

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 878 of 2023

[Arising out of the Impugned Order dated 14.06.2023 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench-III in I.A. No. 1146/2022 and I.A. No. 3234/2023 in C.P. (IB) No. 1348/ND/2019]

In the matter of:

- 1. Sanskriti Allottee Welfare Association (Reg.)**
Through its General Secretary Shri Lalit Chauhan,
Having its registered office at:
Flat No. 101, Tower C,
Earthcon Sanskriti Apartment, GH-10,
Sector-1, Greater Noida West,
Gautam Buddh Nagar 201306, U.P.
- 2. Lalit Chauhan**
S/o Shri Murari Singh
R/o Earthcon Sanskriti Apartment,
Flat- 101, Tower-C, Plot GH-10,
Sector-1, Greater Noida West,
Gautam Buddh Nagar (U.P.)
- 3. Rohit Kumar**
S/o Shri Shital Prasad
R/o Earthcon Sanskriti Apartment,
Flat- 1302, Tower-B, Plot GH-10,
Sector-1, Greater Noida West,
Gautam Buddh Nagar (U.P.)
- 4. Vinod Kumar Upadhyay**
S/o Late Shri Thakur Dutt Upadhyay
R/o Earthcon Sanskriti Apartment,
Flat- 108, Tower-C, Plot GH-10,
Sector-1, Greater Noida West,
Gautam Buddh Nagar (U.P.)
- 5. Rahul Yadav**
S/o Shri C.L. Yadav
R/o Earthcon Sanskriti Apartment,
Flat- 412, Tower-C, Plot GH-10,
Sector-1, Greater Noida West,
Gautam Buddh Nagar (U.P.)

6. **Akash Chauhan**
S/o Mr. Dharampal Singh Chauhan
R/o Earthcon Sanskriti Apartment,
Flat- 1209, Tower-C, Plot GH-10,
Sector-1, Greater Noida West,
Gautam Buddh Nagar (U.P.)

...Appellants

Versus

1. **Gaurav Katiyar**
Resolution Professional
Earthcon Universal Infratech Pvt. Ltd.
D-32, East of Kailash, New Delhi- 110065
Email id: rjcs092@gmail.com
2. **Noida Power Company Limited**
Electric Sub-Station, Knowledge Park-IV
Greater Noida City- 201301, U.P.
Email id: npcl@rpsg.in

...Respondents

Present :

For Appellant : Mr. Yashish Chandra, Mr. Aran Dev Pandey, Advocate.

For Respondents : Mr. Rishabh Jain, Advocate for R-1 (RP).

Mr. Anil Dutt, Mr. Sarthak Garg, Mr. Sarvesh Mehra, Mr.
Anupam Choudhary, Advocates for R-2 (NPCL).

J U D G M E N T

(Hybrid Mode)

[Per: Barun Mitra, Member (Technical)]

1. The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('IBC' in short) by the Appellants arises out of the Order dated 14.06.2023 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-III)

in I.A. No. 1146/2022 and I.A. No. 3234/2023 in C.P. (IB) No. 1348/ND/2019. By the impugned order, the Adjudicating Authority dismissed IA No. 1146 of 2022 filed by the Appellants as infructuous and allowed I.A. No. 3234 of 2023 filed by Resolution Professional ('RP' in short) with liberty to take necessary steps with regard to payment of maintenance charges including electricity charges. Aggrieved with the impugned order, the present appeal has been preferred by the Appellants-Home Buyers.

2. The relevant facts of the present case which are necessary to be noticed and considered to decide the case at hand are as outlined below:

- The Corporate Debtor- Earthcon Infracon Pvt. Ltd. was developing a residential project named 'Sanskriti' with another housing project named 'CASA'. The Appellants represent Home Buyers of 'Sanskriti'.
- In 2019, a Section 7 application was admitted by the Adjudicating Authority following which the Corporate Debtor was admitted into Corporate Insolvency Resolution Proceedings ('CIRP' in short).
- The RP-Respondent No.1 was appointed to manage the operations of the Corporate Debtor as a going concern during the moratorium period, which included providing maintenance services and electricity to the Home Buyers, who received possession of their respective apartments between February, 2018 and January, 2020.
- On the insolvency commencement date, the Home Buyers were paying maintenance fee @ Rs.1 per sq. ft. plus GST. However, there was admittedly an outstanding electricity bill payable to Noida Power Corporation Limited ('NPCL' in short).

