

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I
KOLKATA**

**I.A. (IB) No. 1336/KB/2022
in
I.A. (IB) No. 463/KB/2022
in
C.P. (IB) No. 213/KB/2019**

*An application under section 60(5) of the Insolvency and Bankruptcy Code,
2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.*

In the matter of:

State Bank of India

...Financial Creditor

versus

Mackeill Ispat & Forging Limited

... Corporate Debtor

And

I.A. (IB) No. 463/KB/2022

In the matter of:

1. *Mackeill Ispat & Forging Limited*
2. *Samriddhi Metal Private Limited*

... Applicants

Versus

Damodar Valley Corporation

...Respondent

I.A. (IB) No. 1336/KB/2022

In the matter of:

3. *Mackeill Ispat & Forging Limited*
4. *Samriddhi Metal Private Limited*

... Applicants

Versus

Damodar Valley Corporation

...Respondent

Coram:

Mr. Rohit Kapoor

: Member (Judicial)

Mr. Balraj Joshi

: Member (Technical)

Appearances (via hybrid mode):

For the Applicants

- :
1. Mr. Ratnanko Banerji, Senior Advocate
 2. Mr. Kanishk Kejriwal, Advocate

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in C.P. (IB) No. 213/KB/2019**

For D.V.C. : 3. Mr. Anirudhya Dutta, Advocate
1. Mr. Rishav Banerjee, Advocate
2. Mr. Prasun Mukherjee, Advocate
3. Mr. Deepak Agarwal, Advocate

Date of pronouncement: 14 September 2023

COMMON ORDER

Per: Rohit Kapoor, Member (Judicial)

1. ***Preamble***

1.1. The Court convened through hybrid mode.

1.2. The Corporate Debtor who is also the Applicant No. 1 herein, i.e. Mackeil Ispat & Forging Limited was admitted in Corporate Insolvency Resolution Process (“**CIRP**”) on 03 February 2020, on an application filed by the State Bank of India under section 7 of the Insolvency and Bankruptcy Code (“**Code**”). This Adjudicating Authority approved the Resolution Plan of the Applicant No. 2, viz. Samriddhi Metal Private Limited on 21 September 2021.

1.3. ***I.A. (IB) No. 1336/KB/2022*** and ***I.A. (IB) No. 463/KB/2023*** has been filed by Mackeil Ispat & Forging Limited (“**Corporate Debtor**”) and Samriddhi Metal Private Limited (“**Successful Resolution Applicant**”) against Damodar Valley Corporation (“**DVC**”) seeking the following reliefs in each I.A.:

1.4. Prayers in I.A. (IB) No. 463/KB/2023 are as follows:

- a. *To direct the Respondent to refund the sum of Rs. 1,88,12,539/- wrongfully recovered by the Respondent from the Applicant No. 1 on account of pre-CIRP dues and “Delayed Payment Surcharge” thereon, in excess of the “amount apportioned and approved under the Resolution Plan of the Applicant No. 2, alongwith interest thereon @ 12% per annum from the*

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date when such excess payments were made to the Respondent, until recovery;

- b. To direct the Respondent to act in strict compliance of the order of this Tribunal dated September 21, 2021 passed on I.A. (IB) No. 398/KB/2021 in C.P. (IB) No. 213/KB/2019 together with the Resolution Plan of the Applicant No. 2;*
- c. To restrain/injunct the Respondent from adjusting or claiming any further amounts in terms of its demand dated January 5, 2022 towards “Delayed Payment Surcharge” till the final adjudication of the present Application by this Hon’ble Tribunal;*
- d. Ad-interim orders in terms of prayers (b) and (c) above;*
- e. Costs;*
- f. Such further orders and/or directions be passed as this Hon’ble Tribunal deems fit and proper.*

