

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

**CORAM: SHRI DEEP CHANDRA JOSHI,  
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,  
HON'BLE TECHNICAL MEMBER**

**IA (IBC) No. 464/JPR/2023**  
**CP No. (IB)- 155/PB/2018**

**IN THE MATTER OF:**

**M/s Asset Reconstruction Company (India) Ltd.**  
**...PETITIONER/FINANCIAL CREDITOR**  
**VERSUS**

**M/s Parasrampuriah Synthetics Ltd.**  
**...RESPONDENT/CORPORATE DEBTOR**

**IA (IBC) No. 464/JPR/2023**

**MEMO OF PARTIES**

**M/s Parasrampuriah Synthetics Ltd.**  
through authorised Representative Dalip  
Kumar R/o 826, Kayasthwara, Rewari  
(HR)- 123401

**...Applicant**

**VERSUS**

- 1. Madhya Pradesh Pashchim Khestra  
Vidya Vitran Co. Ltd.**  
Through authorised representative GPH  
Compound, Polo Ground, Indore (Madhya  
Pradesh)- 452003

- 2. Rajesh Jhunjhunwala,**  
R/o A/51, Aashit Apartment, HB Gawde  
Marg, Juhu, Koliwada, Mumbai.

**...RESPONDENTS**

**FOR APPLICANT(S) :** Karan Pratap Singh, Adv.

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**IA (IBC) No. 464/JPR/2023**

**In**

**CP (IB) No. 155/PB/2018**

**FOR LIQUIDATOR** : Amol Vyas, Adv.  
Danish Akhtar, Adv.

**Order Pronounced On: 23.04.2024**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. The instant Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 by *M/s Parasrampuriah Synthetics Ltd.* ('Applicant'/ 'Corporate Debtor') against *Madhya Pradesh Pashchim Khsetra Vidyut Vitran Co. Ltd* ('Respondent No. 1) and *Mr. Rajesh Jhunjhunwala* ('Liquidator' / 'Respondent No. 2') inter-alia seeking the following reliefs:

*I. Declare that the order dated 23.05.2022 passed by this Hon'ble Tribunal thereby approving the proposal to buy is applicable and binding upon the Respondent No. 1.*

*II. Direct the Respondent No. 1 to allow the application filed by the Applicant to secure a new connection and grant fresh electricity connection to the Applicant without claiming dues pertaining to the period prior to 23.05.2022.*

*III. Direct the Respondent No. 1 to expedite the process of granting electricity connection/reconnection to the Applicant.*

2. This Adjudicating Authority *vide* Order dated 17.05.2018 commenced the Corporate Insolvency Resolution Process ('CIRP') of the Corporate

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Debtor under Section 7 of the Code. Thereafter, due to non-approval of the Resolution Plan by the Committee of Creditors ('CoC'), this Adjudicating Authority *vide* Order dated 15.02.2019 initiated the Liquidation proceedings of the Corporate Debtor. The order for Liquidation was challenged and the Hon'ble NCLAT dismissed the Appeal with directions to the Liquidator.

3. Pursuant to the directions, the Liquidator scheduled the sale of the Liquidation estate by way of an auction however no bids were received. Thereafter, the Liquidator issued a Letter of Intent ('LOI') for the sale of the Corporate Debtor as a going concern. This Adjudicating Authority *vide* order dated 23.05.2022, unequivocally, declared *M/s Kautilya Industries Private Limited* ('KIPL') as the successful purchaser of the Applicant as a going concern. Consequently, the Corporate Debtor became an associate company of *KIPL*.
4. The present Application has been filed by the Corporate Debtor seeking the aforementioned prayer on the following grounds:

- 4.1. *KIPL* approached Respondent No. 2 and expressed its interest to buy the Corporate Debtor as a going concern for an amount of Rs. 73.51 Crores. The aforesaid amount was accepted by the Stakeholders Consultation Committee ('SCC') in its meeting dated 18.08.2020. Consequently, *KIPL* submitted a formal purchase proposal dated 01.09.2020 to buy the Corporate Debtor and a LOI

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was issued by Respondent No. 2. The purchase plan was approved by this Adjudicating Authority *vide* its Order dated 23.05.2022.

4.2. As per the Purchase Plan, *KIPL* purchased the Corporate Debtor as a going concern along with all the assets, free from any encumbrances/ dues/ claims/ liabilities etc. Thus, the assets of the Applicant, inter alia, the immovable property situated at Plot No. 423-424 and 854-861, Industrial Area Pithampur, District Dhar ('Subject Property') stood transferred to the new management, i.e., *KIPL*.