- As the accumulated unpaid electricity charges to NPCL kept on escalating, the 12th meeting of the Committee of Creditors ('COC' in short) on 21.01.2022 passed a resolution to increase the maintenance rate from Rs. 1 to Rs. 2 per sq. ft. plus GST so as to also include defraying of electricity charges also. This resolution was passed by the CoC with requisite majority.
- The increase in maintenance charges as approved by CoC was informed by the RP to the Home Buyers on 28.01.2022. Subsequently, the Appellant- Home Buyers filed IA No.1146 of 2022 before the Adjudicating Authority. The prayers contained in IA 1146/2022 are as follows:

“(i) Quash and set aside the decision of CoC in 12th Meeting of CoC conducted on 21.01.2022 regarding increase in maintenance charges from homebuyers@ Rs. 2/- per sq. ft. plus GST;

(ii) In the meanwhile, as an interim measure during the pendency of present application, stay the operation and effect of the decision of CoC in 12th Meeting of CoC conducted on 21.01.2022 regarding increase in maintenance charges from homebuyers@ Rs. 2/- per sq. ft. plus GST;

(iii) In the meanwhile, as an interim measure during the pendency of present application, direct the RP not to disconnect/interrupt the electricity to the Applicants for non-payment of increased maintenance charges.

(iv) Direct the RP to treat the excess/outstanding electricity charges as CIRP Costs.

(v) such other and further orders as this Ld. Adjudicating Authority may deem just and fair in the interest of justice.”

- The Adjudicating Authority after hearing the IA 1146/2022 on 14.03.2022 passed interim orders on 14.03.2022 directing the respondents as well as other residents of the Sanskriti Project “to make payment of all pending dues towards the electricity charges as well as

maintenance charges as decided by the CoC.” However, the RP/CoC was directed not to take any action for disconnection of electricity of the residents.

- Since the maintenance charges including electricity charges aggregated a total amount of Rs. 1.58 cr and the RP was not in a position to collect the dues from the residents and deposit with NPCL, the RP filed IA No. 3234 of 2023 before the Adjudicating Authority making the following prayers:

“a. Modify the order dated 14.03.2022 and allow the Resolution Professional to disconnect the electricity of resident's flat not paying the maintenance@ 21- per sq ft and electricity dues;

b. Pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”

- The Adjudicating Authority after hearing the IA No. 3234/2023 on 14.06.2023 clarified that the order dated 14.03.2022 specifically mentioned that the RP shall not take action with regard to disconnection of electricity of residents' flats. Further modifying its earlier order of 14.03.2022, it clarified that *“the RP is free to take coercive steps with regard to the non-payment, and maintenance charges which include the electricity charges of the common area.”*
- However, vide the same orders dated 14.06.2023, IA No. 1146 of 2022 was dismissed as infructuous.
- Aggrieved with the impugned order dismissing IA No. 1146 of 2022 as infructuous and for allowing IA No. 3234 of 2023 granting liberty to the RP to take coercive steps with regard to payment of maintenance charges including electricity dues, the present appeal has been preferred by the Appellants.

3. Making his submissions, Shri Yashish Chandra, Ld. Counsel for the Appellants contended that though the original maintenance charge of Rs. 1 per sq. ft. was adequate, the RP had arbitrarily increased the maintenance charges by 100% without valid reasons explaining the hike. The Adjudicating Authority had passed a non-speaking, unreasoned impugned order without adjudicating on the validity of the decision of the RP/CoC to levy maintenance charges @ Rs.2 per sq. ft. It is also been contended that neither the RP nor the CoC were empowered by IBC to determine the maintenance charges as under Section 11(4) of the Real Estate Regulation Act, 2016 ('**RERA**' in short) and Section 14(1) of Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 ('**UP Apartment Act**' in short), the RP was required to constitute an Association or Society of the Allottees to take decision on maintenance fees etc. Apart from projecting inflated outstanding bills, the RP had also subjected the Home Buyers to pay electricity rates at commercial rates which tantamount to overcharging. Furthermore, the RP had failed to recover electricity dues from allottees who received possession but were not residing in the residential project. This has shifted the burden of defaulting non-resident allottees on the Appellant. It was vehemently contended that the RP had illegally fastened the total liability upon the resident Home Buyers to pay for electricity charges though it was also being consumed by the Corporate Debtor for carrying out construction activities. Further, the RP had also failed to check illegal diversion of electricity despite complaints having been lodged with RP.

