

PASCHIMANCHAL VIDYUT VITRAN NIGAM LTD. V. HSA TRADERS THROUGH SOLE PROPRIETOR

Paschimanchal Vidyut Vitran Nigam Ltd.
Through its Executive Engineer,
Electricity Distribution Division,
Khatauli – 251201.
Distt. Muzaffarnagar,
Uttar Pradesh.

...Appellant

Vs.

1. HSA Traders Through Sole Proprietor,
Mr. Furqab Ahmed Malik, A-26, Gali No.2,
Bhagirathi Vihar, East Delhi, Delhi- 110094.

2. Ezwaste Recycling Private Limited,
House No.2, Mohalla Dharampura,
Sardhana, Meerut, Uttar Pradesh – 250304.

...Respondents

3. Chanchal Dua, Erstwhile Liquidator of
Shashi Oils and Fats Private Limited
Having office at 1-A/85/A, Ramesh Nagar,
New Delhi- 110015.

...Proforma Respondent

Case No: Company Appeal (AT) (Insolvency) No.527 of 2023

Date of Judgement: 5th December, 2023

Judges:

[Justice Ashok Bhushan]

Chairperson

[Barun Mitra]

Member (Technical)

For Appellant: Mr. Pradeep Misra, Mr. Daleep Dhyani and Mr. Suraj Singh, Advocates.

For Respondent: Mr. Kunal Godhwani, Advocate for R-1 and 2.

Facts

Corporate insolvency resolution process was initiated against Shashi Oils and Fats Pvt Ltd (Corporate Debtor). Liquidation order was passed on 21.02.2020 (Paragraph 1). The liquidator issued e-auction sale notice on 12.08.2020 for sale of assets on "as is where is" basis. Respondent 1 (HSA Traders) was highest bidder for Rs 3.78 Cr in the e-auction held on 29.08.2020. Full sale consideration was deposited on 25.09.2020 and sale/possession certificates were issued (Paragraph 3). Respondent 1 applied for new electricity connection in the premises. The appellant (Paschimanchal Vidyut Vitran Nigam Ltd) rejected it due to outstanding electricity dues of Rs 39.15 lakhs of the corporate debtor. Respondent 1 filed an application seeking direction to provide electricity connection without insisting on payment of past dues (Paragraph 6). The NCLT allowed the application relying on various judgments. It held that the appellant's right to recover past dues is extinguished and it cannot insist on payment for granting connection to successful auction purchaser (Paragraph 9).

Court's Elaborate Opinions

The sale was on "as is where is" basis. The purchaser was required to conduct due diligence regarding outstanding dues (Paragraph 7). The issue whether past electricity dues can be insisted against successful resolution applicant/ auction purchaser has been considered and answered by the Supreme Court and NCLAT (Paragraph 7). Judgment in Telangana State

Southern Power Distribution Company Ltd relied by appellant was under SARFAESI Act. It is distinguishable since there was no insolvency proceeding (Paragraph 8). The Supreme Court in *Paschimanchal Vidyut Vitran Nigam Ltd* has held that the claim has to be raised in liquidation process (Paragraph 10-11). The NCLAT has held in a recent case that an application by successful auction purchaser is maintainable under Section 60(5) for seeking electricity connection without past dues (Paragraph 13-14).

Arguments by Parties

Appellant:

Application by successful auction purchaser was not maintainable after closure of liquidation. NCLT had become functus officio (Paragraph 3). As per e-auction terms, premises was sold with electricity dues liability. Purchaser cannot avoid it (Paragraph 7). Reliance on Telangana State Southern Power Distribution Company Ltd judgment to contend electricity dues liability continues (Paragraph 8).