4.3. The instant Application has been filed seeking relief against Respondent No. 1, a company wholly owned by the Government of Madhya Pradesh which has been incorporated for supplying and distributing electricity in the state. It comes within the ambit and definition of operational creditor as defined u/s 5(20) of IBC, 2016, and provides supply of electricity at the location of the Subject Property. Respondent No. 2 is the erstwhile Liquidator of the Corporate Debtor and is the Chairman of the Monitoring Committee.

4.4. The Applicant *vide* its letter dated 03.04.2023 sought No Dues Certificate ('NOC') from Respondent No. 1 qua the Subject Property. It was also mentioned in the letter that the dues of Respondent No. 1 shall be paid in accordance with provisions of the

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Code, and the new management of the Applicant is not liable to pay the same. On failure of Respondent No. 1 to reply to the letter dated 03.04.2023; the Applicant sent a reminder through its email dated 14.04.2023, however, no heed was paid to the same.

- 4.5. Thereafter, the Applicant filed an application for a fresh electricity connection before Respondent No. 1. The said application was cancelled on 21.06.2023 by Respondent No. 1 due to old arrears pertaining to the subject property and the file was sent to higher authorities for consent.
- 4.6. It was contended that Respondent No. 1 cannot claim any dues from the new management pertaining to the period prior to the takeover of the assets of the Corporate Debtor. The aforementioned condition was also incorporated in Clause 14(c) of the Purchase Plan submitted by KIPL. Thus, Respondent No. 1 is bound to provide an electricity connection to the Applicant without seeking payment of any penalty or dues related to the period prior to the effective date of the purchase plan i.e., 23.05.2022.
- 4.7. A combined reading of Section 31 and Section 32(A) of the Code reveals that the Legislature intended to provide immunity to the new management of the Corporate Debtor from payment of all the debts/ claims/ dues of any nature which did not form part of the Resolution Plan or terms of sale during Liquidation proceedings.

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Further, in catena of Judgments, the Hon'ble Apex Court has laid down the "*Clean Slate*" theory according to which all the dues which do not form a part of the resolution plan stands extinguished and the new management cannot be saddled with the undecided dues and claims.

4.8. The action of Respondent No. 1 is contrary to the ethos of IBC, 2016. Further, the conduct of Respondent No. 1 has brought the working of the Applicant to a standstill. Thus, it is imperative that the Applicant is granted a fresh electricity connection so that it can commence operations and maintain its status as a going concern.

5. It will be relevant to mention that Respondent No. 1 has not participated in the proceedings despite proper service of the notices. Respondent No. 1 was first served *vide* Diary No. 2458 dated 10.10.2023. Thereafter, it was directed that Respondent No. 1 be served through its Authorized Representative, and an affidavit of service to that regard was filed *vide* Diary No. 2753 dated 21.11.2023. Further, notices were also served upon Respondent No. 1 through the Registry. At last, this Adjudicating Authority *vide* its Order dated 09.04.2024 decided to proceed *ex-parte* against Respondent No.1.

6. We have heard the Ld. Counsels for the parties and perused the averments made in the Application along with the documents enclosed therein.

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7. The instant Application has been filed by the new management of the Corporate Debtor who bought the business of the Corporate Debtor as a going concern and the same was approved by this Adjudicating Authority *vide* Order dated 23.05.2022. The moot point of law which arises for consideration is whether the liability towards previous electricity dues owed to Respondent No. 1 by the Corporate Debtor could be mulled on to the new management of the Corporate Debtor.
8. The aforesaid issue is no more *res integra* and has already been settled by the Hon'ble Apex Court and the Appellate Authority. It will be apposite to refer to the case of *Eastern Power Distribution Company of Andhra Pradesh Ltd. v/s Maithan Alloys Ltd. And Ors. (2022) ibclaw.in 393* NCLAT wherein the Hon'ble NCLAT made the following observation:

*"13. When in the IBC proceedings, the Appellant has lodged his claim before the Liquidator pertaining to pre-CIRP dues, the same has to be dealt with as per the provisions of the Code. Pre-CIPR dues of the Appellant have been treated as operational debt and the same required to be paid as per Section 53 of the Code. The payment under Section 53 of all debts including operational debt has to be made in accordance with Section 53. Thus, the Appellant is entitled to receive pre-CIRP dues as per provisions of section 53. Hence, the Appellant cannot be heard in contending that he should realize the said amount from the Successful Auction Purchaser. The claim of the Appellant to realize the pre-CIRP dues from Successful Auction Purchaser is clearly in conflict of the statutory scheme as laid down in the Code.*

