

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-1432/2022
In
IB-1348(ND)/2019

IN THE MATTER OF IB-1348(ND)/2019:

M/s. NISUS FINANCE & INVESTMENT MANAGERS LLP & Anr.

..... Financial Creditors

Versus

M/s. EARTHCON UNIVERSAL INFRATECH PRIVATE LIMITED

..... Corporate Debtor

AND IN THE MATTER OF IA-1432/2022:

M/s. NOIDA POWER COMPANY LIMITED

..... Applicant

Versus

Mr. GAURAV KATIYAR

..... Respondent

Order Pronounced On: 03.05.2024

CORAM:

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:

For the NPCL : Mr. Anil Dutt, Mr. Tenzen Negi, Mr. Sarthak Garg,
Adv.

For the RP : Mr. Rishabh Jain, Adv. for RP and Mr. Gaurav
Katiyar, RP in person

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by M/s. Noida Power Company Limited, the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking vacation of interim order dated 20.01.2022 passed in IA No. 82 of 2022 and interim order dated 19.10.2020 in IA No. 3379 of 2020. The Applicant seeks the following reliefs:

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“a. Allow the present Application and pass an Order vacating the direction (to not to disconnect the electricity Connection of the Corporate Debtor) issued vide order dated 19.10.2020 in IA No. 3379/2020 and Order dated 20.01.2022 in IA No. 82 of 2022.

b. Pass such Orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.”

- 2.** In view of the order passed in IA-82/2022 whereby this Adjudicating Authority allowed the Application filed by Mr. Gaurav Katiyar, the Resolution Professional of the Corporate Debtor seeking permanent stay of electricity disconnection notice issued by Respondent and this Adjudicating Authority directed the Respondent (M/s. Noida Power Company Limited) not to disconnect the electricity connection of the Real Estate Project of the Corporate Debtor. Hence, the present IA-1432/2022 stands **disposed of** with the above order passed in IA-82/2022.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-82/2022
In
IB-1348(ND)/2019

IN THE MATTER OF IB-1348(ND)/2019:

M/s. NISUS FINANCE & INVESTMENT MANAGERS LLP & Anr.

..... **Financial Creditors**

Versus

M/s. EARTHCON UNIVERSAL INFRATECH PRIVATE LIMITED

..... **Corporate Debtor**

AND IN THE MATTER OF IA-82/2022:

Mr. GAURAV KATIYAR

..... **Applicant**

Versus

M/s. NOIDA POWER COMPANY LIMITED

..... **Respondent**

Order Pronounced On: 03.05.2024

CORAM:

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:

For the NPCL : Mr. Anil Dutt, Mr. Tenzen Negi, Mr. Sarthak Garg,
Adv.

For the RP : Mr. Rishabh Jain, Adv. for RP and Mr. Gaurav
Katiyar, RP in person

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by Mr. Gaurav Katiyar, the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 for seeking permanent stay of electricity disconnection notice issued by Respondent. The Applicant seeks the following reliefs:

“a. Permanent stay the impugned disconnection notice dated 17.12.2021 issued by the Respondent;

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b. Direct the Respondent to not to disconnect the electricity connection of the Corporate Debtor during the pendency of the Corporate Insolvency Resolution Process of the Corporate Debtor and

c. 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.”

2. The facts that are relevant for the determination of the issues involved in this application are stated as under:

- i.** An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditors i.e. M/s. Nisus Finance & Investment Managers LLP & Anr., against the Corporate Debtor i.e. M/s. Earthcon Universal Infratech Private Limited and the said application was admitted by this Adjudicating Authority vide order dated 08.11.2020 and a moratorium was declared including the appointment of Mr. Jitendra Arora as an Interim Resolution Professional. Subsequently, the present Respondent namely Mr. Gaurav Katiyar was confirmed as Resolution Professional.
- ii.** The Resolution Plan was submitted by the Successful Resolution Applicant namely Consortium of M/s. D. S. Infraheights Private Limited and M/s. Anand Buildtech Private Limited which was approved by the CoC in its 26th meeting dated 19.08.2023 by 70.18% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability. Thereafter, Mr. Gaurav Katiyar, the Resolution Professional of M/s. Earthcon Universal Infratech Private Limited filed IA-4466/2023 for seeking approval of the Resolution Plan under Section 30(6) read with Section 31 of IBC, 2016 on 22.08.2023. This Adjudicating Authority vide Order 02.05.2024 rejected the Resolution Plan and directed the Resolution Professional to issue a fresh 'Form G'.