4. It has also been contended that under Regulations 31 and 32 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, ('**CIRP**

Regulations' in short) electricity dues form part of the CIRP costs and have to be paid as per Section 53 of the IBC only at the time of distribution of CIRP costs to all stakeholders. The RP by collecting the electricity dues was violating the provisions of IBC and its regulations lead for their unjust enrichment. In terms of Regulation 32 of CIRP Regulations, electricity has been defined as one of the essential supplies. Furthermore, Section 14 of the IBC mandates uninterrupted supply of essential goods or services to the Corporate Debtor and hence electricity supply cannot be terminated, suspended or interrupted.

5. Shri Rishabh Jain, Ld. Counsel representing the RP admitted that the Corporate Debtor had taken only one temporary electricity connection from NPCL for the residential project. The RP submitted that even after the Corporate Debtor was admitted into CIRP, the allottees continued to receive their electricity supply on the strength of the temporary single point connection. It was further submitted that when the RP took over the charge of the Corporate Debtor, there was already an outstanding electricity due of Rs. 70 lakhs and hence the 3rd CoC meeting had resolved to increase electricity rates from Rs.7 to Rs. 8.91 per unit.

6. It was further pointed out that as per Section 11(4)(d) of RERA Act, the Corporate Debtor is obligated to provide essential services on reasonable charges till the maintenance of the project is taken over by the association of allottees. In the present case, in the absence of any such association of allottees, the RP was responsible for providing maintenance service and electricity for which it had to collect the charges from the allottees who were the consumers. The earlier maintenance charges of Rs. 1 per sq. ft. did not include electricity of common

area. Since the construction of real estate project had come to halt and there was no source of income, the Corporate Debtor was not in a position to clear electricity dues of common area following which the CoC in its 12th meeting decided to increase maintenance charges so that electricity consumed in common areas also get absorbed. It was vehemently contended that the Adjudicating Authority on 14.03.2022 had correctly directed the residents to make payment of all pending dues as decided by CoC. Despite these specific directions, the residents were not paying maintenance charges which had aggregated to an outstanding amount of Rs. 1.69 cr as on 06.08.2023 including electricity dues. This had compelled the RP to file IA No. 3234 of 2023 in which the Adjudicating Authority had correctly given the liberty to the RP to take coercive steps with regard to the non-payment, and maintenance charges which include the electricity charges of the common area.

7. Asserting that electricity charges of common area had remained uncaptured in the earlier rate of maintenance, it was contended that it is reasonable that residents were to bear the burden of clearing the related arrears and current dues. Moreover, the maintenance activity for the common areas such as lifts, corridors etc. had to be taken care of by the RP. To enjoy uninterrupted supply of electricity, the Home Buyers were bound to pay their maintenance bills on time so that the IRP in turn could pay to NPCL. It is also asserted that providing maintenance services fell in the realm of business activity as opposed to CIRP activity. Merely because payment of electricity dues is to be treated as CIRP cost does not absolve the liability of residents to pay arrears of maintenance. The RP claimed that the Appellants have only made a

sweeping statement regarding mismanagement of maintenance activities by RP without giving proof of even a single instance. The RP also denied any illegal use or diversion of electricity. It was also claimed that the stage of handing over of maintenance to the allottees as per the UP Apartment Act had still not been reached. Even if electricity dues are collated as CIRP cost, it will not absolve Home Buyers of their liability to pay to the electricity supplier.