*14. Now, we come to the electricity dues during the CIRP. The said dues are also to be taken care of and paid in accordance with Section 53(1). The electricity consumed by the Corporate Debtor during CIRP period is an insolvency process cost which is also to be paid in accordance with Section 53 Sub-section (1) of the Code. The above is the statutory*

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*scheme for payment of all claims including operational debts i.e. claim of the electricity dues pre-CIRP and post-CIRP. When the claim of the creditors of a Corporate Debtor which is gone into liquidation are specifically dealt in the Code, the Appellant cannot be heard to say that it shall realize its pre-CIRP dues and post-CIRP dues from the Successful Auction Purchaser. Accepting the said argument of the Appellant will be clear in derogation of the scheme for payment of creditors of the Corporate Debtor as delineated in the Code.*

...  
 22. *We, thus, are fully satisfied that the submission of the Appellant that they are entitled to recover the entire pre-CIRP and post-CIRP dues from the Successful Auction Purchaser i.e. Respondent No. 1 cannot be accepted. The Adjudicating Authority did not commit any error in issuing the directions as contained in the order dated 05.10.2021. We, however, are of the view that the Appellant is entitled to claim its electricity dues both pre-CIRP and post-CIRP in accordance with Section 53 of the Code...*

9. A similar issue came up before the Hon'ble Apex Court in the case of *Southern Power Distribution Company of Andhra Pradesh Ltd. v/s Gavi Siddeswara Steels (India) Pvt. Ltd and Another* (2023) ibclaw.in 134 SC wherein it was 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”<sup>1</sup>. 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.*

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*The electricity connection, applied for or revival sought by the successful resolution applicant is not an asset or property. The above-quoted observations from Embassy Property Developments Private Limited (supra) would confer jurisdiction on the tribunal constituted under the Code insofar as the appellant – Southern Power Distribution Company of Andhra Pradesh Limited is insisting on payment of the dues of the corporate debtor for restoration/grant of the electricity connection. The dues of the corporate debtor have to be paid in the manner prescribed in the resolution plan, as approved by the adjudicating authority. The resolution plan is approved when it is in accord with the provision of the Code. Thus, the issue of corporate debtor dues falls within the fold of the phrase ‘arising out of or in relation to insolvency resolution’ under section 60(5)(c) of the Code.”*

10. In another case of *M/s Shiv Shakti Inter Globe Exports Pvt. Ltd v/s M/s KTC Foods Private Limited* 2022 SCC OnLine NCLAT 85, the Hon’ble NCLAT held that while approving a sale of ‘Corporate Debtor’ as a ‘going concern’ in Liquidation Proceedings without its dissolution in terms of Regulation 32(e) of the Liquidation Process Regulations, 2016, it is essential to see that the Corporate Debtor is not burdened by any past or remaining unpaid outstanding liabilities prior to the sale of the Company as a going concern and after payment of the sale proceeds distributed in accordance with Section 53 of the Code.
11. In the instant case, as per the Purchase Plan, the effective date for the proposal shall be the date of approval of the proposal by this Adjudicating Authority i.e., 23.05.2022. Further, it is pertinent to refer to clause 14(c) of the Plan which reads as:

*“14(c) The relevant Electricity authorities of MP and Rajasthan Government will provide the electricity connection/reconnection after*

*the acquisition of Corporate Debtor (PSL) by the Applicant without payment of any penalty or dues related to the period prior to the effective date to them by PSL.”*

12. A bare perusal of the record will reveal that *KIPL* has already paid the consideration for purchasing the business of the Corporate Debtor and the same has also been distributed among the creditors of the Corporate Debtor in accordance with the waterfall mechanism contained in Section 53 of the Code. It will be relevant to mention that Respondent No. 1 never submitted its claim before the liquidator.
13. In view of the Judicial Pronouncements and the facts mentioned above we are of the opinion that Respondent No. 1 is bound by the terms and conditions of the Purchase Plan and it cannot insist upon payment of dues for the period prior to the date of approval of the Purchase Plan i.e., 23.05.2022 for granting an electricity connection. Further, the dues of the Corporate Debtor owed to Respondent No. 1 stands extinguished in light of the approved Purchase Plan and the fact that Respondent No. 1 never submitted any claim before the Liquidator.
14. Hence, we hereby direct Respondent No. 1 to issue a new power connection to the Applicant without requiring settlement of any outstanding past dues and it is clarified that the relief granted in the instant Application is restricted to past dues for the period prior to the date of approval of the Purchase Plan i.e., 23.05.2022.



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In view of the aforementioned observations the I.A. bearing No. 464/JPR/2023 stands allowed and disposed of.

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**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

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**RAJEEV MEHROTRA,  
TECHNICAL MEMBER**