Respondents:

*Appellant did not file its claim during liquidation. It cannot insist for dues after completion of process (Paragraph 4). Application was maintainable under Section 60(5) as it emanated from liquidation proceeding (Paragraph 14). Reliance on NCLAT judgment in *Shiv Shakti Inter Globe Exports Pvt* to contend past dues stand extinguished (Paragraph 15).*

Sections

Sections referred:

Section 60(5) of IBC

Cases Cited

Cases relied upon:

Telangana State Southern Power Distribution Company Ltd vs Srighdhaa Beverages. Paschimanchal Vidyut Vitran Nigam Ltd vs Raman Ispat Pvt Ltd. Chinar Steel Segments Centre Pvt Ltd vs Samir Kumar Agarwal. Tata Power Western Odisha Distribution

Limited vs Jagannath Sponge Pvt Ltd. Shiv Shakti Inter Globe Exports Pvt Ltd vs KTC Foods Pvt Ltd

Referred Laws

No specific law has been referred.

Conclusion

The NCLAT dismissed the appeal and upheld NCLT's order directing the appellant to provide electricity connection to successful auction purchaser without insisting on payment of past outstanding dues of corporate debtor.

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Court

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Full Text of Judgment:

1. This Appeal has been filed against order dated 21.02.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench, Prayagraj in I.A. No. 219/2022 in CP (IB) No.140/ALD/2017. I.A. No. 219/2022 filed by the Respondent, Successful Auction Purchaser having been allowed by the Adjudicating Authority, Appellant feeling aggrieved by the order has come up in this Appeal. Brief facts of the case necessary to be noticed for deciding this Appeal are:

(i) Corporate Insolvency Resolution Process against the Corporate Debtor, Shashi Oil and Fats Pvt. Ltd. commenced by the Adjudicating Authority on a Section 7 application filed by a Financial Creditor.

(ii) The order of liquidation of the Corporate Debtor was passed by the Adjudicating Authority on 21.02.2020.

(iii) The Liquidator published E-auction Sale Notice dated 12.08.2020 on as is where is basis, as is what is, whatever there is and without recourse basis.

(iv) E-auction was held on 29.08.2020 and Respondent No.1 was held to be highest Bidder for an amount of Rs.3,78,00,000/-. The Respondent No.1 was declared as Successful Auction Purchaser by the Liquidator by email dated 29.08.2020.

(v) On 25.09.2020, the Respondent No.1 deposited the entire sale consideration along with the GST. Sale Certificate dated 28.09.2020 was issued as well as Possession Certificate.

(vi) The Respondent No.1 made an application to the Appellant for new electricity connection for the premises, which was rejected by the Appellant on the ground that there is demand of electricity dues of Rs.39,15,625/- against the erstwhile Corporate Debtor and unless the said amount is paid no new electricity connection can be given.

(vii) After rejection of the prayer of new electricity connection, the Successful Auction Purchaser i.e. Respondent No.1 filed an C.A. No. 219/2022 in the CP (IB) No.140/ALD/2017, in which following prayers were made:

"a) Allow the present application;

b) Kindly, pass an ex parte ad interim order directing Paschimanchal Vidyut Vitran Nigam Ltd. Not to take any coercive steps over the property Khasra No. 38. Village Sardhan, Budhana Road, Khatauli, District Muzaffarnagar, Uttar Pradesh during the pendency of the instant application;

c) pass an order declaring that Paschimanchal Vidyut Vitran Nigam Ltd. Is not entitled to claim any dues over the property Khasra No. 38, Village Sardhan, Budhana Road, Khatauli, District Muzaffarnagar, Uttar Pradesh.

d) Consequently, direct Paschimanchal Vidyut Vitran Nigam Ltd. to grant electricity connection to Applicant

No.2 i.e. Ezwaste Recycling Private Limited.

e) Pass such other or further order(s) as may be deemed fit and proper the facts and circumstances of the instant case.”

(viii) The Appellant filed a counter affidavit to the CA controverting the contentions raised by the Applicant. It was contended on behalf of the Appellant that the property was purchased by the Respondent No.1 on “as is where is, as is what is, whatever there is and without recourse basis” and if they exercised due diligence, they would have known that there are electricity dues. They placed reliance on Clause 4.3(f)(i) of Electricity Supply Code, 2005 and submitted that unless the dues of erstwhile consumer are paid no new connection can be granted in the premises.