8. This Tribunal had allowed, on the request of the Appellant, the impleadment of NPCL. Making his submissions, Mr. Anil Dutt, Ld. Counsel representing NPCL submitted that the Corporate Debtor had been provided single point temporary commercial electricity connection for purposes of project construction. However, the Corporate Debtor provided electricity supply to the Home Buyers from this connection without applying for connection for Common Area services and individual connections. It was contended that the Corporate Debtor is obligated to pay current dues on account of electricity supply and the same cannot be treated as CIRP costs. Reliance was placed on the judgment of this Tribunal in ***Shailesh Verma vs Maharashtra State Electricity Distribution Company in CA(AT)(Ins)No. 383 of 2022*** to assert that if supply of electricity is essential and is to be continued even during CIRP period, then the Corporate Debtor is obliged to make payment of electricity dues of the CIRP period and even payment of outstanding dues.

9. Electricity dues being in the nature of current dues have to be paid by the Corporate Debtor during the moratorium period. In support of their contention, the Learned Counsel for the NPCL adverted reference to ***Dakshin Gujarat VJ Company Ltd. v. M/s. ABG Shipyard Ltd. & Anr in CA(AT)(Ins)No. 334 of Company Appeal (AT) (Insolvency) No. 878 of 2023***

2017 where it was held that no prohibition has been made or any bar imposed towards payment of current charges of essential services. Such payments not having been covered by moratorium under the substantive provisions of Section 14 of IBC, it was submitted that the Appellant has wrongly banked upon Regulations 31 and 32 of CIRP Regulations as these Regulations cannot override the statutory provision. The Ld. Counsel for NPCL further contended that NPCL being a regulated entity under the provisions of Electricity Act, its dues are statutory in nature and hence the Corporate Debtor was bound to pay such dues. It is also contended that recovery and collection of electricity dues was not barred by Section 14 of the IBC and failure to pay such dues entitled NPCL to disconnect electricity supply.

10. It is submitted by NPCL that the RP had filed IA No. 82 of 2022 against the disconnection notice issued by NPCL and sought stay of the disconnection. The Adjudicating Authority in its order dated 20.01.2022 granted interim relief and had directed NPCL not to proceed with its disconnection notice and to ensure electricity supply to the projects of the Corporate Debtor. Though NPCL had filed I.A. No. 1432 of 2022 seeking vacation of the interim order dated 20.01.2022, the same was dismissed by the Adjudicating Authority and been challenged by them before this Tribunal wherein notice has been issued.

11. We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully.

12. The short question before us is to consider the propriety of the directions issued by the Adjudicating Authority that the RP shall be free to take coercive

steps with regard to the non-payment of maintenance charges including the electricity charges of the common area and make the payment to the NPCL and further that RP shall not take any action with regard to disconnecting the electricity of the Home Buyers flats.

13. To answer the question as outlined above, we need to first decipher at the very outset the pendency of maintenance charges including electricity dues. From the given factual matrix, it is an undisputed fact that when the RP took over the charge of the Corporate Debtor, there was shortfall in maintenance charges collected from the Home Buyers and an outstanding electricity due payable to NPCL. In the present case since the Corporate Debtor was admitted into CIRP and RP had been appointed, the responsibility to discharge the pending payments of maintenance charges including electricity dues fell on the RP in terms of the statutory construct of IBC. It is also an admitted fact that in terms of Section 11(4)(d) of RERA Act, the Corporate Debtor was obligated to provide essential services including electricity supply till the maintenance of the project was taken over by the association of allottees. We do not wish to enter into the realm of the dispute as to whether the association of allottees was already constituted or not as this is not the competent forum to consider this subject matter. In any case, irrespective of whether the association of allottees was constituted or not, this fact is not germane as it has no bearing on the undisputed fact that the Corporate Debtor was saddled with the liability of outstanding maintenance charges including electricity dues. What we need to consider at this stage is whether the RP being responsible for running the Corporate Debtor as a going concern took the necessary steps to apprise the CoC

about the dues payable to the NPCL as expected of RP in terms of the IBC scheme.

