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IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
CUTTACK

IA (IB) No. 307/CB/2023

In

C.P. (IB) No. 111/CB/2020

*In the matter of:*

An Application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

-And-

*In the matter of:*

**OCL Iron & Steel Ltd.**, having its registered office at: Lamloi Rajgangpur, Sundargarh, Odisha-770017.

... Applicant

-Versus-

**TP Western Odisha Distribution Limited (TPWODL)**, having its registered office at: Executive Engineer, TPWODL, Rajgangpur, Odisha.

... Respondent

-In-

*In the matter of:*

**Indian Bank**, having its registered office- 66, Rajaji Salai, Chennai- 600001

...Petitioner

-Versus-

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OCL Iron & Steel Ltd., having its registered office at: Lamloi Rajgangpur,  
Sundargarh, Odisha-770017.

...Respondent

-And-

*Appearances (through hybrid mode)*

For the Applicant : Mr. Rishav Banerjee, Adv.  
For Mr. Supriyo Gole, Adv.

For the Respondent : Mr. Sumit Lal, Adv.  
Ms. Zenish Mary Wallace, Adv.

**Coram:**

Shri P. Mohan Raj : Member (Judicial)  
Shri Kaushalendra Kumar Singh : Member (Technical)

**Order Pronounced on: 30.04.2024**

**ORDER**

1. The present application filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 by the Successful Resolution Applicant for a declaration that the electricity due amount of Rs.1,13,63,830/- of corporate debtor prior to CIRP period is extinguished because of approval of resolution plan by order dated 20.03.2023 and restraining the respondent from making any claim in respect of the said due amount and provide new electricity connection and for return of Bank Guarantee etc.

***Brief Contents of the application :-***

2. The Applicant is the Successful Resolution Applicant of the Corporate Debtor. The Respondent is the distributor of electricity and distribution licensee under the

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Electricity Act, 2003 in Western Odisha. The Corporate Debtor was admitted into CIRP by an order dated 20.09.2021 of this Adjudicating Authority. The Chief Electrical Inspector, Sambalpur (being responsible for discharging various public functions pertaining to the supply of electricity), had submitted a claim with the IRP for an aggregate sum of Rs. 21,22,35,559/- in respect of certain services provided by the Electricity Department of the State of Odisha prior to the CIRP commencement date and the entirety of the said claim was admitted. The Respondent herein, however, chose not to file any claim in respect of any of its alleged dues.

3. Thereafter, M/s. Indrani Patnaik (the Resolution Applicant) submitted a resolution plan in respect of the Corporate Debtor dated 27.05.2022 and an addendum dated 20.09.2022 to the resolution plan. The said resolution plan was approved by the CoC with the requisite majority, eventually, such resolution plan was approved by this Adjudicating Authority by order dated 20.03.2023. By virtue of this order, the Resolution Applicant was granted various waivers, reliefs, and concessions in order to facilitate the implementation of the said resolution plan and the revival of the Corporate Debtor. By operation of law, all arrears, dues of the Respondent also stood extinguished, and the Corporate Debtor became entitled to apply for *inter alia* fresh electricity connections and supply of electricity at its plants and factories.

4. Prior to CIRP commencement, the Corporate debtor was operating a factory/plant at Lamioi Village. Rajgangpur, Sundargarh, Odisha-770017. The said factory was shut down in and around 23.03.2020 on account of poor financial condition of the Corporate Debtor, and the said factory has been shut ever since. The new management of the Corporate Debtor started taking steps to make this factory operational. In furtherance of this, they applied to the authorities of the state of Odisha and the distribution licensee for electricity in the region in order to establish a fresh high voltage/load electricity connection for the said factory.

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5. The Applicant by a series of letters to the Respondent has requested to process the Applicant's application for a fresh electricity connection without insisting on the past dues of the Corporate Debtor as those dues were deemed to have been waived/extinguished upon the approval of the resolution plan. In some of the correspondences exchanged between the Applicant and the Respondent, the Respondent has asked for a copy of the resolution plan which was denied by the Applicant citing that the resolution plan was a confidential document and could not be shared with the Respondent.