1.5. Prayers in I.A. (IB) No. 1336/KB/2022 are as follows:

- a. Order restraining the Respondent from taking any coercive steps or actions against the Applicants, including but not limited to disconnection notice dated October 18, 2022;*
- b. Order restraining the Respondent from taking any steps or further steps to recover any demand from the Applicants relating to the period prior to September 21, 2021.*
- c. Order staying the effect of the wrongful demand made by the Respondent against the Applicants on June 1, 2022 to the extent of Rs.14,37,503/- relating to the period prior to September 21, 2021, till the final adjudication of the Said Applicant;*
- d. Order restraining the Respondent from raising further wrongful demands against the Applicants for any alleged dues or claims relating to the period prior to September 21, 2022.*

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- e. *Order quashing the wrongful demand of the Respondent dated June 1, 2022, December 7, 2021 and November 3, 2021 in so far as it related to the pre-CIRP dues i.e. Prior to September 21, 2021;*
 - f. *Order quashing the disconnection notice of the Respondent dated October 18, 2022;*
 - g. *Ad-interim orders in terms of Prayers (a) to (d) above.*
 - h. *Costs;*
 - i. *Such further orders and/or directions be passed as this Hon'ble Tribunal deems fit and proper.*
- 2. Submissions of the learned Senior Counsel appearing on behalf of the Applicants**
- 2.1. The learned Senior Counsel submitted that the Respondent i.e. Damodar Valley Corporation, is the electricity supplier to the manufacturing unit of the Applicant No.1 at Durgapur, West Bengal. The admitted claim of the Respondent was Rs.2.32Crore. According to the Resolution Plan which was approved on 21 September 2021, the successful Resolution Applicant had proposed to pay the Respondent, being an operational creditor Rs.4,64,300/- (Rupees Four Lakh Sixty Four Thousand and Three Hundred only).
- 2.2. The payments to the creditors were made within 14 March 2022 and the commercial operations of the Applicant No. 1 started from December 2021, hence the Resolution Plan was implemented.
- 2.3. The Applicants have filed the applications I.A. (IB) No. 463/KB/2022 and I.A. (IB) No. 1336/KB/2022 challenging the illegal demands made by DVC in respect of pre-CIRP dues of the Applicant No.1, which was specifically settled under the approved Resolution Plan, which is binding on DVC under law and seeking direction upon DVC to refund the amount of Rs. 2,37,95,756 wrongfully recovered from the Applicants on account of pre-CIRP dues. However, DVC, in contravention of the Resolution Plan and the provisions of Code, has illegally appropriated huge sums of money from the Applicants under duress by withholding electricity supply, unless the pre-CIRP dues

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were agreed to be paid by the Applicants. The Applicants have sought refund of the sums wrongfully appropriated by DVC and have also sought injunction against DVC from making further wrongful demands of pre-CIRP dues from the Applicants.

- 2.4. The learned Senior Counsel submitted that the main issue in the application is whether DVC having realised sums of money, in violation of the provisions of the Code and the Resolution Plan, can continue to retain the same on the pretext that the Corporate Debtor has made payment. DVC takes the defence of a concluded contract but has failed to explain how the contract is a lawful contract in view of section 23 of the Contract Act, 1872.
- 2.5. By letter dated 03 November 2019, although DVC acknowledged the effect of the order dated 21 September 2019 and requested to be paid Rs.4.643 Lakh in terms of the said order “*without any further delay*”, however, DVC stated that view of the binding provisions of Clause 4.6.4 of the WBERC (Electricity Supply Code) Regulations, 2013, DVC demanded Rs.1,72,23,023/- together with delayed payment surcharge in order to resume power supply to the Applicant. On 05 January 2022 DVC also demanded Rs.55,99,527/- towards delayed payment surcharge on account of the pre-CIRP claim of Rs. 1,72,23,023/-.
- 2.6. The Hon’ble NCLAT has already held that provisions of Code have an overriding effect over provisions of WBERC Regulations, specifically Regulation 4.6.4. the learned Senior Counsel placed reliance on *DVC v. Kharkia Steels Pvt. Ltd. and Ors in Comp Appeal (AT) (Insolvency) No. 1111 of 2020* (decided on 15.03.2022 paras 10, 24, 29–32) and *DVC v. VSP Udyog Pvt. Ltd. reported in 2022 SCC OnLine NCLAT 151* (paras 7,8,14,15).
- 2.7. Hence, the demand of DVC on the pretext of WBERC Regulations, was contrary to the approved Resolution Plan, and hence it was ex facie wrongful and illegal.

