

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.306  
IA/1242(AHM)2023  
in  
CP(IB) 533 of 2018

**Proceedings under Section 60(5) IBC r.w Rule 11 of NCLT Rules, 2016**

**IN THE MATTER OF:**

Mangalam Worldwide Limited  
V/s  
Madhya Gujarat Vij Co. Ltd.

.....Applicant

.....Respondent

**Order delivered on: 16/07/2024**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)  
Mr. Sameer Kakar, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**  
**(Hybrid Mode)**

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH - I, AHMEDABAD**

**IA/1242 (AHM) 2023  
in  
CP(IB)/533(AHM)2018**

An application under Section 60(5)(C) of the Insolvency and Bankruptcy Code, 2016 R/W Regulation 32(E) and 32A of IBBI (Liquidation Process) Regulations, 2016 R/W Rule 11 of NCLT Rules

***In the matter of Diamond Power & Infrastructure Ltd.***

**MANGALLAM WORLDWIDE LIMITED**

102, Mangalam Corporate House, 42,  
Shrimali Society, Netaji Marg, Mithakhali,  
Navrangpura , Ahmedabad, Gujarat,- 380009

... Applicant

**VERSUS**

**MADHYA GUJARAT VIJ LIMITED**

Division office (O& M), 66KV GIDC S/S Compound,  
Near Lucky Studio, Village Maghasar,  
Taluka kalol, Panchmahal- 389330

... Respondents

**Order Pronounced on 16.07.2024**

**CORAM:**

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)**

**SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

For Applicant(s): Mr. Mohaal Davawala, Advocate

For Respondent: Mr. Kishan Patel, Proxy Advocate

## **ORDER**

**Per: Bench.**

1. The present application is filed under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 R/W Rule 11 of NCLT Rules in CP(IB) No. 533 of 2018 seeking certain the reliefs and concessions with following prayers: -

- (a) Allow the present Application; and/or*
- (b) declare that the purported claim of Respondent stands extinguished pursuant to the approval of Resolution Plan by this Hon'ble Tribunal vide order dated 13.12.2021; and/or*
- (c) direct the Respondent to grant the name transfer application submitted by the applicant forthwith without having to make any payment/arrears in whatever nature payable by the Corporate Debtor prior to 16.3.2020 i.e. date of commencement of CIRP; and/or*
- (d) pending the admission and final hearing of this application, direct the Respondent not to take any coercive action against the applicant including but not limited to disconnecting the electricity connection already subsisting at the premises of the Corporate Debtor and now in control of the applicant; and/or*
- (e) grant any other relief or relief as may deem fit in the interest of justice.*

2. The applicant submitted that one Operational Creditor being Megamet Steel Private Limited had filed a petition being Company Petition No. 533 of 2018 under Section 9 of the Code seeking initiation of CIRP against the Corporate Debtor. The Tribunal vide its order dated 16.3.2020 was pleased to admit the said petition thereby declaring moratorium and initiating Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor, One Mr. Pawan Kumar Ramdhan Agarwal was appointed as the IRP who made public announcement inviting claims from various creditors on 10.6.2020 and the CoC came to be constituted thereunder which consisted of 5 Financial Creditors viz. City Union Bank, Small Industries Development Bank of India, Mahindra Financial Services Limited, IDFC First Bank Limited and Magma FinCorp Limited. In the 1st CoC meeting held on 15.7.2020, the members of CoC resolved to replace the IRP and appoint Mr Rishabh Chand Lodha as the Resolution professional of the Corporate Debtor.
3. It is stated by the applicant that this Tribunal vide order dated 16.03.2020 admitted the petition and initiated

Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed Mr. Pawan Kumar Ramdhan Agarwal as resolution professional vide Order dated 20.06.2022. Thereafter, this Tribunal approved the Resolution Plan submitted by Mangalam Worldwide limited [‘Successful Resolution Applicant’] vide Order dated 13.12.2021.