3. It is submitted that the construction of the real estate project of the Corporate Debtor namely "Casa Royale" is short by 40%-45% and

"Sanskriti" is short by 20%-25% all located at GH-10, Sector 1, Greater Noida, West, Greater Noida, Gautam Buddh Nagar, Uttar Pradesh 201306 and registered with the RERA registration number UPRERAPRJ4689. Before the Insolvency commencement date, the Corporate Debtor has handed over physical possession of flats to 450 (approx.) allottees and 400 families (approx.) are residing in there.

4. Presently the Corporate Debtor is providing the electricity to the allottees residing in the real estate project on the basis of single point temporary electricity connection taken by the Corporate Debtor. It is submitted that the Corporate Debtor is providing electricity to the allottees on back-to-back basis without any profit. Presently, the Corporate Debtor is charging Rs. 8.91/unit from the individual allottees w.e.f. 01.01.2021 and Rs. 180/KvA per month.
5. The Corporate Debtor is recovering from the allottees to the extent the consumption is shown in the electricity meters installed in their flats. Whereas the electricity is also used in the common area and other general areas which is never billed to the individual allottees. The outstanding dues of the Respondent on the date of taking over the affairs of the Corporate Debtor was Rs. 75.32 lakhs.
6. The proposal of the installation of digital meters and temporary increase of electricity rate from Rs. 7.00/unit to Rs. 8.91/unit was approved by the CoC but the decision to temporarily increase maintenance charges from Rs. 1.00 per Sq. ft. to Rs. 2.30 per sq. ft. was rejected. The RP installed 250 digital meters which ultimately increased the collection of Respondents.
7. After taking over the affairs of the Corporate Debtor the outstanding dues of the Respondent increased from Rs. 75.32 lakhs to Rs.95.13 lakhs. The main reason for such an increase is the non-payment of the late payment surcharge (LPSC) levied by the Respondent.

8. It is contended by the Applicant that as per Section 53 of the Electricity Act, 2003 the disconnection of electricity is optional and not mandatory. Therefore, any decision of disconnection of electricity connection by the Respondent would be barred by the provisions of Section 14 of the Insolvency and Bankruptcy Code, 2016 and will severely affects the life of individuals/ families residing in the real estate project of the Corporate Debtor.
9. Instead of filing reply in the present Application, the Respondent herein filed IA-1432/2022 seeking vacation of interim order dated 20.01.2022 passed in IA No. 82 of 2022 and interim order dated 19.10.2020 in IA No. 3379 of 2020.
10. The Respondent in its IA-1432/2022 submitted that it is an indisputable fact that the impugned electricity dues, which the Corporate Debtor is liable to pay, have accrued in pursuance to the electricity supplied to the Corporate Debtor after the admission of the Section 7 Application on 08.01.2020. Though the Respondent is disputing the action of the RP to categorize the impugned dues as 'CIRP Costs', however, it is evident that the impugned dues are in the nature of current dues.
11. The Respondent submitted that the impugned electricity dues fall squarely within the scope of explanation to sub-section (1) of Section 14 and/or sub-section (2A) of Section 14 of the Code as it is a direct input to the output supplied by the Corporate Debtor within the meaning of Regulation 32 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Hence, failure to pay such dues would entail disconnection of electricity and the same would not be barred under Section 14 of the Code.
12. The Respondent further submitted that any probable hardship which may be caused to the allottees of the Corporate Debtor residing at the subject Project which is the main consideration of the interim reliefs granted by this Adjudicating Authority in both the aforementioned IAs cannot be a

consideration to restrain NPCL from realising its statutory dues from the Corporate Debtor by following the procedure prescribed under the Electricity Act, 2003 and the statutory framework prescribed thereunder.