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- 2.8. The Applicant *vide* email dated 07 December 2021 agreed to the stand of DVC to liquidate the pre-CIRP dues and by email dated 09 December 2021 the Applicant confirmed the payment of the wrongful demand by DVC.
- 2.9. The contention of DVC that payment by Applicants of the demands by DVC led to a concluded contract, which cannot be resiled from now, is untenable since such a contract would be void because it defeats the provisions of law i.e. the Insolvency and Bankruptcy Code, 2016 provisions. There can be no valid contract to nullify the effect of the Resolution Plan, which is final and binding on all parties, including DVC.
- 2.10. It is well settled that an entity cannot be bound by its earlier decision if that decision is found to be contrary to law. There can be no estoppel against the provisions of a statute. The learned Senior Counsel placed reliance on *HS Rikhy & Ors v. The New Delhi Municipal Committee*, AIR1962SC 554 (para 13) and *Director of Elementary Education v. Pramod Kr Sahoo*, (2019)10SCC 674 (para 11).
- 2.11. The Applicants had no option but to agree to the illegal demand of DVC, since without electricity there would be a complete failure of the Resolution Plan and would cause immense loss to the Applicants. The situation created by DVC, due to its superior position, led to economic duress and coercion against the Applicants. Reliance was placed on *Dai-ichi Karkaria Pvt Ltd v. Oil & Natural Gas Commission Bombay & Anr.*, AIR 1992 Bom 309 at (para 28, 36, 40) and *Century Pharmalabs India Pvt Ltd v. State of Andhra Pradesh*, 2021 SCC OnLine AP 3520 (para 17–19, 21).
- 2.12. The learned Senior Counsel submitted that after filing IA (IB) NO. 463/KB/2022, by letter dated 01 June 2022, DVC demanded Rs. 20,78,507/- towards arrears on account of tariff revision for the period April 2017 to April 2022. This included pre-CIRP claim of Rs. 14,37,503/- for April'17 to Feb'20.
- 2.13. By interim order dated 12 September 2022 this Adjudicating Authority, *inter alia*, directed that the electricity consumed by the Applicant shall be

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subject to payment of dues as per applicable tariff and that DVC shall not disconnect electricity without following the due course of law including giving notice with reasonable time to respond.

2.14. By an email dated 18 October 2022, DVC threatened to disconnect electricity of Applicant in case the delayed payment surcharge is not paid by the Applicant within the due date.

2.15. In view of the wrongful threats of DVC, the Applicants have paid the following amounts towards pre-CIRP claim of DVC, in excess of Rs.4,64,300/- (the approved amount in Resolution Plan) –

- a) Rs. 1,67,58,723/- – pre-CIRP dues
- b) Rs. 55,99,530/- – delayed payment surcharge on pre-CIRP
- c) Rs. 14,37,503/- – towards tariff revision of pre-CIRP dues

2.16. The payment realised by DVC is contrary to the settled amount in the Resolution Plan. The Learned Senior Counsel submitted that if DVC is permitted to keep this amount which they have obtained contrary to the Resolution Plan, then it will have a cascading effect and all creditors will then demand their full amount from the Corporate Debtor in respect of which a Resolution Plan has been approved. It will be unjust enrichment of DVC at the cost of all other creditors. It will tantamount to DVC taking unfair advantage of its position as electricity supplier to the Corporate Debtor. The relief prayed for in this Application is only to ensure implementation of the Resolution Plan in its true meaning and to have all questions of law and fact arising out of or in relation to the insolvency resolution to be resolved by this Adjudicating Authority in terms of section 60 of the Code. The present disputes have arisen directly on account of the CIRP of Applicant No.1 and the Resolution Plan approved by this Adjudicating Authority, hence this Adjudicating Authority has exclusive jurisdiction to entertain, try and adjudicate the present application. Reliance has been placed on *Gujarat Urja*

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Vikas Nigam Ltd s Amit Gupta & Ors., (2021) 7 SCC 209 (paras 43, 44–46, 54–55 and 56.7).