4. Pursuant to the Form G issued by the RP, various Resolution Plans were received and the Resolution Plan submitted by the applicant was found to be the most viable by the CoC in its commercial wisdom after few rounds of negotiations between the concerned parties. Accordingly, in the adjourned 8th CoC meeting held on 7.5.2021, the Resolution Plan submitted by the applicant was approved by the CoC with 95.23% voting.
5. This Tribunal was pleased to approve the Resolution Plan submitted by the applicant vide order dated 13.12.2021 passed in Interlocutory Application No. 368 of 2021. In Paragraph 25 of the said order, the Tribunal has categorically held as under:

*"25. The Resolution Applicant has claimed various reliefs and concessions in the resolution plan. However, we grant the reliefs in the following manner and to this extent:*

*1. After the payment of dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders shall stand permanently extinguished after the approval of the resolution plan. We further hold that other claims including claims of Government/ Statutory Authorities, whether lodged during CIRP or not, shall stand extinguished after the approval of the Resolution plan. We further hold that contingent/ unconfirmed dues shall also stand extinguished.*

*....*

*9. The provisions of the Resolution plan shall be binding on the Company, guarantor, members, employees, statutory authority and other stakeholders in accordance with Section 31 of the Code with effect from the appointed date."*

6. The applicant submits that the Resolution Plan has been fully implemented and the applicant has taken complete charge of the Corporate Debtor. In furtherance of the same, the applicant submitted application dated 30.5.2023 with the Respondent for change of name for the electricity connection from that of the Corporate Debtor to the name of the applicant.
7. The applicant submitted that it was surprised and shocked to know that the Respondent rejected its application claiming that there were arrears to the tune of Rs.

3,61,88,241.27/- of one Jalan Forging Limited – a purported previous consumer in the same premises. The Respondent further asked the applicant to clear the said dues to enable it to process the applicant's application for change of name.

8. The applicant stated that it is pertinent to note that the Respondent had not lodged its purported claim in accordance with law with the erstwhile IRP or the RP at any point of time during the CIRP of the Corporate Debtor. Even thereafter, the Respondent has not approached the RP or even this Tribunal seeking to get its claim lodged/admitted in accordance with law. The applicant unequivocally submitted that there is no outstanding or arrears payable to the Respondent after initiation of CIRP i.e. from 16.3.2020 till date.
9. The applicant submitted that the law with respect to pre-CIRP electricity dues has been reiterated by the Hon'ble Supreme Court recently in the case of Southern Power Distribution Company of Andhra Pradesh Limited vs. Gavi Siddeswara Steels (India) Pvt. Ltd. & Another wherein it has held that:

*“..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". The appellant – Southern Power Distribution Company Of Andhra Pradesh 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 for the corporate debtor for the grant of an electricity connection in her/his name...”*

10. The applicant further submits that the law with respect to claims which have not been lodged/admitted during CIRP or undecided claims is also well settled by the Hon'ble Supreme Court. In Committee of Creditors of Essar Steel Limited vs. Satish Kumar Gupta & Others, the Hon'ble Supreme Court has held as under:

*“67. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty*



*amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count”*

11. Similarly, in *Ghanashyam Mishra & Sons vs. Edelweiss Asset Reconstruction Company Limited & Others*, the Hon'ble Supreme Court has categorically directed as under:

*“..95.In the result, we answer the questions framed by us as under:*

*i) That once a resolution plan is duly approved by the Adjudicating Authority under sub section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;*