14. When we look at the minutes of the 3rd meeting of the CoC held on 19.12.2020, we find that Item No. 13 dealt with the agenda to consider, discuss the issue related to electricity bill of NPCL so as to approve a cogent business plan to clear the pending dues of the NPCL. The relevant extracts of the discussion on item no 13 are as follows:

“The Chairman informed to the committee that as per recent bill of NCPL dated 26.11.2020 their outstanding is of Rs. 75,32,924 and in compliance with the direction given by Hon’ble NCLT vide order dated 04.11.2020, the committee members may consider, discuss and finalized the payment plan Noida Power Corporation Limited of Rs. 75,32,924/-.

The Chairman further informed the CoC members that nonpayment of NPCL dues is a quite alarming situation as it may leads to disconnection of power of supply and may adversely affect more than 400 families staying in Sanskriti & Casa Royal.

The Chairman also informed that Hon’ble NCLT has given direction vide order dated 04.11.2020 to the Resolution Professional to place an agenda in this relation before CoC for taking appropriate decision.”

(Emphasis supplied)

15. Thereafter, item no. 14 was tabled in the 3rd CoC meeting to consider, discuss and authorize the RP to increase the electricity rate @ Rs. 8.91/- per unit from the allottees having possession of their flats in Sanskriti Project of the Corporate Debtor. It was stated in the Agenda Note that the Corporate Debtor is charging Rs. 7/- per unit from the residents residing at the Sanskriti whereas NCPL charged Rs. 8.91/- per unit. It was also submitted by the RP that the services of electricity to residents of the Sanskriti on the temporary electricity connection of Corporate Debtor is on “back to back basis without adding any

markup". Hence, to reduce the deficit in the collection of electricity charges and make the regular payments to NPCL so that buyers may not face any coercive action from NPCL, the RP proposed to increase the electricity rate from Rs. 7/- per unit to Rs. 8.91/- per unit with effect from 01.01.2021.

16. We further notice that after due consideration of the matter, the CoC resolved to approve the increase in the electricity rate @ Rs. 8.91/- per unit w.e.f. 01.01.2021 from the allottees who had obtained possession of their flats in the project of the Corporate Debtor. We also notice that this resolution was passed by CoC with the requisite majority and more pertinently the Authorised Representative of the financial creditors in class had informed that 87% had cast their votes in favour of the resolution.

17. However, as the dues to the NPCL remained unpaid and a disconnection notice had been issued by NPCL, the RP tabled Agenda item no. 5 in the 12th CoC meeting dated 21.01.2022 to increase the rate of maintenance charges from Rs 1 to Rs. 2 plus GST per sq ft. to resolve the problem. The relevant extracts of the discussion on item no 15 is as follows:

"The Chairman informed the committee that as per the electricity bill dated 25.12.2021 the electricity dues have accumulated to Rs. 99 lakhs and disconnection notice was issued by NPCL which was placed before CoC in 10th CoC meeting.

During CIR period the average monthly consumption of 28,000 units per month for common services which were never billed and never considered in the determination of maintenance charges@ Re. 1/ sq ft. Common services include lights of the common area, the functioning of lifts, and electricity consumed in facility offices and guardrooms.

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It is worthwhile to note that there was no other activity during the CIR period except electricity consumed for maintenance purposes.

It is also stated that such an increase in the maintenance rate is for the benefit of the residents as they will receive an uninterrupted supply of electricity.

Mr. Deepak Gupta- AR of Real Estate Allottees raised an objection on behalf of real estate allottees who have taken possession The Chairman replied that the facts mentioned in the agenda are self-explanatory and he requested the members to decide the matter through voting as it is a matter of grave concern and electricity disconnection will adversely affect the lives of more than 2000 individuals (ie. More than 500 families). None of the members raised any concern.

(Emphasis supplied)

18. The draft resolution for increase in maintenance rate from Re. 1 plus GST to Rs. 2 plus GST was thereafter placed before the 12th CoC for approval. We notice that this resolution was passed by CoC with the requisite majority and more pertinently the Authorised Representative of the financial creditors in class informed that 80% had cast their votes in favour of the resolution.