(ix) The Adjudicating Authority heard both the parties and by the impugned order dated 21.02.2023 allowed the application. The Adjudicating Authority after considering the relevant judgments of the Hon’ble Supreme Court and this Tribunal recorded its conclusion in Para 15 of the judgment and issued directions in Para 16. The conclusion and directions of the Adjudicating Authority are as follows:

“15. Relying on the judicial pronouncements as discussed in above para, we hold that right of Paschimanchal Vidyut Vitran Nigam Ltd. to recover outstanding dues of pre-CIRP period is now extinguished due to CIRP process getting completed and liquidation of Corporate Debtor is also done and hence, no pre-CIRP electricity dues can be collected from Applicant No.1 being Successful Auction Purchaser or Applicant no.2 in which Applicant no.1 is a director. If duty is cast under Electricity Act, 2003 to supply electricity then Respondent No.1 being the electricity supplying company is duty bound to provide electricity connection to Applicant No.2 in which

Applicant No.1 is director in terms of Electricity Act 2003.

16. As decided above we direct Respondent No.1 as under:

(i) To complete the documentation with Applicants on the basis of Application dated 28.11.2021 submitted by the Applicant No.2 in the office of Respondent No.1 and energise the electricity connection in terms of Electricity Act, 2003 without insisting on the payment of pre- CIRP dues.

(ii) Applicants shall otherwise complete all the requirement in terms of Electricity Act 2003 for getting new electricity Connection."

(x) The Appellant aggrieved by the said order has come up in this Appeal.

2. We have heard Shri Pradeep Mishra, learned counsel for the Appellant and Shri Kunal Godhwani, learned counsel appearing for Respondent No.1 and 2.

3. Learned counsel for the Appellant challenging the impugned order submits that the Adjudicating Authority committed error in allowing the I.A. 219/2022. He submits that after liquidation process was closed by issuing Sale Certificate in favour of the Respondent No.1, application 219/2022 filed by the Respondent No.1 before the Adjudicating Authority was not maintainable since the Adjudicating Authority has become functus officio. It is further submitted that the E-auction notice clearly contemplate sale on as is where is, as is what is, whatever there is and without recourse basis, hence, the premises was sold along with the liability of electricity dues owed of the Appellant. It is submitted that as per Clause 4.3(f) of the UP Electricity Supply Code, 2005, the Appellant is entitled to claim arrears of electricity dues on the premises for providing new electricity connection. Learned counsel for the

Appellant has relied on judgment of the Hon'ble Supreme Court in "Telangana State Southern Power Distribution Company Ltd. & Anr. vs. Srigdhaa Beverages, (2020) 6 SCC 404". Learned counsel for the Appellant has also placed reliance on judgment of Hon'ble Supreme Court in "Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Ltd. & Ors., 2023 SCC OnLine SC 842". Learned counsel for the Appellant referring to judgment of "Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Ltd. & Ors." submits that said judgment is not applicable in the circumstances of the present case as in the present case after the liquidation of the Company, the grant of electricity connection shall be governed by the distribution licence.

4. Learned counsel for the Respondent refuting the submission of learned counsel for the Appellant submits that in the liquidation proceeding of the Corporate Debtor, the Appellant never filed its claim. Learned counsel for the Respondent submits that the Successful Auction Purchaser is not liable to pay electricity dues which was payable by the erstwhile Corporate Debtor. The claim of the Appellant, if any, could have been only considered in the liquidation proceeding of the Corporate Debtor and no claim having been filed by the Appellant, Appellant cannot insist for payment of its arrears of electricity dues. Learned counsel for the Respondent has relied on judgment of this Appellate Tribunal in "Company Appeal (AT) (Ins.) No. 650 of 2020, Shiv Shakti Inter Globe Exports Pvt. Ltd. vs. KTC Foods Pvt. Ltd. & Anr.".