*(ii) ...*

*(iii) 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...”*

12. Reply was filed on 21.03.2024 under Diary No. D2514 by the Respondent through an Affidavit stating as under:

- a) It is submitted that the applicant is clearly premised on the “clean slate” principle and the hypothesis that the Successful Resolution applicant cannot and should not be faced with any “undecided” claims or should not be flung with any surprise claims.
- b) It is submitted that the applicant in the present case, appears to have lost of the seminal principle of interpretation of the judgment and has sought to read the decisions cited in the memo of application as ‘Euclid’s theorem’.
- c) It is submitted that the Applicant has with hold some facts of the case which are as under:
  - i. M/s Jalan Forging Limited was a consumer of the respondent electricity distribution company. The said consumer defaulted in making payment of electricity charges. Despite multiple requests, the consumer did not clear outstanding bills. Therefore, power supply to the consumer was stopped and the connection was ultimately disconnected on 01.04.1997.
  - ii. M/s Jalan Forgings Limited came to be wound up by an order dated 1.12.2005 passed by the Hon'ble High Court of Gujarat in Company Petition No. 325 of 1999. One of the asset of the Company (In Liquidation), being land bearing Plot No. 2348 having Survey No.219/3 situated in Village

Chandrapura, was purchased by Agarwal Mittal Concast Private Limited, as a nominee of M/s Ajay Enterprises Private Limited by registered sale deed dated 16.04.2009.

- iii. Agarwal Concast Private Limited, being desirous of starting the manufacturing unit at the premises, made an application on 7.05.2009 to the respondent company for getting new electricity connection of 4000 KVA. The electricity distribution company informed by letter dated 22.05.2009 that there were unpaid dues of Rs. 3,61,88,241.27 of M/s Jalan Forgings Limited which need to be cleared by Agarwal Concast Private Limited prior to its application being processed for release of a new electricity connection.
- iv. Agarwal Concast Private Limited challenged the communication dated 22.05.2009 conveying the decision of the electricity distribution company in demanding clearance of past outstandings of M/s Jalan Forgings Limited by filing an application before the Consumer Grievance Redressal Forum. The said application came to be dismissed by the Forum. The said order was never challenged by Agarwal Concast Private Limited, and attained finality in law.
- v. Agarwal Concast Private Limited then filed an application seeking a declaration that it was 'not liable to pay the outstanding electricity dues of the Company (In Liquidation) before the Hon'ble High Court of Gujarat, being Miscellaneous Civil Application No. 58 of 2009 in Official Liquidator Report No. 37 of 2008 in Company Petition No. 1 of 2003. The said application came to be dismissed by the learned Single Judge of the Hon'ble High Court. The learned Company Judge made the following observations:

*“27. It appears that the electricity Company is not indirectly seeking to enforce its claim against the applicant as alleged. As per condition No.2 (i) of the Conditions of supply, if at a later date, the electricity Company gets full or part of the dues in question from the Company, for which claim is lodged with the Official Liquidator, then the applicant will be entitled to refund in accordance with the said provision. The Electricity Company is not claiming to recover its dues from the assets of the Company in liquidation. For its dues against the Company, a claim is lodged with the Official Liquidator and the same may be settled as per law and whatever is realized upon settlement of said claim in accordance with the provisions of the Act, the intending consumer who as per conditions of supply and as per law declared by the Apex Court deposits the sum due from the previous consumer, will become entitled to refund. There is no question in the present case of any encumbrance or any attachment becoming ineffective. A basic difference between a claim by a Creditor against the Company in liquidation before the Official Liquidator and requirement to fulfill any condition to avail power supply from a distributing Company which condition is legally upheld is being lost sight of, while submissions are made based upon Scheme of the Act and liability of the Company in respect of pre-liquidation claims. There is no question of Creditor making a claim against the Company in liquidation contrary to the provisions of the Act so as to confer jurisdiction upon the Company Court to decide such claim. The Court is, therefore, of the view that there is no question of seeking any clarification as contended since the terms are clear and unambiguous..”*