19. Another significant CoC meeting was the 15th meeting held on 11.04.2022 where the permanent solution of multi-point electricity connection to the residents of Sanskriti was discussed and approved. It was mutually agreed to decide the matter through voting and two options were given to CoC member to decide upon. The first option was that the cost of the infrastructure related to multi point electricity connection be financed by all allottees who took possession on or before insolvency commencement date. The second option was that the cost of the infrastructure be financed by all real estate allottees whether they filed their claim before RP or not. We notice that first option was approved by the CoC and this resolution was again passed with the requisite majority including the financial creditors in class.

20. Besides the RP placing the issue of maintenance charges and electricity dues before the CoC for its deliberations and consideration, we also find that the RP, in all fairness, had from time to time sent communications to the allottees regarding the electricity overdue amount and emphasised the need to clear the outstanding dues of NPCL to avoid disconnection of electricity supply. Illustratively, we are noting down some of them. On 23.06.2021 a letter had been sent to all residents indicating decline in collection of maintenance charges and accrual of Rs. 1.40 cr as short fall on account of power supply and maintenance services as placed at page-147 of Appeal Paper Book ('APB' in short). On 04.02.2022, the RP had sent a communication to the residents stating that though the CoC had approved the appointment of a maintenance service agency @ Rs. 1.55 per sq. ft., the said agency had expressed their unwillingness to provide service at the same cost and hence there was a need to engage another agency for this purpose on enhanced rates. On 21.02.2022, the RP again explained to the resident allottees that electricity over-due amount was not factored in the maintenance rate as may be seen at page 149 of APB and that the earlier maintenance charges of Rs. 1 per sq. ft. did not include electricity of common area. Such communications though not an exhaustive list, clearly depicts that the RP had been making bonafide efforts to apprise the allottees of the need to clear the outstanding electricity dues to stave off the stark possibility of electricity disconnection.

21. In the given facts and circumstances, we do not find any credible ground which has been brought before us by the Appellants to substantiate any impropriety, procedural or otherwise, to have been committed by the RP in

placing the correct facts before the allottees and the CoC members regarding the need to enhance the maintenance charges and need to clear the cascading electricity dues to avoid any possible power disconnection by the NPCL. In the given facts of the case, since it was the prime responsibility of the RP to run the Corporate Debtor as a going concern, it was entirely appropriate on the part of the RP to seek the approval of the CoC in the determination of maintenance fees and recovery of electricity dues. Moreover, we notice that the allottees as financial creditor in class were represented by their Authorised Representative in the CoC meetings and also participated in the e-voting process. After having been present in the CoC meetings and exercised their voting rights on the determination of the maintenance fees and electricity dues, the allottees cannot question the authority of the CoC to have made these business decisions. It goes without saying that the commercial decision of the CoC is paramount and non-justiciable and every dissatisfaction cannot partake the character of a legal grievance.

22. This brings us to next part of the question as to whether payment of electricity charges being an essential service, such amount can be accounted towards CIRP costs and that the Corporate Debtor is not liable to pay the amount till the completion of the period of moratorium.

23. This issue has been squarely covered by the judgement of this Tribunal in ***Shailesh Verma vs Maharashtra State Electricity Distribution Company in CA(AT)(Ins)No. 383 of 2022***. This Tribunal by making a contextual and purposive interpretation of statutory provisions of moratorium and its subsequent amendment by Act 1 of 2020 had held that while benefit of essential **Company Appeal (AT) (Insolvency) No. 878 of 2023**

services should be continued, there should not be any default in the discharge of the dues arising therefrom. The relevant portion of the judgment reads as under:

“8. We need to notice the provisions of the Code to find out as to whether the Respondent, who was directed to supply the electricity was entitled to claim payment of electricity dues during CIRP period or the Respondent had to wait till the resolution of the CIRP of the Corporate Debtor to receive its dues. Section 14, sub-section (2) provides for supply of essential goods or services to the Corporate Debtor shall not be terminated or suspended or interrupted during the moratorium period. Section 14(2) is as follows:

“14(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.”

