



**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

**IA (IB) No. 14/CB/2023
Arising out of
CP (IB) No. 1174/KB/2018
In
TP No. 34/CTB/2019**

In the Matter of:

An Application filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

-And-

In the Matter of:

An application to Adjudicating Authority to direct TPWODL to provide 550 kVA electricity to Sponge Iron Unit at Kuarmunda site of Jagannath Sponge Private Limited;

-And-

In the Matter of:

Jagannath Sponge Pvt. Ltd., having its registered office at Panda Colony, Birsa Dahar Road, Rourkela, Dist. – Sundergarh represented through its Director Arun Kumar Gaindhar;

...Applicant

-Versus-

1. Tata Power Western Odisha Distribution Ltd. (TPWODL) having its office at Burla, Sambalpur 768 017, Dist.- Sundergarh, represented through its Chief Executive Officer;

2. The Executive Engineer, TPWODL, Rajgangpur Electrical Division, Rajgangpur, Sundargrah, Odisha;

... Respondents

Appearances: -

For Applicant
For Respondents.

Mr. Satya Smruti Mohanty, Advocate.
Mr. Sumit Lal, Advocate

**Order Reserved on: 11.04.2023
Order Pronounced on 18.04.2023**



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Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

ORDER

Per P. Mohan Raj, Member, (Judicial)

1. This is an Application filed under section 60(5) IBC 2016 R/W Rule 11 of National company Law Tribunal Rules 2016 to set aside the demand letter dated 08.12.2022 issued by 2nd respondent and for direction directing the 2nd respondent to provide electricity connection to the two units of applicant's at Kuarmunda and Padajampalli.

2. The Applicant is the successful Resolution Applicant of the erstwhile corporate debtor Jaganath Sponge Private Limited. The corporate debtor was admitted into CIRP by this Adjudicating Authority by order dated 22.04.2019 in the petition filed under section 10 IBC 2016. The resolution Plan of the Applicant was approved by the Committee of Creditors of the corporate debtor and thereafter it was also approved by this Authority vide its order dated 06.08.2021.

3. The successful Resolution applicant in pursuance of the approved plan inter alia as provided in serial No.4 of clause 10, made a request to the 2nd respondent by letters dated 16.06.2022 and 14.11.2022 requesting to provide service connection to Kalamunda sites & Padajampalli units of the applicant. The 2nd respondent by reply letter dated 08.12.2022 demanded the applicant to clear the arrears of Rs.13,46,19,931/- being the amount payable by the two units of the Applicant company at Kuarmunda and Padajampalli pertaining to the period prior to the approval of resolution plan. The 2nd respondent also find fault with the publication effected by Resolution professional, and because of faulty publications he could not file claims before the Resolution professional.

4. The 2nd respondent preferred an appeal C.A.(AT) No. 1404 of 2022 before NCLAT-Delhi against the order of approval of resolution plan dated 06.08.2022 passed by this Authority, later the said appeal was dismissed as withdrawn by order dated 25.11.2022.



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5. As per the applicant the demand of the 2nd respondent to pay the arrears amount payable prior to the date of approval of resolution plan dated 06.08.2021 is unsustainable and pray to allow the application.

On the respondent side filed a detailed reply, there the respondent opposed the plea of applicant on the following grounds.

6. The application filed for supply of power does not fall under the ambit of section 60(5)(c) IBC 2016, hence application is not maintainable. The applicant approached the restoration of electricity after the lapse of more than one and half years. The order passed by this Authority dated 6.8.2021 in pursuance of defective publication is not valid. The publication was effected in violation of Regulation 6(2)(b)(ii) of the IBBI (Insolvency Resolution process for Corporate Persons). The resolution plan approved by this Authority is not in accordance with law.

The point for consideration is:

1. Whether letter dated 08.12.2022 of 2nd respondent demanding Rs.13,46,19,931/- against the applicant is valid?
2. Whether the applicant is entitled for service connection?

Points No.1 & 2: The applicant filed this application for service connection as a successful resolution applicant of corporate debtor. The Resolution plan submitted by the applicant was approved by this Adjudicating Authority on 06.08.2021. In the approved plan provision is made under the Waivers, Reliefs and Exemptions Serial No.4 runs as follows (page 145 of application):

Sl. No.	Waivers, Reliefs and Exemptions sought from NCLT	Orders thereon
	The Hon'ble NCLT be pleased to give or issue necessary directions, instructions to the relevant electricity board to give the exemption to the Corporate Debtor from making	The electricity distribution companies shall not raise any demand with reference to the past dues. They shall, however, treat the application that shall be filed by the



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	payment towards reconnection charges of power.	corporate debtor, as a new connection and collect charges as applicable for a new connection, without any coercion or precondition to pay the past dues.
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The above passage clearly reveals that this Adjudicating Authority granted permission to the applicant to avail new service connection without paying past dues prior to the date of approval of resolution plan.