13. We have heard the submissions of Ld. Counsel appearing for the Applicant as well as Ld. Counsel appearing for the Respondent. We have also perused the records.

14. Admittedly, the 400 families (approx.) are residing in the Real Estate Project of the Corporate Debtor. Further, Ld. Counsel Mr. Rishabh Jain Appearing for the RP contended that the RP can pay the electricity charges only after collecting the maintenance from the residents residing in the real estate project of the Corporate Debtor.

15. As per the ledger account of Respondent (M/s. Noida Power Company Limited) in the books of the Corporate Debtor, the Corporate Debtor has paid the amount of Rs. 4.25 Crores out of the total demand of Rs. 5.40 Crores for consumption of electricity during last 4 years of CIRP of the Corporate Debtor.

16. This Adjudicating Authority vide order dated 20.01.2022 passed the following Order, the operative part of which is extracted as follows:

“In the meantime, we are convinced that certain immediate reliefs need to be granted having regard to the nature of services being availed by the residents of Corporate Debtor's project which is under CIR Process from the Respondents. We, therefore, direct the Respondents not to proceed with its disconnection notice dated 17.12.2021 issued against the Applicant till further orders and ensure that regular electricity is provided to the project of the Corporate Debtor in question. Post this matter after three weeks.”

17. We are of the considered view that under Section 238 of the Code, the Provisions of the Code shall prevail over any other provision or law that is contrary or inconsistent with any of its provisions. We are therefore of the

opinion that the proceedings under the Electricity Laws are in violation of Section 14 read with Section 238 of the Code.

- 18.** We find force in the arguments of the Ld. Counsel appearing for the Resolution Professional. It is a settled principal of law that once the CIRP is initiated and moratorium in terms of Section 14 of the Code is declared, the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including the execution of any judgement, decree or order in any Court of Law, Tribunal, Arbitration Panel or other authority is prohibited. Therefore, in our considered view, the Respondent (M/s. Noida Power Company Limited) could not have initiated the proceedings as has been done in the present case against the Corporate Debtor during the moratorium period, even though the Respondent is a Statutory Authority.
- 19.** The Resolution Professional has categorically stated that the moratorium in terms of Section 14 came into force from the date when the CIRP was initiated by this Adjudicating Authority vide order dated 08.11.2020 and therefore, the Respondent (M/s. Noida Power Company Limited) could not have initiated any action and proceeded against the Corporate Debtor in view of the moratorium and therefore, the disconnection notice dated 17.12.2021 issued by the Respondent is null and void in the eyes of law.
- 20.** In view of the above circumstances, we direct the Respondent (M/s. Noida Power Company Limited) not to disconnect the electricity connection of the Real Estate Project of the Corporate Debtor. However, the Interim Order dated 20.01.2022 passed by this Adjudicating Authority is self-explanatory and needs no interference because the situation still exists as same. Moreover, the balance of convenience clearly lies in favor of the continuation of the supply of electricity to Residents of the Corporate Debtor because at this juncture, the Corporate Debtor may not have sufficient liquid funds to pay the outstanding electricity dues but the

Corporate Debtor has sufficient assets (i.e., flats and debtors) which can be utilized to pay the outstanding debt of Corporate Debtor.

21. In view of the above facts and circumstances and the foregoing discussion.

It is accordingly ordered as follows:

- i.** The Application bearing **IA-82/2022** filed by the Applicant is **allowed**.
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

No order as to costs.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III**

Item No. 321
IA-1645/2024
In
IB-1348(ND)/2019

IN THE MATTER OF:

M/s. Nisus Finance & Investment Managers LLP & Anr.

.....APPLICANT/PETITIONER

Vs

M/s. Earthcon Universal Infratech Pvt. Ltd

.....RESPONDENT

SECTION

U/s 7 of IBC, 2016

Order delivered on 03.05.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

HYBRID HEARING (PHYSICAL & VC)
ORDER

Due to paucity of time, the matter is adjourned as directed by Hon'ble Members.

Put up on **28.05.2024**.

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)