9. Section 14(1) has been amended by Act 1 of 2020 and explanation of Section 14(1) and sub-section 14(2A) as inserted by Act 1 of 2020 is as follows:

“14(1) Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;

(2-A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified”

10. We need to notice the purpose of object of amended Section 14 by Act 1 of 2020. For finding out the purpose of object of the provision, we need to notice the Statement of Objects and Reasons. The Statement of Objects and Reasons as contained in the Insolvency and Bankruptcy Code, Second Edition 2021, are as follow:

“Statement of Objects and Reasons

The Insolvency and Bankruptcy Code, 2016 (the Code) was enacted with a view to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order or priority of payment of Government dues and to establish and Insolvency and Bankruptcy Board of India.

2. A need was felt to give the highest priority in repayment to last mile funding to corporate debtors to prevent insolvency, in case the company goes into corporate insolvency resolution process or liquidation, to prevent potential abuse of the Code by certain classes of financial creditors, to provide immunity against prosecution of the corporate debtor and action against the property of the corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions, and in order to fill the critical gaps in the corporate insolvency framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code, 2016.”

11. When we look into the Statement of Objects and Reasons as extracted above, one of the object as expressly recorded was “in order to fill the critical gaps in the corporate insolvency framework”. Explanation to sub-Section (1) of Section 14 and insertion of sub-section (2-A) of Section 14 was with the object to fill the critical gap in the corporate insolvency framework. Section 14, sub-section (2) as contained in the Code only provided for supply of essential goods or services to the Corporate Debtor contained an indication that supply of essential goods or services to the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period, brought a substantive provision that when Interim Resolution Professional or Resolution Professional consider the supply of goods or services critical to protect and preserve the value of the Corporate Debtor, the same shall not be terminated or suspended or interrupted during the period of moratorium except where Corporate Debtor has not paid such

dues arising from such supply during the moratorium period. The insertion of sub-section (2-A) in the Section 14 has been brought with a purpose and object. Section 14, sub-section (1) explanation also clarifies that a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the same. The scheme delineated by Section 14(1) explanation as well as Section 14(2-A) is same, that is, all benefits, which were enjoyed by the Corporate Debtor given by Government or authority should be continued, but subject to condition that there is no default of payment of current dues. Sub-section (2-A) also envisage continuation of the essential supply and provides for such termination, suspension or extension when payment has not been made for the such supply during the moratorium.

12. Sub-section (2) of Section 14 has to be read with the legislative intent, which is now reflected by Explanation to Section 14(1) and 14(2-A). In the facts of the present case, when Corporate Debtor took a decision that supply of electricity is necessary to make the value of Corporate Debtor as has been specifically pleaded in IA No.1661 of 2021 as noticed above, the Corporate Debtor is obliged to make payment.”

24. Coming to the facts of the present case, we find that the RP has admitted that electricity supply by NPCL, being in the nature of supply of essential goods and services, was necessary to be continued so as to protect and preserve the value of the Corporate Debtor and hence dues arising from electricity supply require to be discharged. This subject matter has been considered and deliberated at length by the CoC from time to time in its various meetings and resolutions passed to collect the outstanding amount from the allottees to square off the dues of NPCL. Given this backdrop, we find that the Adjudicating Authority did not commit any fault in directing that payment be made of all pending dues towards the electricity charges as well as maintenance charges as decided by the CoC and further clarifying that the RP is free to take coercive

steps with regard to the non-payment, and maintenance charges which include the electricity charges of the common area. There is no prohibition or bar imposed by the IBC towards payment of dues arising from essential services supply during CIRP period nor is there any statutory provision which stipulates that the Corporate Debtor is not liable to pay such amounts till completion of the period of moratorium.

25. In result, we are of the considered opinion that we find no infirmity in the impugned order of the Adjudicating Authority holding that the Corporate Debtor through the RP was obligated to make payment of the electricity dues as approved by the CoC and apply coercive measures to collect the same to make payment to the NPCL. The Appeal lacks merit and is dismissed. No costs.



LEGALERA
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Place: New Delhi

Date: 19.07.2024

Harleen Kaur