7. On the respondent side reluctant to accept the request of applicant and demanded arrears amount of Rs. 13,46,19,931/- as pre condition to provide service connection in the reply letter dated 08.12.2022. As per section 31 of IBC 2016 any resolution plan is approved by the Adjudicating Authority the same is binding upon all including Central Government, State Government or any local authority. This view is reiterated by the Apex court in **Ghanashyam Mishra And Sons' vs Edelweiss Asset Reconstruction (2021) SCC 657**

"102.3 Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under [Section 31](#) could be continued.

In the circumstances the claim of the 2nd respondent against the successful Resolution Applicant is not valid and not binding as against the successful resolution applicant.

8. On the respondent's side argued that due to defective publication effected by the Resolution professional they could not submit their claims before him, hence the approval of resolution plan ordered by this Adjudicating Authority is not valid and binding upon them. The contention of the respondent is the public



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announcement effected in dailies Business Standard in English and Odisha Bhaskar in Odia both in Bhubaneswar Edition is not in accordance with Regulation because the Registered office and Principal office of the corporate debtor is situated in Rourkela in Sundergarh District. As per Regulation 6(2)(b)(i) of Insolvency And Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016 the publication to be effected “*in one English and in One regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the interim resolution professional, the corporate debtor conducts material business operations*”. The objection of the respondent is the publication was effected in Bhubaneswar Edition dailies, not in Rourkela hence publication is defective. This contention of respondent is unsustainable because the Regulation says publication to be effected in news daily having wide circulation of the place where the Registered office and Principal office of corporate debtor situate, the regulation does not say anything about place of Edition. On the respondent side it is not stated that the dailies in which publications were effected not having wide circulation at Rourkela where the office of corporate debtor is situated. It is understood that no major dailies having wide circulation in Rourkela and other parts of Orissa published from the District of Sundergarh. Thus, the plea taken by the respondent that the publication effected by Resolution professional is defective is not acceptable. Further this Adjudicating Authority after satisfied with the publication and other requirements under IBC 2016 granted Approval to the Resolution plan, so after the approval the respondent cannot agitate the correctness of the approval order before this Authority. If the respondent aggrieved by the approval order of this Authority the remedy is before the Appellate Authority. In fact, the respondent preferred an appeal before NCLAT-Delhi in C.A.No.1404 of 2022 the said appeal was dismissed as withdrawn.

9. On the respondent side stated that since appeal was not dismissed on merits, the respondent withdrew the appeal because of delay in preferring an appeal, since the appeal was not decided on merits the respondent can agitate the



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correctness of approval order before this Authority. This submission of the respondent is not acceptable. When the appeal is dismissed in whatever manner, the order of this Authority merged with the appellate order hence the respondent cannot challenge the correctness of the order of approval of this Authority before this Authority after the dismissal of the appeal.

10. On the respondent side argued that the due amount payable to the electricity is statutory due hence it cannot be waived under IBC 2016 and relies upon the Apex court Judgment **State Tax officer vs Rainbow Papers Limited 2022 SCC OnLine SC 1162**. This is the case decided by two member judges of the Supreme court decided that the due under Gujarat Value added tax is termed as secured debts. In the supra case the sales tax authority filed the claim before the Resolution Professional of course belatedly and agitated. In our case the respondent did not file any claim before the Resolution professional till the Resolution plan was approved hence the citation relied by the respondent side not helpful to their case. Recently on 28.03.2023 the NCLAT-Delhi in **Swastik Aqua Ltd and Anr vs Jharkhand Biji Vitran Nigam Ltd and Anr Company Appeal (AT)(Insolvency) No.847 of 2022** made it clear that Respondent having not filed any claim in the CIRP regarding pre-CIRP dues, it is not entitled to recover the pre CIRP dues and on non-payment of the said amount, to disconnect the electricity. Here also the respondents not submitted any claim, now claiming dues pre-CIRP dues, hence the supra citation applicable to this case also.

11. The contention of the respondent that the provision of law section 60(5)(c) quoted in the application is incorrect. The applicant filed this application on the basis of approved resolution plan for service connection. The question of entitlement of granting relief to the applicant arises in relation to the insolvency resolution, accordingly this application filed under section 60(5)(c) is maintainable.

12. In these circumstances the approved resolution plan with exemption clause is valid and binding upon the respondent, hence letter dated 08.12.2022 of respondent is not valid and not enforceable as against the applicant, in consequence



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the applicant/ the successful Resolution applicant of corporate debtor, is entitled to get service connection as provided in the approved resolution plan.

In the result the petition is ordered as follows:

1. It is hereby declared that the amount of Rs. Rs.13,46,19,931 claimed by the respondents in their impugned letter dated 08.12.2022 addressed to applicant is not valid and not enforceable as against the corporate debtor/successful resolution applicant.
2. The 2nd Respondents is directed to consider the service connection application of the applicant submitted by the successful resolution applicant or any other person on its behalf, in accordance with the code/regulation without insisting to make any payment/arrears in whatever nature payable by the corporate debtor prior to 06 .08.2021.

Thus, this application is Allowed, no order for cost.

13. Registry is directed to send e-mail copies of the order forthwith to all the parties and their counsel for limitation.

14. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Satya Ranjan Prasad
Member (Technical)

P. Mohan Raj.
Member (Judicial)

Signed on this 18th day of April, 2023.

Kaushal P.S