6. The Applicant, thereafter, applied for and deposited Rs. 36,71,161/- for a new electricity connection with the Respondent in and around 07.08.2023. Despite making such payment, the Respondent refused, failed and/or neglected to grant such electricity connection or release the metering cubicle causing the Applicant to issue a letter dated 13.09.2023 calling upon the Respondent to act in accordance with law and to release the metering cubicle. By a letter dated 03.10.2023, the Applicant without prejudice to its rights and contentions requested the Respondent to allow the Applicant to submit a bank guarantee for the purported demand amount and grant permission for supply of electricity. In response, the Respondent, by a letter dated 04.10.2023, has allowed the Applicant to submit a bank guarantee for the purported sum of Rs. 1,13,63,830/- on account of past electricity dues of the Corporate Debtor. The Applicant also submitted a bank guarantee dated 05.10.2023 for the said sum of Rs. 1,13,63,830/- with the Respondent. The Respondent is still demanding the past arrears of electricity dues arising before CIRP. The Applicant has been duly making payment of all electricity dues charged after the date of approval of the resolution plan. The Applicant also undertakes to comply with any other formalities for getting the fresh electricity connection at the said factory.

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***Brief Contents of the Reply filed by the Respondent:***

7. The present application is not maintainable because in the instant case, the power supply had already been disconnected prior to the commencement of CIRP involving the Applicant Company. Therefore, disconnection or re-connection of the power supply thereof has no nexus with the insolvency proceeding and as such the present I.A. arising out of the said insolvency proceeding, is not maintainable under Section 60(5)(c) of the IBC. The Respondent has further contended that the fourth prayer of the Applicant has become infructuous as fresh electricity connection has been provided to the Applicant's industrial unit to the subject premises by the Respondent on 16.11.2023, with allotment of new Consumer No. 8130-0000-0352, under 'Large Industry (HT)' tariff category with contracted load of 555 KVA. It is submitted by the Respondent that the Corporate Debtor was an erstwhile consumer of electricity of the Respondent. Due to non-payment of the current month's electricity dues, the power supply to the industry of the Corporate Debtor was disconnected. The Respondent submits that the order dated 20.03.2023 where by the resolution plan was approved does not have specific mention of the waiver of the arrears electricity dues pending as against the CD. Rather, the Respondent requested the Applicant to provide a copy of the approved resolution plan to enable the Respondent to peruse the same and take a final decision on providing a fresh power supply to the Applicant. The Applicant has refused to provide a copy of the approved resolution plan on the ground that the same is a confidential document, whereas the Respondent has taken the stance that the Resolution Plan is a public document and the same should not be denied to the interested party. Thereafter, after mutual discussion, the Applicant agreed to submit a Bank Guarantee on the said amount of Rs. 1,13,63,830/-. After compliance with all other requirements, the power supply to the unit of the Applicant was commenced on 16.11.2023. The electricity charges are statutory dues, same cannot be completely waived off in any resolution plan while determining the entitlement of various stakeholders under Section 53 of the IBC,

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2016. The question of extinguishment of past electricity dues as claimed by the Applicant does not apply to the facts and circumstances of the case. Therefore, the instant IA filed by the Applicant seeking supply of electricity without making payment of statutory dues is unsustainable and untenable in law and the same, is liable to be dismissed at the threshold.