2.17. The learned Senior Counsel submitted that the judgment relied upon by DVC is wholly inapplicable to the present case–

i. *Sanjeev Maheshwari v. Assistant Commissioner and Others, MA 1012/2018 in CP(IB) 1A/2017*, passed by Learned NCLT, Mumbai Bench decided on 21.08.2020.

In the said case, the Liquidator had sought Rs. 23.49 Crore on account of payment made by Corporate Debtor between July 2012 to December 2013. Corporate Debtor had already filed winding up petition in 2015 for such claims and the same was pending. The Learned NCLT, Mumbai Bench dismissed the claim of the Liquidator in such facts. The facts of the case referred is totally inapplicable to the present facts.

3. ***Submissions of the learned Counsel appearing on behalf of the Respondent***

3.1. The learned Counsel states that the Applicant has filed the I.A.'s praying for refund of a sum of Rs.1,88,12,539/- paid by the Applicants to the Respondent after approval of the Resolution Plan by this Adjudicating Authority on 21 September 2021. As such, the Applicant has made a monetary claim and the application is in nature of a recovery process initiated by the Applicants against the Respondent.

3.2. The learned Counsel submitted that it is now a settled principle of law as has been held by the Hon'ble Supreme Court in catena of judgements that proceedings under Code are not recovery proceedings and the Adjudicating Authority sitting in a summary jurisdiction cannot be converted into a recovery court and/or civil court. The reliefs canvassed by the Applicant can be claimed in a civil suit wherein the Applicant can claim for a decree for payment of money as has been held by the Hon'ble Supreme Court of India in the case of *K Kishan v. Vijay Nirman Company Pvt. Ltd., (2018) 17 SCC*

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662 proceedings under the IBC, 2016 being summary in nature and the proceedings under the Code are not recovery proceedings.

- 3.3. In support of his contention the learned Counsel placed reliance on the following judgments i.e. *Invent Asset Securitisation And Reconstruction Private Limited v. Girnar Fibres Ltd., 2022 SCC Online SC 808, Transmission Corporation of Andhra Pradesh Ltd. v. Equipment Conductors and Cables Ltd., (2019) 12 SCC 697 : 2018 SCC Online SC 2113* (para 19) wherein the Hon'ble Supreme Court has held that the Code is not intended to be substitute to a recovery forum, *Sanjeev Maheshwari, Liquidator of UB Engineering Private Limited v. Assistant Commissioner, Pune-II Division, 2020 SCC OnLine NCLT 12393*, (paras 16, 20, 21, 23, 24. 4) wherein the learned NCLT, Mumbai Bench categorically held that for the purpose of recovery of money, one has to approach the civil court only and the process of recovering money through a suit cannot be short circuited by invoking the jurisdiction of this Adjudicating Authority as this Adjudicating Authority is not a civil court and in exercise of its residuary jurisdiction, the Adjudicating Authority cannot try a matter of original jurisdiction vested with civil court. The relief claimed in the application which is in nature of a monetary claim cannot be thus made before this Adjudicating Authority.
- 3.4. The Adjudicating Authority does not have any jurisdiction to entertain the application under section 60(5) of the Code. The CIRP of the Corporate Debtor has come to an end. The question and/or issue canvassed by the Applicant does not concern the implementation of the Resolution Plan in respect of the Corporate Debtor as the Resolution Plan already stands implemented.
- 3.5. The learned Counsel submitted that after approval of the Resolution Plan in respect of the Corporate Debtor there is a fresh concluded contract between the Applicant and the Respondent, which the Applicant is now trying to resile from. The learned Counsel led us through the letter dated 18 November 2021

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from the Resolution Applicant to DVC, letter dated 29 October 2021 and email dated 07 December 2021 to DVC.