- vi. Aggrieved by the order of the learned Company Judge, Agarwal Concast Private Limited filed an appeal, registered as Original Jurisdiction Appeal No. 3 of 2010. The said appeal is presently pending adjudication before the Division Bench of the Hon'ble High Court of Gujarat.
  - vii. Pending the aforesaid appeal, M/s Agarwal Mittal Concast Private Limited filed Civil Application No. 15 of 2010 in O.J. Appeal No. 3 of 2010 seeking electricity connection. The Division Bench of the Hon'ble High Court, by an interim order dated 14.05.2010, passed an order for release of electricity connection subject to the appellant - M/s Agarwal Concast Private Limited depositing an amount of Rs. 50 lacs. Both parties later agreed to have the appeal be heard after the decision on the issue of legality and permissibility of the electricity distribution company demanding clearance of past dues prior to granting reconnection or new connection to a subsequent purchaser of the property. This is reflected in the order dated 20.06.2019 passed by the Hon'ble High Court.
- d) It is submitted that the applicant has not only chosen to omit making a true and complete disclosure of all correct and relevant facts but has resorted to misleading the Hon'ble Tribunal by presenting an image of absence of there being any pending legal proceeding. The applicant has conveniently avoided mentioning the fact that Agarwal Concast Private Limited has itself given an undertaking to the Hon'ble High Court to pay the balance amount of money demanded by the distribution company subject to final orders that may be passed by the Hon'ble High Court basis the decision of the Hon'ble Supreme Court of India.

- e) In the case of K C Ninan vs. Kerala State Electricity Board, the Hon'ble Supreme Court has recognized the right of the electricity distribution company to insist upon payment of past dues prior to grant of reconnection or fresh connection of electricity. The provisions of the Gujarat Electricity Regulatory Commission (Electricity Supply Code and Related matters) Regulations, 2015 permitting such demand as a condition for grant of electricity fell for consideration before the Hon'ble Supreme Court, and the provision has been approved by the Hon'ble Supreme Court of India.
- f) It is now judicially recognized by Constitution Courts, and more so in the case of M/s Agarwal Concast Private Limited that such demand by the electricity distribution company does not tantamount to "indirectly seeking to enforce its claim" and that the electricity distribution company "is not claiming to recover its dues" when making such demand; such demand is in furtherance to the statutory "requirement to be fulfilled for availing power supply from a distributing company".
- g) Independently, it emerges from the record that M/s Agarwal Concast Private Limited itself got admitted to Corporate Insolvency Resolution Process and that the applicant herein submitted a Resolution Plan which came to be accepted by the Committee of Creditors and approved by the Adjudicating Authority under provisions of the Insolvency and Bankruptcy Code, 2016. However, these subsequent events by themselves would not obliterate the proceedings pending before the Hon'ble High Court of Gujarat, nor would the subsequent events frustrate the judgment dated 11.01.2010 passed by the learned Company Judge of the Hon'ble High Court in Miscellaneous Civil Application No. 58 of 2008 in Official liquidator Report No. 37 of 2008 in Company Petition No. 1 of 2003.

13. The Applicant filed rejoinder to the reply filed by the Respondent on 30.04.2024 under Diary No. stating as under:

- a) It is submitted that with respect to Paragraphs 9 and 11 of the affidavit in reply, it is submitted that the applicant cannot make any disclosure if it is not aware of the same. The Information Memorandum provided by the erstwhile RP of the Corporate Debtor made no such mention of pending proceedings before the Hon'ble Gujarat High Court, in any case, such proceedings could not have been proceeded with effect from 16.3.2020 i.e. date of initiation of CIRP of the Corporate Debtor in accordance with Section 14 of the Code. Be that as it may, relying on the orders passed by the Hon'ble Gujarat High Court, the Respondent has again sought to falsely portray that the Corporate Debtor had made part payment of outstanding electricity dues whereas admittedly the said payment was made as security against granting an electricity connection. The order dated 14.5.2010 at Annexure R2 of the reply clearly states that the applicant (Corporate Debtor) is ready to deposit Rs. 50 lakhs as security and not as part payment of outstanding dues as is sought to be portrayed by the Respondent.
- b) It is submitted that the Respondent has further annexed the last order dated 20.6.2019 at Annexure

R3 passed by the Hon'ble Gujarat High Court - again seeking to portray as if proceedings with respect to its outstanding electricity dues in relation to the Corporate Debtor are pending before the Hon'ble Gujarat High Court. Infact, reference to the proceedings pending before the Hon'ble Apex Court therein have since attained finality and merged with the order passed by the Hon'ble Apex Court in K. C. Ninan vs. Kerala State Electricity Board Civil Appeal No. 2109 and 2110 of 2004 – referred to by the Respondent in Paragraph 12 of its reply.