***Brief Contents of the Rejoinder filed by the Applicant:***

8. In the Rejoinder Affidavit, the Applicant has relied on the following judgments to contend that the Successful Resolution Applicant cannot be burdened with past liabilities:

- i. **Kashvi Power & Steel Private Limited and Anr. v. West Bengal State Electricity Distribution Company**, Calcutta High Court in WPA No. 6327 of 2022;
- ii. **Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Private Limited & Ors.** 2023 SCC Online SC 842
- iii. **Tata Power Western Odisha Distribution Limited (TPWODL) & Anr. v. Jagannath Sponge Private Limited Director** Civil Appeal No. 5556/2023
- iv. **State Bank of India v. Impex Metal & Ferro Alloys Ltd.** Order dated 06th September 2021 in IA (IB) 748/KB/2021 in CP (IB) 176/KB/2018

9. It is stated that the application has been filed under the correct provision as section 60(5) of the Insolvency and Bankruptcy Code, 2016 deals with any question of law or facts arising out of insolvency resolution or liquidation proceedings. It is pertinent to mention that the issue in hand is regarding (a) payment of past arrears, (b) release of bank guarantee which has been given by the Applicant for obtaining the fresh electricity connection, and various other allied issues. Hence, the present matter

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squarely falls within the ambit of section 60(5) of the Insolvency and Bankruptcy Code 2016.

***Points for Consideration are:-***

- i. Whether the present IA is maintainable?
- ii. Whether the Pre-CIRP electricity dues got extinguished/waived off by virtue of the approval of the resolution plan?
- iii. Whether the applicant is entitled for the return of the Bank Guarantee?

***Analysis and Findings:***

**Point No. I**

10. The first issue that arises for our consideration is regarding the maintainability of the present IA. The Respondent has submitted that the present application is not maintainable as Section 60(5)(c) of the Code, will only come into play when there is any question of law or facts arising out of or in relation to the insolvency resolution or liquidation proceedings of the Corporate Debtor.

11. It is rightly submitted by the Applicant that this Adjudicating Authority has power and authority under section 60(5) of the Code relating to any past dues which may be fastened to the Corporate Debtor prior to the CIRP. The Adjudicating Authorities have been vested with residuary powers under Section 60(5) of the IBC, 2016. Section 60(5)(c) of the IBC, 2016 empowers this Tribunal to adjudicate on questions of law and fact that relate to or arise during an insolvency resolution process.

12. Further, the Applicant has cited the case of *Tata Power Western Odisha Distribution Limited (TPWODL) & Anr. vs. Jagannath Sponge Private Limited Director, Civil Appeal No. 5556/2023*, wherein the Apex Court after referring to its earlier

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judgment in the case of *Embassy Property Developments Private Limited vs. State of Karnataka and Others, 2020 13 SCC 308* has held as follows:

*“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 – Tata Power Western Odisha Distribution 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’s 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.”*

13. The Applicant has also cited the case of *Mackeill Ispat & Forging Ltd. & Anr. v. Damodar Valley Corporation* (IA No. 1336/KB/2022 in IA No. 463/KB/2022 in CP (IB) No. 213/KB/2019, passed by the Hon’ble NCLT Kolkata Bench, wherein the Applicant had challenged the demands made by the Damodar Valley Corporation concerning pre-CIRP electricity dues of the Corporate Debtor. In this case, one of the issues raised was whether the Adjudicating Authority has the jurisdiction to decide the I.A. filed by the Successful Resolution Applicant after the approval of the Resolution Plan. In this regard, the Hon’ble NCLT Kolkata Bench held that the issues raised in such IAs relate to the relief that was part of the Resolution Plan which was approved by the Adjudicating Authority. Therefore, the issue involved is a direct fallout of the approved resolution plan, and as such these I.A.s were held to be maintainable under sub-section (5) of section 60 of the Code. We concur with the views adopted by the Hon’ble Kolkata Bench in this regard.

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14. Therefore, we are of the considered view that in the present scenario, the application pertains to electricity connection, more precisely the pre-CIRP electricity dues, which is a direct fallout of the resolution plan which has already been approved by this Adjudicating Authority by order dated 20.03.2023 and hence, this is perfectly maintainable under Section 60(5)(c) of the Code. Therefore, the first point is answered in favour of the Applicant and against the Respondent.