5. We have considered the submissions of learned counsel for the parties and perused the record.

6. There is no dispute between the parties regarding facts of the case. Electricity dues amounting to Rs.39,15,625/- was owed by the erstwhile Corporate

Debtor – Shashi Oils and Fats Private Limited. E-auction notice was issued by the Liquidator for sale of the assets. Learned counsel for the Appellant has relied on Clause (h) of the E-auction notice which dealt with due diligence. Clause (h) is as follows:

“H. DUE DILIGENCE

The Liquidator shall endeavor to provide necessary assistance, facilitating the conduction of due diligence by interest Bidders. The information and documents shall be provided by the Liquidator in good faith. The properties and assets of the Company are proposed to be sold on “As Is Where Is, As Is What Is, Whatever There Is and Without Recourse basis” and the proposed sale of assets of the company does not entail transfer of any title, except the title which the Company has on the assets as on date of transfer. All taxes/ maintenance fees/ outstanding rentals/ electricity/ water charge/ annual lease rentals/ unearned income in case of leasehold properties, etc., if any outstanding as on date or yet to fall due in respect of the relevant asset should be ascertained by the E-Auction process applicant and would be borne by the successful bidder.”

7. There can be no dispute between the parties that the sale in the liquidation process was on “As Is Where Is, As Is What Is, Whatever There Is and Without Recourse basis”. ‘Due Diligence’ Clause also notes that any outstanding charge was also to be performed in the e-auction process by the prospective bidder. The question that electricity dues of the Corporate Debtor who underwent insolvency resolution process/liquidation process can still be insisted against the Successful Resolution Applicant/ Successful Auction Purchaser is not res integra. The question has been considered and answered by this Tribunal as well as by the Hon’ble Supreme Court.

8. Learned counsel for the Appellant has relied on judgment of Hon'ble Supreme Court in "Telangana State Southern Power Distribution Company Ltd. & Anr. vs. Srigdhaa Beverages" (Supra). In the above judgment, the Hon'ble Supreme Court dealt with auction of a unit under SARFAESI Act, 2002. The Hon'ble Supreme Court has extracted the terms and conditions of the said auction and noted that the auction was on 'as is where is, whatever there is and without recourse basis'. It was held that the Successful Auction Purchaser was liable to pay the electricity dues. The Hon'ble Supreme Court laid down following in Para 16.1, 16.2 and 16.3:

"16.1. That electricity dues, where they are statutory in character under the Electricity Act and as per the terms and conditions of supply, cannot be waived in view of the provisions of the Act itself, more specifically Section 56 of the Electricity Act, 2003 (in pari materia with Section 24 of the Electricity Act, 1910), and cannot partake the character of dues of purely contractual nature.

16.2. Where, as in cases of the e-auction notice in question, the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on "as is where is, whatever there is and without recourse basis", there can be no doubt that the liability to pay electricity dues exists on the respondent (purchaser).

16.3. The debate over connection or reconnection would not exist in cases like the present one where both aspects are covered as per Clause 8.4 of the General Terms & Conditions of Supply."

9. The above judgment having been rendered in a case under SARFAESI Act, there was no occasion for extinguishment of dues of the power distribution company since it was not under IBC process. The distinguishing

feature in the present case is that the present is a case arising out of IBC where in liquidation process, the Appellant was required to file its claim against the electricity dues outstanding towards the Corporate Debtor who was undergoing liquidation process. The above judgment is thus clearly distinguishable in the facts of the present case.

10. The Judgment of Hon'ble Supreme Court in "Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Ltd. & Ors." (Supra) which has been referred by learned counsel for the Appellant was a case where the Adjudicating Authority has directed District Magistrate and Tehsildar, Muzaffarnagar to release the property which was attached by Paschimanchal Vidyut Vitran Nigam Ltd. for realisation of its dues, for enabling the sale under IBC process. A bill was issued by the Appellant on the Corporate Debtor and District Magistrate issued notice for recovery of outstanding dues and attached assets of the Corporate Debtor. The Liquidator pleaded that unless attachment orders are not set aside, no buyer would purchase the property of the Corporate Debtor. The Appellate Tribunal directed the District Magistrate and Tehsildar, Muzaffarnagar to release the property to enable sale of property and after realisation of the property's value to ensure its distribution to various stakeholders under the IBC process. Paras 4 and 5 of the judgment are as follows:

"4. Under the final bill dated 27.01.2017, the total arrears due were Rs.4,32,33,883/-. Of this, the District Collector issued notice for recovery of outstanding dues to the tune of Rs.2,50,14,080/-, by auction of movable and immovable properties located at Khasara No.0.4710, on 05.03.2018. The liquidator alleged that unless the attachment orders of the Tehsildar, Muzaffarnagar were set aside by the NCLT, no buyer would District

Collector, Muzaffarnagar and purchase the property of the corporate debtor due to uncertainty about the authority of the liquidator to sell the property. The liquidator also took the plea that PVVNL's claim would be classified in order of priority prescribed under Section 53 of the IBC, and PVVNL would be entitled to for rata distribution of proceeds along with the other secured creditors from sale of liquidation assets.

5. The liquidator's position ultimately led the NCLAT to direct the District Magistrate and Tehsildar, Muzaffarnagar to immediately release the attached property in its favour so as to enable sale of the property, and after realisation of the property's value, to ensure its distribution in accordance with the relevant provisions of the IBC. The NCLAT also endorsed NCLT's reasoning that PVVNL fell within the definition off' operational creditor', which could realize its dues in the liquidation process in accordance with the law."

11. An appeal was filed by Paschimanchal Vidyut Vitran Nigam Ltd. against the judgment of this Tribunal, which appeal was ultimately dismissed by Hon'ble Supreme Court taking the view that claim of Paschimanchal Vidyut Vitran Nigam Ltd. is to be considered in the liquidation process. Paras 59 and 60 of the judgment are as follows:

"59. The record further shows that after the NCLT passed its order, the appellant preferred its claim on 10.04.2018, Based on deat application, the liquidator had filed an application before the NCLT for modification of its order dated 21.08.2018, and contended that PVVNL also came under the definition of 'secured operational creditor in realization of its dues in the liquidation proceedings as per law. The application sought amendment of the list of stakeholders. The application was allowed. In view of

these factual developments, this Court does not consider it appropriate to rule on the submissions of the liquidator vis-a-vis the fact of non-registration of charges under Section 77 of the Companies Act, 2013. V. CONCLUSION

60. For the above reasons, it is held that the appeal deserves to fail. At the same time, the liquidator is directed to decide the claim exercised by PVVNL in the manner required by law. It shall complete the process within 10 weeks from the date of pronouncement of this decision, after providing such opportunity to the appellant, as is necessary under law."

12. The above judgment in no manner support the submission of the Appellant advanced in this case rather the said judgment mentions it clearly that claim of the electricity dues of the Appellant is to be raised in the IBC process when Corporate Debtor is in the liquidation process.

13. The issue which has arisen in the present case has been recently considered by this Tribunal in "Company Appeal (AT) (Insolvency) No. 1355 of 2022, Chinar Steel Segments Centre Pvt. Ltd. vs. Samir Kumar Agarwal". In the above case, an application filed by the Successful Auction Purchaser seeking direction to Damodar Valley Corporation to energize its electricity connection, was rejected relying on WBERC Regulation. Appeal was filed by the Successful Auction Purchaser which appeal was ultimately allowed by this Tribunal directing that fresh connection be granted without charging any outstanding dues of the Corporate Debtor. It is relevant to notice that the submission which has been advanced by the Appellant that the application filed by the Successful Auction Purchaser was not maintainable was also considered by this Tribunal in the above case and it was held that the application was fully maintainable under Section 60(5). This Tribunal held that application filed

by the Successful Auction Purchaser was fully entertainable under Section 60(5) since it arose out of liquidation proceeding of the Corporate Debtor.

14. The application which was filed by the Successful Auction Purchaser being I.A. No. 219/2022 was filed by the Successful Auction Purchaser who was successful in the liquidation process and when order was sought against Paschimanchal Vidyut Vitran Nigam Ltd. that it should give a new electricity connection which connection was earlier granted in favour of the Corporate Debtor, the stand taken by the Appellant was that there were electricity dues of Rs.39,15,625/- against the erstwhile Corporate Debtor which was required to be paid by the Successful Auction Purchaser before taking a new connection. The said submission of the Appellant was clearly a plea with regard to claim of the Appellant, which claim stood extinguished in the liquidation process of the Corporate Debtor since admittedly no claim was filed by the Appellant in the liquidation process. The application which was filed by the Successful Auction Purchaser was clearly an application which arose out of or in relation to the liquidation proceeding of the Corporate Debtor, hence, the application is fully maintainable under Section 60(5) and submission of the Appellant that application is not maintainable since the Adjudicating Authority had become functus officio cannot be accepted.