- 3.6. In emails dated 09 December 2021, the Applicant confirms that the Applicant has paid entire money to DVC without prejudice. The learned Counsel submitted that the emails dated 09 December 2021 read with the Respondent's reply dated 03 November 2021 and letter dated 05 January 2022 clearly proves a concluded contract between the Applicants and the Damodar Valley Corporation after approval of the Resolution Plan.
- 3.7. In fact, after payment of the entire money by the Applicant to Damodar Valley Corporation, the Applicant also got benefitted out that concluded contract as Damodar Valley Corporation has restored the power connection in favour of the Applicant. Having agreed to make payment to get electricity connection restored in the premises of the Applicant, the Applicant is estopped from contending that the Applicant was not liable to pay to Damodar Valley Corporation.
- 3.8. The Applicant has waived its statutory right, if any, under section 31 of the Code by agreeing to a fresh/new contract with Damodar Valley Corporation under which payment was to be made to Damodar Valley Corporation. In this regard the learned Counsel has placed reliance on *Shri Lachoo Mal v. Shri Radhey Shyam, (1971) 1 SCC 619* (paragraphs 6, 7 and 8), the Hon'ble Supreme Court has held that everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of an entity in a private capacity as long as no explicit statutory prohibition exists on such an agreement waiving any particular statutory right. There is no prohibition and/or limitation in the Code or any legislation whatsoever on the ability of any company (i.e. erstwhile corporate debtor) to enter into any contract after it has undergone a successful CIRP through the auspices of a successful resolution applicant. To infer anything to the contrary would tantamount to permitting a company to enter into commercial

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contracts irresponsibly with ulterior motives even after CIRP and render enforcement of contracts unpredictable.

- 3.9. In the instant case at hand, there is nothing on record and/or there is no pleading by the Applicant in its application that any public policy has been violated by its new agreement with Damodar Valley Corporation that was consciously entered into by it after the approval of the resolution plan. On the contrary, the Applicant by entering into a fresh/new contract with Damodar Valley Corporation after approval of the Resolution Plan and even proceeding to make payments thereunder, has waived its statutory right, *inter alia*, under section 31 of the Code, if any.
- 3.10. The Applicant cannot mischievously contend that the Resolution Plan is binding upon the Damodar Valley Corporation under section 31 of the Code, by ignoring the fact that it entered into a new contract with Damodar Valley Corporation and even made payments thereunder after the approval of such Resolution Plan solely to gain commercial benefit.
- 3.11. The Applicant is a commercial entity engaged in seeking profit and entered into such fresh/new contract with commercial motive. It is not a hapless individual who has waived any protection of any social welfare legislation on account of unequal bargaining power. It is instructive at this juncture to appreciate the ruling of the Hon'ble Supreme Court in ***Central Inland Water Transport Corporation Limited & Anr. v. Brojo Nath Ganguly & Anr., (1986) 3 SCC 156*** (paragraph 89) wherein the Hon'ble Supreme Court held that "the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into parties who are not equal in bargaining power," may not find application in cases "where both parties are businessmen and the contract is a commercial transaction".
- 3.12. The Applicant, a commercial corporate entity, has consciously waived a statutory right, if any, it may have under section 31 of the Code insofar as its

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own private commercial benefits under the said section are concerned, hence it cannot ask for refund of the money paid under the contract.

3.13. The Hon'ble Supreme Court in the matter of *Chief Engineer, Water Resources Department & Ors. v. Rattan India Power Ltd. through its Director & Ors., (Civil Appeal No. 8550 of 2022 arising out of SLP (C) No. 28161 of 2016*, judgment dated 13 January 2023, (paragraph 1 ,21), has held that signing of an agreement would estop a party from challenging the levy of the contractually stipulated amount under such contract. In the instant case at hand, the Applicant has sought to challenge the contract with Damodar Valley Corporation itself and sought return of the contractually stipulated amounts it has consciously paid thereunder in a commercial transaction, which it is estopped from doing.

3.14. The judgement cited by the Applicant in the matter of *Damodar Valley Corporation v. Kharkia Steels Limited, CA (AT)(Ins.) No. 1111 of 2020¹*, is not applicable in the instant case as in that case no new contract was entered into by and between Damodar Valley Corporation and the Corporate Debtor therein after approval of the Resolution Plan and in such facts the Resolution Plan was held to be binding. However, in the instant case at hand the Applicant expressly in several letters have agreed to make payment for which a new contract by conduct and by implication had been entered into by and between the Applicant and Damodar Valley Corporation. As such, the Applicant is estopped from withdrawing its commitment made to Damodar Valley Corporation under the newly executed contract between the Applicant and the Damodar Valley Corporation and thus the judgment relied upon by the Applicant is not applicable in the facts of the instant case.