**Point No. 2**

15. It is a settled law that once a Resolution Plan is approved by the Adjudicating Authority; such approved resolution plan is binding on the Central Government, State Government and local authorities, etc. As held by the Hon'ble Supreme Court of India in *Ghanashyam Mishra & Sons (P) Ltd. vs. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657*, the legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the Adjudicating Authority, is that after the approval of the resolution plan, no surprise claims should be flung on the Successful Resolution Applicant. That is to say, the dominant purpose is that the Successful Resolution Applicant should start with a fresh slate on the basis of the resolution plan approved.

16. From the perusal of documents presented on the applicant side it appears that the applicant has itself invited the situation to file this application. Initially, the respondent has not demanded the arrears of electricity charges pertaining to the period prior to CIRP. The applicant submitted an application (Annexure-C) for a new electricity connection to the applicant company by letter dated 27.07.2023 along with the order of this Adjudicating Authority dated 20.03.2023 and other supporting documents. The respondent by reply dated 28.08.2023 (Annexure-D) requested the applicant to submit a copy of the approved resolution plan since Sl.No.19 of the order not specifically waived off electricity dues. The applicant instead of clarifying the fact, by reply dated 12.08.2023 refused to submit the copy of the approved

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resolution plan quoting the citation of NCLAT passed in ***Association of aggrieved Workmen of Jet Airways (India) Limited vs Jet Airways (India) Ltd., Represented by Shri Ashish Chhawchharia dated 20.01.2022, para 28*** of the supra order runs as follows:

*“28. When the right to Appeal on the ground enumerated in sub-section(3) of Section 61 is provided, unless the Appellant is aware of the contents of the Resolution Plan, how he will be able to satisfy the Appellate Court that the grounds enumerated in sub-section (3) of Section 61 are made out in reference to approval of the Resolution Plan. The provision of Section 61, sub-section (3) reaffirms our view that after approval of the Resolution Plan, Resolution Plan does not remain a confidential document, so as to deny its perusal to a claimant, who is aggrieved by the Plan and has come up on the Appeal. We, thus, are of the view that Resolution Plan after its approval by the Adjudicating Authority is no more a confidential document, so as to deny access to even a claimant. It is true that the Resolution Plan even though it is not a confidential document after its approval, cannot be made available to each and to any one who has no genuine claim or interest in the process. On various grounds the access to Resolution Plan even if it is not a confidential document, after approval can be denied in proper and appropriate cases.”*

17. In the supra citation, it is observed that a copy of the approved resolution plan can be denied to those who have no genuine claim, here applicant relies upon the plan for an extinguishment of the substantial due amount payable to the respondent and sought new electricity connection, further in the resolution order of this Adjudicating Authority dated 20.03.2023 in part III references are made page number and clauses of the approved resolution plan in such a situation the approved plan become part of the order. In any case, the respondent's request for a copy of the approved resolution plan cannot be termed as not genuine. The respondent again in its letter dated 27.09.2023 (Annexure-D) reiterated to furnish a copy of the approved

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resolution plan to support the claim of the applicant. Now the applicant instead of complying with the request of the respondent, immediately came forward with a proposal on its own by letter dated 3.10. 2023 (Annexure I) sought permission to submit a Bank Guarantee. In this letter, it stated that a demand notice dated 29.09.2023 was received for a sum of Rs.1,13,63,830/- and assured to settle the dues as per NCLT order.

18. On the applicant side filed (Annexure G) dated 29.09.2023, this is a drawing approval letter issued by the respondent. Applicant not produced the alleged demand notice dated 29.09.2023. The respondent in its reply dated 04.10.2023 clearly stated that since the applicant has not produced a copy of the approved resolution plan instead sought permission to furnish Bank Guarantee it is accepted. Thus it reveals that the Bank Guarantee was offered by the applicant on its own without any demand or coercion in substitution of furnishing a copy of the approved resolution plan.

19. The respondent in the reply stated that due to the refusal to furnish a copy of the approved resolution plan, the respondent could not take the final decision.