15. In the case of “Chinar Steel Segments Centre Pvt. Ltd. vs. Samir Kumar Agarwal” (Supra), this Tribunal has noticed the judgment of Hon’ble Supreme Court in “Telangana State Southern Power Distribution Company Ltd. & Anr. vs. Srigdhaa Beverages” as well as “Eastern Power Distribution Company of Andhra Pradesh Limited vs. Maithan Alloys Limited & Ors.- Company Appeal (AT) (Ins.) No.961 of 2021” of this Tribunal which judgment

has also been relied by the Adjudicating Authority in the impugned order. The Judgment of this Tribunal in “Shiv Shakti Inter Globe Exports Pvt. Ltd. vs. KTC Foods Pvt. Ltd. & Anr., Company Appeal (AT) (Ins.) No. 650 of 2020” decided on 25.02.2022 also support the submission made by learned counsel for the Respondent. This Tribunal took view that when the Corporate Debtor is sold in the liquidation proceeding, Corporate Debtor cannot be burdened by any past or remaining unpaid outstanding liabilities. In Para 22 of the judgment following has been held:

“22. It is no longer Res Integra that while approving a ‘Corporate Debtor’ sale as a ‘going concern’ in Liquidation Proceedings without its dissolution in terms of Regulation 32(e) of the Liquidation Process Regulations, 2016, it is essential to see that the ‘Corporate Debtor’ is not burdened by any past or remaining unpaid outstanding liabilities prior to the sale of the Company as a ‘going concern’ and after payment of the sale proceeds distributed in accordance with Section 53 of the Code. The Impugned Order in I.A. 889 of 2020 is modified to the extent that the sale of the first Respondent as a ‘going concern’ is upheld and the direction sought for in prayer (c) & (e) in CA No. 1189 of 2019 seeking extinguishment of past/remaining unpaid outstanding liabilities including contingent liabilities, prior to the sale as ‘going concern’, after payment of sale proceeds distributed in accordance with Section 53 of the Code, is allowed.”

16. The issue raised in the present appeal are fully covered by judgment of Hon’ble Supreme Court in “Tata Power Western Odisha Distribution Limited (TPWODL) & Anr. vs. Jagannath Sponge Private Limited, Civil Appeal No.5556 of 2023” which judgment has also been relied by this Tribunal in “Chinar Steel Segments Centre Pvt. Ltd.

vs. Samir Kumar Agarwal” (Supra). It shall be sufficient to quote Para 37 and 38 of the judgment of “Chinar Steel Segments Centre Pvt. Ltd.”, where judgment of Hon’ble Supreme Court date 11.09.2023 in “Tata Power” has also been considered. Para 37 and 38 of the “Chinar Steel Segments Centre Pvt. Ltd.” is as follows:

“37. The issues raised in the present Appeal are fully covered in favour of the Appellant by a recent judgment of the Hon’ble Supreme Court dated 11.09.2023 in Civil Appeal No.5556 of 2023- “Tata Power Western Odisha Distribution Limited (TPWODL) & Anr. vs. Jagannath Sponge Private Limited”. Appellant in the above case was also insisting for payment of arrears of electricity dues. The Hon’ble Supreme Court relied on the earlier judgment of the Hon’ble Supreme Court in “Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Limited & Ors.- 2023 SCC Online SC 842” and has also noted the judgment of the Hon’ble Supreme Court in “Embassy Property Developments Pvt. Ltd.” and distinguished the same. It is useful to extract the entire judgment of the Hon’ble Supreme Court dated 11.09.2023, which is to the following effect:-

“In our opinion, the legal issue is covered by the judgment of this Court in “Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Limited and Others” and the order of this Court in “Southern Power Distribution Company of Andhra Pradesh Limited vs. Gavi Siddeswara Steels (India) Pvt. Ltd. and Another.” The appellant – Tata Power Western Odisha Distribution Limited cannot insist on payment of arrears, which have to be paid in terms of the waterfall mechanism, for grant of an electricity connection. However, the successful resolution applicant will have to comply with the other requirements for grant of electricity connection. The clean slate principle would stand negated if the successful resolution applicant is asked

to pay the arrears payable by the corporate debtor for the grant of an electricity connection in her/his name.