3.15. The learned Counsel thereafter distinguished Gujarat Urja Vikas Nigam Limited and stated that the Applicant has mischievously sought to take shelter of the judgment of the Hon'ble Supreme Court in *Gujarat Urja Vikas Nigam Ltd supra*. However, the facts and ratio in Gujarat Urja Vikas Nigam Limited

¹ judgment dated 15 March 2022

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matter cited hereinabove solely concerned the survival of the sole business of the Corporate Debtor during the CIRP period itself. The freedom of contract of the pertinent contracting parties in the said Gujarat Urja Vikas Nigam Limited matter to enter into a contract (Power Purchase Agreement - PPA) was circumscribed by the Hon'ble Supreme Court, insofar as it invalidated an ipso facto termination clause (terminating PPA on commencement of insolvency), solely to ensure survival of the Corporate Debtor during the CIRP period. The ratio in Gujarat Urja Vikas Nigam Limited cannot be arbitrarily and wantonly extend to denude and/or detract from any freedom or rights, and concurrent duties, of contracting parties to enter into fresh commercial contracts even after the conclusion of CIRP in respect of one the parties.

- 3.16. Furthermore, the judgment of the Hon'ble Supreme Court in *Gujarat Urja Vikas Nigam Ltd supra.* is not applicable in the facts of this case as in the case of *Gujarat Urja Vikas Nigam Ltd supra.*, the power purchase agreement was terminated due to the insolvency of the Corporate Debtor. Such termination was during the Corporate Insolvency Resolution Process. In the present case, the Resolution Process of the Corporate Debtor has come to an end and the Resolution Plan has already been implemented and after the Resolution Plan is implemented, there is a fresh contract that being entered into by and between the Applicant and the Damodar Valley Corporation which this Adjudicating Authority will not have jurisdiction to entertain any dispute arising out of such contract. Thus, in the present case, there is no fact and/or issue arising out of the Corporate Insolvency Resolution Process of the Corporate Debtor to give jurisdiction to this Adjudicating Authority under section 60(5) of the Code to entertain the present application.

Analysis and Findings

4. Heard the learned Senior Counsel appearing on behalf of the Applicants and the learned Counsel appearing on behalf of the Respondent and perused the records.
5. The first issue raised by the Respondent is whether this Adjudicating Authority has jurisdiction to decide the I.A.s filed by the Applicants after approval of the Resolution Plan. Before answering this issue, we need to note that the Applicant has come to seek relief with respect to insolvency resolution proceedings of the Corporate Debtor. It is not a matter of dispute that the Corporate Debtor has entered into a new agreement with DVC. If the present case dealt with the demands made by DVC with respect to electricity charges and incidental charges with respect to the new dues that arise from this agreement, then this I.A. would not have been maintainable. However, this I.A. relates to the relief that was part of the Resolution Plan which was approved by this Adjudicating Authority on 21 September 2021. Therefore, the issue involved is a direct fallout of the approved resolution plan and as such these I.A.s are maintainable under sub section (5) of section 60 of the Code.
6. Now coming to the reliefs sought by the Applicant in this I.A., while considering the plea of the Respondent, we agree that the Adjudicating Authority is not a recovery forum. However, this I.A. has been filed not for seeking any recovery but merely claiming a right vis-à-vis pre-CIRP and CIRP dues which according to the Applicant stand extinguished after the approval of the Resolution Plan by this Adjudicating Authority,
7. Now let us deal with the main issue that arises i.e. “**whether the claim raised by DVC is correct and as per law**”, in this regard let us first consider the letters/emails exchanged between the Applicants and the Respondent.
8. On perusal of the letter dated 03 November 2021 which was sent by DVC in response to the letter to the Applicant dated 29 October 2021, wherein DVC has requested the Applicant to make the payment of Rs.4.643 Lakh in