20. The respondent in the reply denies the claim of the applicant. In fact, it appears from the records that the respondent has not submitted any claim during the CIRP. Now claims that electricity dues are statutory and cannot be waived off etc. All these submissions in this regard made on the respondent side are unsustainable. According to the applicant the corporate debtor company was shut down on 23.03.2020 and subsequently admitted into CIRP on 20.09.2021. The electricity due of Rs. 1,13,63,830/- pertains to the period prior to the CIRP period. The respondent has not submitted any claim before RP. The resolution plan submitted by the applicant was approved on 20.03.2023. In this situation, the successful resolution applicant is not liable to pay any due amount not referred to in the resolution plan and pertaining to the pre-CIRP period. In this regard Hon'ble Apex court held in *Ghanashyam*

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***Mishra and Sons Private Limited Through the Authroized Signatory vs Edelweiss Asset Recontruction Company Limited through the Director & Ors. Para 130 as follows:***

*As such, when the resolution, plan is approved by NCLT, the claims, which are not not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since, the subject matter of the petition are the proceedings, which relate to the claims of the respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued. Equally, the claims, which are not part of the resolution plan, shall stand extinguished.*

Further the Hon'ble Apex Court in the case of ***Tata Power Western Odisha Distribution Limited (TPWODL) & Anr. v. Jagannath Sponge Private Limited Director***, Civil Appeal No. 5556/2023, wherein held as follows:

*“The appellatant – 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”.*

21. Therefore, from the above passages it is amply clear that the Successful Resolution Applicant cannot be saddled with past liabilities once a Resolution Plan is approved by the Adjudicating Authority under Section 31 of the IBC, 2016.

22. In the present case, the Resolution Plan for the Corporate Debtor submitted by M/s. Indrani Patnaik (Successful Resolution Applicant) was approved by this Adjudicating Authority by order dated 20.03.2023. Therefore, the pre-CIRP

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electricity dues by the corporate debtor are extinguished by virtue of approval of the Resolution Plan hence the applicant is not liable to pay the said due amount. Thus this point is answered.

**Point No.3:**

23. The next issue that has arisen for our consideration is whether, in the facts and circumstances of this case, the Bank Guarantee worth Rs. 1,13,63,830/-, furnished by the respondent ordered to be returned. As discussed earlier the applicant on its own gave the Bank Guarantee when the respondent insisted on furnishing a copy of the approved resolution plan or at least relevant portions of the approved resolution plan, stating that since in column No.19 of the order it is not specifically waived the electricity dues and unable to arrive final decision. The applicant refused to submit a copy of the approved plan and instead offered to submit a Bank guarantee. The respondent being an interested person his claim for a copy of the resolution plan is genuine and the respondent is entitled to the copy of the approved resolution plan. The Bank Guarantee was substituted by the applicant instead of submitting a copy of the approved resolution plan. The applicant furnished the bank guarantee substituting the copy of the approved resolution plan hence the applicant is entitled to return of Bank Guarantee on furnishing the copy of the resolution plan, thus this point is answered.

24. Electricity connection was already given hence prayer No.4 became infructious. In view of the answer arrived to the points the application is ordered as follows:

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- i. It is declared that the electricity due amount of Rs.1,13,63,830/- pertaining to the Pre-CIRP period payable to the respondent is extinguished in view of the approval of resolution plan of the

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applicant by order dated 20.03.2023, in consequence, the applicant is not liable/obliged to pay the said amount.

ii. The respondent is directed to return the Bank Guarantee bearing No.0229NDDG00058224, dated 5.10.2023 to the applicant on the production of a copy of the approved resolution plan. Thus the application is ordered and disposed of.

25. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

26. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

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**Kaushalendra Kumar Singh**  
**Member (Technical)**

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**P. Mohan Raj**  
**Member (Judicial)**

Signed on this, 30<sup>th</sup> day of April, 2024.

Kaushik\_LRA.