In “Embassy Property Developments Private Limited vs. State of Karnataka and Others”, this Court clarified that a decision by public authority etc. may fall within the jurisdiction of the tribunals constituted under the Code, where the issue relates to or arises out of the dues payable to an operational or financial creditor, by observing:

“37...It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression “operational debt” under Section 5(21), making the Government an “operational creditor” in terms of Section 5(2). The moment the dues to the Government are crystallised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the adjudicating authority, namely, the NCLT.”

The above-quoted observations from Embassy Property Developments Private Limited (supra) would confer jurisdiction on the tribunal constituted under the Code insofar as the appellant – Tata Power Western Odisha Distribution Limited is insisting on payment of the dues of the corporate debtor for restoration/grant of the electricity connection. The dues of the corporate debtor have to be paid in the manner prescribed in the resolution plan, as approved by the adjudicating authority. The resolution plan is approved when it is in accord with the provision of the Code. Thus, the issue of corporate debtor’s dues falls within the fold of the phrase ‘arising out of or in relation to insolvency resolution’ under section 60(5)(c) of the

Code. Therefore, we do not find any good ground and reason to interfere with the impugned judgment(s)/order(s) and hence, the present appeals are dismissed. Pending application(s), if any, shall stand disposed of."

38. In view of the law laid down by the Hon'ble Supreme Court in "Tata Power Western Odisha Distribution Limited" (supra), submission advanced on behalf of the Respondent- Damodar Valley Corporation cannot be accepted. The Respondent cannot insist that unless the arrears of the electricity dues which dues were payable by the Corporate Debtor prior to disconnection are paid by the Appellant only then communication can be issued. The stand taken by the Respondent is contrary to the law laid down by this Tribunal as well as the Hon'ble Supreme Court as noted above."

17. The Hon'ble Supreme Court in "Tata Power" (Supra) clearly held that Tata Power cannot insist on payment of arrears for granting electricity connection. This Tribunal in "Chinar Steel Segments Centre Pvt. Ltd." after noticing the judgment of Hon'ble Supreme Court and this Tribunal has ultimately allowed the appeal and issued directions in Para 39 of the judgment, which are to the following effect:

"39. In view of the foregoing discussions, we are satisfied that the Adjudicating Authority committed error in rejecting IA No. 984 of 2021 as not maintainable. We hold that the application is fully maintainable under Section 60(5) for the reasons as indicated above. The Appellant has made out a case for grant of reliefs as claimed in the application. In result, we allow the Appeal in following manner:-

The impugned order dated 01.09.2022 is set aside. IA No.984 of 2021 is allowed. Respondent No.1 to grant fresh connection of electricity after taking all

necessary charges for fresh connection except outstanding dues of the Corporate Debtor which stood satisfied and extinguished as per the liquidation proceedings against the Corporate Debtor."

18. We, thus, are of the view that submission raised by learned counsel for the Appellant that Successful Auction Purchaser was liable to pay the arrears of electricity dues which were dues of the erstwhile Corporate Debtor and without payment of said dues electricity connection cannot be granted are not in accord with the statutory scheme of IBC. The Adjudicating Authority did not commit any error in issuing direction in Para 16 of the impugned order, as extracted above, to energise the electricity connection without insisting on the payment of pre-CIRP dues. It is made clear that the Successful Auction Purchaser shall be liable to pay all dues for getting the new connection except the arrears of the electricity dues of Rs.39,15,625/- as was being claimed by the Appellant.

19. In view of the foregoing discussion, we do not find any ground to interfere in the impugned order of the Adjudicating Authority. There is no merit in the Appeal. Appeal is dismissed.