

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. III)**

**IA-4673/2022
IN
IB-440(ND)/2021**

IN THE MATTER :-

Mr. Anil Kaushal & Ors.

... Financial Creditor

Versus

M/s. Logix Developers Pvt. Ltd

... Corporate Debtor

And in the Matter of:

Manohar Lal Vij

**... Applicant/
Resolution Professional**

Versus

Pashchimanchal Vidyut Viatran Nigam Ltd. & Anr.

... Respondents

Pronounced on :25.01.2023

CORAM:-

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

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

Parties / Counsels present

For Applicant : Mr. P.Nagesh, Sr. Adv. , Mr. Saurabh Kalia,
Mr. Madhav Goel, Advocates

For the Respondent: Mr. Pradeep Misra & Mr. Daleep Dhyani,
Advs (R-1); Mr. Rachit Mittal, Mr. Parish
Mishra, Ms. Pooja Kapoor, Mr. Adarsh
Srivastava, Counsel for Noida Authority.

ORDER

Per: Sh. Bachu Venkat Balaram Das, Member (Judicial)

1. This application has been filed by the Interim Resolution Professional ("IRP") for the Corporate Debtor, Logix City Developers Private Limited, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code') seeking directions against M/s. Pashchimanchal Vidyut Viatran Nigam Limited ('Respondent No. 1') to sanction temporary connection of 1100 KVA for the project - Blossom Zest ('Project'), being developed by the Corporate Debtor at sector 143 Noida UP, and for seeking directions against M/s. New Okhla Industrial Development Authority (NOIDA) ('Respondent No. 2') to bear the cost, if any, incurred and to develop/ modify necessary external infrastructure, if required, to ensure supply of electricity at the door step of the project.
2. Briefly stated the facts of the case as averred by the applicant are that the Respondent No. 1, is the electricity distribution company (DISCOM), supplying electricity in the area in which project is situated and Respondent No. 2 is the land owning authority which allotted land for the development of the project. About 511 families are residing in the housing complex which is being developed by the Corporate Debtor, after partial occupancy certificate was issued by the Respondent No.2 to the Corporate Debtor on 08.02.2019 for five towers comprising of 1084 flats, after carrying out of physical inspection of the project site, confirming that flats are fit and having adequate facilities for

habitation. Relying on the said certificate issued by the Noida (Respondent No. 2), 714 Home buyers took possession from the Corporate Debtor.

3. It is submitted that the erstwhile management was providing electricity to Residents through Diesel Generator (DG) as short term measures, till the commencement of CIRP and the ex-management was charging Rs. 7.75 per unit from the Residents against the cost of power generation of Rs. 33-34/- per unit. After the commencement of CIRP, the erstwhile management is refusing to bear this deficit cost on the projects on the ground that the management and control of Corporate Debtor is now vested with IRP/RP and it is the responsibility of IRP/RP to protect and preserve the value of the property of the Corporate Debtor and manage its operations as a going concern.
4. It is also submitted that the Applicant approached DISCOM and vide letter dated 25.08.2022 addressed to Executive Engineer Electricity Urban Distribution Division -3 (EEEUDD) for Respondent No. 1 and vide letter dated 27.08.2022 addressed to the Managing Director of Respondent No. 1, requested the Respondent No. 1, for sanction of electricity load of 1100 KVA on temporary basis to provide electricity to the residents of the project, as an interim measure. The Applicant also met the concerned officials personally. The said officials informed the Applicant that the project would have to pay external infrastructure development cost (i.e. cables laying cost from 132KVA substation to project involving approx. Rs. 7-8 crore) as project's total load would be 9870 KVA. However, on the persistent request of Applicant, officials reluctantly agreed to examine the proposal. However, vide their letter dated 07.09.2022, Respondent No. 1 refused to provide temporary electricity connection.

5. The Paschimanchal Vidyut Vitran Nigal Limited/Respondent No. 1 and Noida New Okhla Industrial Development Authority/Respondent No. 2 have filed the reply affidavits.
6. The Respondent No. 1 has raised various contentions in its reply and broadly submitted that the present application is not maintainable and also submitted that under the provisions of Electricity Act, 2003, the electricity supply has to be made as per the terms and conditions to be laid down by the Electricity Regulatory Commission. It is also submitted that the temporary connection taken for construction purposes cannot be used for supply to the flat owners as it will amount to theft of electricity.
7. The Noida Authority/Respondent no. 2 has also filed a detailed reply refuting the allegations made by the Applicant and submitted that the Respondent No. 2, as per the terms of lease deed, has already provided external infrastructure for electricity connection to the Corporate Debtor but the Corporate Debtor with malafide intentions never took the burden to establish electricity connection in its premises which was the sole responsibility of the Corporate Debtor as per the terms and conditions of the Lease Deed and now the Applicant is asking unreasonable and unjustified relief from the Respondent No. 2. Further, the Applicant has admitted the fact that transmission line of 11KV (which is the external development work) is already available at the project site which was the obligation of the Respondent No. 02 as per the terms of the lease deed and the Corporate Debtor is responsible for the further connection (which is the internal development work).
8. As per the lease deed, the Respondent No. 2 has developed the area outside the housing society including transmission of 11KV electricity lines however, the Corporate Debtor failed to connect the transmission line from its substation

and now the Applicant is praying for unreasonable and non-justified demand from this Hon'ble Adjudicating Authority.

9. We have heard Ld. Counsel appearing for the Applicant/IRP and Ld. Counsel appearing for Respondent No.-1 and Respondent No.-2.
10. This Adjudicating Authority is of the prima facie view that providing of electricity connection to the residents of the Blossom Zest ('Project'), situated at sector 143 Noida UP being developed by the Corporate Debtor is independent of the CIRP Proceedings initiated against the Corporate Debtor. In this context, we note that the **Hon'ble Supreme Court in Tata Consultancy Services Ltd. Vs. Vishal Ghisulal Jain, RP, SK Wheels Pvt. Ltd.(2021) ibclaw.in 167 SC while discussing the Gujarat Urja Vikas v. Amit Gupta & Ors case** held and observed that “In Gujarat Urja (supra), the contract in question was terminated by a third party based on an ipso facto clause, i.e., the fact of insolvency itself constituted an event of default. It was in that context, this Court held that the contractual dispute between the parties arose in relation to the insolvency of the corporate debtor and it was amenable to the jurisdiction of the NCLT under Section 60(5)(c). **This Court observed that “..... NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor... The nexus with the insolvency of the corporate debtor must exist” (para 69). Thus, the residuary jurisdiction of the NCLT cannot be invoked if the termination of a contract is based on grounds unrelated to the insolvency of the Corporate Debtor.”**
11. However, considering the suffering of the residents of Blossom Zest Project, it is open to the applicant to apply for the connection of the electricity before appropriate concerned authority as provided under law and in case the applicant makes an application, the concerned authority shall act in

accordance with the provisions of Electricity Act, 2003 and other law applicable.

12. Further, it is observed that Ld. Counsel for both the sides have raised various legal issues and contentions with regard to the supply of electricity connection which needs to be examined in detail by an appropriate authority for arriving at a just conclusion.

13. Having regard to the conspectus of facts and circumstances and the judgments cited supra, the instant interlocutory application (IA/4673/2022) **stands disposed of in the above terms.**

Sd/-

**(SH. ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(SH. BACHU VENKAT BALRAM DAS)
MEMBER (JUDICIAL)**