. Ltd. & Anr.

...Respondent

Case No: Company Appeal (AT) (Ins.) No. 1300 of 2022

Date of Judgement: 18.12.2023

Judges:

[Justice Ashok Bhushan]

Chairperson

[Mr. Barun Mitra]

Member (Technical)

For Appellant: Mr. Vipul Ganda, Ms. Nirthi Dua, Mr. Ishan Upadhaya, Advocates.

Mr. Anal S. Shah, Advocate

For Respondent: Mr. Ravi Raghunath, Advocate for R-2.

Facts

This is an interlocutory application (I.A.) filed by the Executive Engineer, Uttar Gujarat Vij Company Limited seeking payment of interest on the security deposit for the electricity connection given to the corporate debtor, Pacific Pipe Systems Pvt. Ltd. (Paragraph 1). The I.A. has been filed in an existing appeal (Company Appeal No. 1300 of 2022) that

was filed by the appellant against an order of the NCLT. In that order, the NCLT had directed the appellant to restore electricity supply to the corporate debtor and that all electricity dues prior to liquidation commencement date stand extinguished (Paragraph 2-3). The said appeal was disposed of by the NCLAT on 16.05.2023. The appellant submitted that it has recovered all electricity dues and is ready to give a fresh connection if proper application/forms are submitted. It was further submitted that the existing security deposit will continue for the corporate debtor. The appeal was disposed of with a direction that appellant should consider respondent's entitlement for interest on security deposit as per applicable rules and regulations (Paragraph 4-5). Aggrieved by non-payment of interest on security deposit, the present I.A. has been filed seeking reliefs as mentioned in paragraph 1 of the order (Paragraph 6).

Court's Elaborate Opinions

The NCLAT noted that the issues raised in the present I.A. regarding interest on security deposit were not before the NCLT in the earlier appeal (Paragraph 5). Merely because the appeal was disposed of by giving a direction to the appellant to consider interest payment as per applicable rules, it does not mean the I.A. can be entertained in the disposed of appeal. The NCLAT held that the issues raised in the I.A. cannot be adjudicated in the present proceedings (Paragraph 6-7). However, it clarified that it is not expressing any opinion on the merits of the claim made in the I.A. The appellant, if aggrieved by any decision of the appellant on its interest claim, can approach the NCLT by filing an appropriate application (Paragraph 7).

Arguments by Parties

– Arguments on behalf of the Appellant:

It has already recovered all electricity dues from the corporate debtor. It is ready to give a fresh electricity connection if proper forms are submitted. The existing security

deposit will continue. Electricity can be restored within 6 weeks if application is made within 2 weeks. No financial charges shall be asked for giving fresh connection. It will consider interest payment on security deposit as per applicable rules and regulations.

– Arguments on behalf of the Respondent:

Under the GERC regulations, it is entitled to interest on the security deposit held by the appellant. The appellant has not paid the interest due and payable since the disconnection of electricity in March 2016. Interest should be paid till the date of disposal of this I.A.

Sections and Cases Cited

No sections or cases have been cited in the order.

Referred Laws

The order refers to the followings laws:

Gujarat Electricity Regulatory Commission (Security Deposit) Regulations 2005 issued vide Notification No. 8 of 2005.

The regulation provides for payment of interest on electricity security deposits. The interest rate is prescribed under the regulations.

Conclusion

In conclusion, the NCLAT disposed of the I.A. filed by Uttar Gujarat Vij Company Limited without adjudicating on the issues raised regarding interest payment on security deposits. It granted liberty to the appellant to approach NCLT by filing an appropriate application, in case it is aggrieved by any decision of the respondent company on its interest claim.

Download

Court

Copy: <https://dreamlaw.in/wp-content/uploads/2024/01/5.pdf>

Full Text of Judgment:

I.A. No. 4473 of 2023:- By this application the applicant has

prayed for following reliefs:

- a. Allow the present Application;
- b. Direct the Respondent No.1 to pay the interest due and payable from the date of termination of the electricity i.e. March

01, 2016 connection in the name of the Corporate Debtor, till the date of adjudication of the present application, at the interest rate prescribed in Gujarat Electricity Regulatory Commission (GERC) (Security Deposit) Regulations 2005 published vide Notification No: 8 of 2005;

- c. Pass such further and/or other orders as deemed fit and proper in the interest of justice.

2. This appeal was filed against the order of Adjudicating Authority dated 04.10.2021 while deciding the application for relief and concession filed by the Applicant.

3. Adjudicating Authority disposed of the application and issued certain direction in paragraph (ix) which is to the following effect:

“IX. We hold that all electricity charges accrued prior to liquidation commencement date shall stand permanently extinguished and any security deposit for connection shall continue in the name of the Corporate Debtor. We further direct Uttar Gujarat Vij Company Limited to restore the electricity supply to the Corporate Debtor so that the Corporate Debtor can be run as a going concern. The charges after the liquidation commencement date and till acquisition date shall also stand extinguished quo Successful Auction Bidder.”

4. Appeal was filed by the Executive Engineer, Uttar Gujarat Vij Company Limited which appeal was disposed of on 16.05.2023 and noticing the submissions of the counsel for the respondent. Following submissions were noticed of the order:

“3. When the Appeal was taken today, Learned Counsel for the Appellant submits that Appellant has already recovered all

dues

on the electricity connection and there are no further dues to be recovered. He further submits that the electricity connection was disconnected permanently in 2017 and Appellant is ready to give fresh connection to the Successful Bidder provided that Application and/or Form are filled up. It is further submitted that security which was already deposited with the Appellant shall be continued in the name of the Corporate Debtor. It is further submitted that electricity shall be restored within six weeks if application/form is made within two weeks from today for the restoration of the electricity.

4. It is made clear that no financial charges shall be asked from the Corporate Debtor for giving fresh connection.

5. Learned Counsel for Respondent submits that there was some entitlement of interest on the security deposited. With regard to

said, the Appellant may consider in accordance with applicable rules and regulations.

6. The Appeal is disposed of, accordingly.”

5. Subsequent to the aforesaid order an application was filed by Executive Engineer, Uttar Gujarat Vij Company Limited being I.A. No. 3972/2022. Now in this application the grievance of the applicant is that the interest of the security deposits is not being paid which according to the regulation the respondent was entitled. The issues which are sought to be raised in this application were not before the Adjudicating Authority in this appeal.

6. Recording the statement of counsel for the respondent (who is applicant before us) that the appellant may consider in accordance with the application rules and regulations the appeal was disposed of. In event, the said consideration is not favourable to the applicant it is always open to the applicant to file appropriate application before the Adjudicating Authority for relief, if any.

7. We are of the view that said issues cannot be entertained in this application nor adjudicated by this Tribunal in this appeal. We, however, make it clear that we are not expressing any opinion on merits of the claim in the application filed by the applicant and it is for the Adjudicating Authority to consider and decide in accordance with law.

8. With these observations, we dispose of this application.