- c) It is submitted that in accordance with the proposition laid down by the Hon'ble Supreme Court in K. C. Ninan (supra), even if the case of the Respondent is taken at its best possible outcome viz. the Corporate Debtor is made liable to pay the entire outstanding dues of the erstwhile consumer, the said amount, in the present circumstances wherein the Corporate Debtor went into CIRP, would constitute a claim of the Respondent recoverable from the Corporate Debtor. The Respondent has admittedly not filed any claim with the erstwhile RP and the applicant has taken over the Corporate Debtor by virtue of Approval of Resolution Plan by this Hon'ble Tribunal vide order dated 13.12.2021 - which will result in its purported claim against the Corporate Debtor getting extinguished Again, the Respondent



has admitted as much in Paragraphs 3 to 8 of its affidavit in reply.

- d) It is submitted that infact, the Hon'ble Supreme Court in a subsequent judgment in the case of Paschimanchal Vidyut Vitran Nigam Ltd vs. Raman Ispat Private Limited & Ors. Civil Appeal No. 7976 of 2019 - order dated 17.7.2023 has duly considered its judgment in K. C. Ninan (supra) and unequivocally held in Paragraph 52 that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non-obstante clauses (i.e., Section 173 and 174). Thus, even in the mind of the Hon'ble Supreme Court, there is no doubt as to the primacy of IBC vis-à-vis the Electricity Act and the Code framed thereunder.
- e) It is submitted that the same has been further reiterated by the Hon'ble Supreme Court in Tata Power Western Odisha Distribution Limited (TPWODL) & Anr. Vs. Jagannath Sponge Private Limited Civil Appeal No. 5556 of 2023 - order dated 11.9.2023 wherein it has been held that **“... 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...”***

Thus, it is abundantly clear that once a Resolution Applicant such as the applicant takes over a Corporate Debtor, it is necessarily to be provided with a clean slate and not fastened with unforeseen claims otherwise the same would defeat the very purpose and object of the Code.

- f) It is submitted that the applicant thus finally submits that this Hon'ble Tribunal may allow the present application and pass appropriate orders declaring that any purported claims of the Respondent stand extinguished pursuant to the approval of Resolution Plan vide order dated 13.12.2021 and consequently direct the Respondent to grant the name transfer application without insisting on payment/arrears in whatever nature payable by the Corporate Debtor.

14. Applicant had filed their Compilation of judgments on 30.06.2024.

15. We have heard the Counsels for the Applicant and respondent and have perused the documents placed before us. The observation of this Tribunal are as follows:

- i. This Application is filed by the applicant seeking extinguishment of the claim by the Respondent and directing the Respondent to grant the name transfer application.
- ii. It is seen that the Applicant was admitted to the CIRP on 16.03.2020 and the Resolution Plan was approved against the Applicant on 13.12.2021 by this Tribunal.
- iii. Relying upon the Judgment of the Supreme Court in the matter of Ghanashyam Mishra & Sons vs. Edelweiss Asset Reconstruction Company Limited & Others, which emphasis on the principle of the clean slate. The relevant portion of the order is reproduced as under:

*“..95.In the result, we answer the questions framed by us as under:*

*i) That once a resolution plan is duly approved by the Adjudicating Authority under sub section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State*

*Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;*

*(ii) ...*

*(iii) 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...”*

- iv. We also rely on the Judgment of Hon’ble Supreme Court in the matter of Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Limited and Others in this regard.
- v. As it is seen that the Resolution Plan order passed by this Tribunal was not challenged before any higher forum within the prescribed time, therefore the order has attained finality.

16. In view of the above, prayers (b & c) stands granted.

17. On the prayer seek in the clause c of the application the applicant is direct to approach the respondent and the respondent to take the necessary actions.

18. The Application is **allowed** and disposed of.

**-SD-**  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

**-SD-**  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

SP