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compliance of the order dated 21 September 2021 without any further delay. In the said letter DVC has also referred to WBERC (Electricity Supply Code) Regulation and in lieu of the said regulation, DVC has claimed due of Rs.1,72,23,024/- as on 31 March 2021 along with delayed payment surcharge. Further, it is stated that “we would be able to take action for resumption of power supply in the premises of Mackeil Ispat & Forging Ltd only after the amount due and payable is paid. On perusal of the other emails and letters it is seen that DVC has continued to seek payment from the Applicants under different heads, which include “old outstanding”, “delay payment surcharge”, “security deposit”, reconnection charge” etc.

9. The clean slate theory laid down by the Hon’ble Supreme Court in **Essar Steel India vs. Satish Kumar Gupta and Ors.** obviates the defaults of the Corporate Debtor prior to the approval of Resolution Plan, after payments are made as proposed in the Resolution Plan, in order to enable the Successful Resolution Applicant to start the business of the Corporate Debtor afresh. While deciding the issue of demand raised by DVC, we place reliance on the principle laid down in by the Hon’ble Supreme Court in *Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. & Ors.*² wherein the Hon'ble Supreme Court has held 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 Govt, any State Govt 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. The Hon’ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any

² (2021) ibclaw.in 54 SC

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I.A. (IB) No. 1336/KB/2022 in I.A. (IB) No. 463/KB/2022
in C.P. (IB) No. 213/KB/2019**

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.

10. In the present case, the Applicant No. 2 gave in to the demands made by DVC in order to ensure restoration of the electricity which was essential for the business operations of the Applicant No. 1. DVC has sought for claims that were due before the CIRP period and during the CIRP period as well.
11. Seeking payment of Rs.1,72,23,024/- under the WBERC (Electricity Supply Code) Regulation is contrary to law laid down in *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt. Ltd. & Ors.*³ wherein the Hon'ble NCLAT has held that *section 238 of the Code, will have overriding effect on all laws which are for the time being in force, including the Electricity Act, 2003 and Rules and Regulations framed thereunder.*
12. Further, it may be noted that this Adjudicating Authority had granted relief to the Successful Resolution Applicant with regard to DVC as seen hereunder:

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
1.	All utility suppliers, including but not limited to DVC, shall commit supplies on and from the Effective Date. No utility supplier, including but not limited to DVC, should withhold / delay supply of utility on the ground of non-payment of dues prior to the Effective Date.	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁴ wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under

³ (2019) ibclaw.in 325 NCLAT

⁴ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	<p>The Resolution Applicant proposes to revive the unit and to resume production facilities to achieve the broader objective of the IB Code. It is not feasible to operate the plant without the support & co-operation of Utility suppliers, especially DVC. The Resolution Plan, once approved, will be binding on all stakeholders and all the utility suppliers, including DVC, should consider approval of this Resolution Plan as direction of Adjudicating Authority to supply respective utilities, including Power.</p>	<p>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 Govt, any State Govt 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. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt 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.</p>

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13. Thus, in view of the above relief granted, all the claims of DVC were extinguished, and DVC was bound by the same. The demands of DVC with respect to Pre-CIRP and CIRP period dues of DVC at this stage is in contravention to the Code and principles laid down with respect to the Code in terms of the above referred judgment.
14. In view of the above, we direct DVC to refund the amount received by it which was of Pre-CIRP including the Delayed payment surcharge thereon within one month from the date of this order. Further, DVC shall not disconnect the supply of electricity without following the due course of law.
15. The above directions shall not be construed in any manner, a relaxation of any fees or charges payable by the Applicant to DVC with respect to the new connection and concurrent charges.
16. In view of the above directions, **I.A. (IB) No. 1336/KB/2022 and I.A. (IB) No. 463/KB/2022 in C.P. (IB) No. 213/KB/2019** are allowed and disposed to the extent as directed above.
17. The Registry shall e-mail copy of this order to the Counsel on record for the Applicant and for the Respondents, and the Resolution Professional, for information and for taking necessary steps.
18. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order pronounced on the 14th day of September 2023.

GGRB[LRA]