

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

MAT 646 of 2022
with
CAN 1 of 2022

Reserved on: 17.06.2022
Pronounced on: 12.07.2022

West Bengal State Electricity Distribution Company Limited

...Appellant

-Vs-

Sri Vasavi Industries Limited and Another

...Respondents

Present:-

Mr. Abhrajit Mitra,
Mr. Jishnu Chowdhury,
Mr. Chayan Gupta,
Mr. Sandip Dasgupta,
Mr. Saaqib Siddiqui,
Mr. Souradeep Banerjee,
Mr. Aviroop Mitra, Advocates

... for the Appellant

Mr. Joy Saha,
Mr. Swatarup Banerjee,
Mr. Moti Sagar Tiwari,
Mr. Ravindra Tiwari,
Mr. Hemant Tiwari,
Ms. Shweta Poddar, Advocates

... for the Respondents

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. This appeal is at the instance of the Electricity Distribution Company, i.e. the respondent in the writ petition, challenging the order of the learned Single Judge dated 23rd of March, 2022 whereby WPA 1936 of 2022 has been allowed and appellant has been directed to restore the electricity supply to the respondent no. 1 herein (writ petitioner) only on the reconnection charges without insisting upon deposit of its previous

claims or past dues of electricity and other charges which had resulted into disconnection.

2. The respondents, herein, had filed the writ petition with the plea that the respondent no. 1 is an ISO9001 certified company engaged in the manufacturing of iron, steel and ferro alloy products. The matter relates to the electricity connection of the plant at Bishnupur, West Bengal which was shut down in 2014. The respondent no. 1 was placed under Corporate Insolvency Resolution Process (for short, 'CIRP') under the Insolvency and Bankruptcy Code, 2016 (for short, 'the IBC') pursuant to which, the respondent no. 1 was taken over by the new management through respondent no. 2 who was a successful resolution applicant. For putting back the respondent no. 1 in operation by the new management, new electricity connection was required. Further case in the writ petition was that the electricity charges of the Damodar Valley Corporation (for short, 'DVC') were on the lower side and recently, the respondents had come to know that the Government of West Bengal had decided that all industrial parks in the State will be supplied power by the appellant by the matching tariff of DVC. The respondents had approached the appellant and had submitted the representations for making the power available at the competitive rate. Further case of the respondents was that the appellant had orally refused to grant power supply or grant a No Objection Certificate (NOC) till the entire earlier unpaid amount are paid by the respondent no. 1. In the aforesaid background, the writ petition was filed by the respondents with a prayer to direct the appellant to provide electricity connection to the respondent no. 1 at the competitive rate or to issue NOC to the respondents to seek power supply from the DVC or any other source.

3. Learned Single Judge, after hearing learned counsels for both the parties, has noted that CIRP was initiated and a resolution plan was passed by the NCLT on 10th of November, 2021. Learned Single Judge has

found that upon approval by the adjudicating authority, the resolution plan becomes binding on the corporate debtor and its employees, members, creditors, guarantors and other stake-holders involved in the resolution plan. It has further been found that Section 238 of the IBC has overriding effect. After taking note of the judgment of the Hon'ble Supreme Court on the point. Learned Single Judge has found that the dues payable to the appellant squarely fall within the ambit of "operational debt" as defined by the IBC and the dues of the appellant relate back to the period immediately prior to the disconnection of the electricity supply, which took place on 29th of November, 2014, i.e., before the enactment of the IBC. Hence, the right of the appellant to recover got extinguished by operation of Section 31(1) of the IBC. On reaching to the above conclusion, learned Single Judge has allowed the writ petition.

4. Submission of learned counsel for the appellant is that the appellant was not permitted to file affidavit-in-opposition before the learned Single Judge. He has further submitted that in the resolution plan, the relief relating to grant of power connection was not allowed and in terms of the earlier agreement dated 15th of November, 1997, the appellant had right to disconnect the electricity on non-payment of electricity charges. Further referring to the West Bengal Regulatory Commission (Electricity Supply Code) Regulation, 2013, he has submitted that the respondent can get the new connection only on clearing the earlier outstanding dues. He has further placed reliance upon Section 56 of the Electricity Act, 2003. He has also submitted that in terms of Section 30(2)(e) of the IBC, resolution plan cannot be contrary to the Regulation of 2003 and the Electricity Act, 2003. He has also referred to Regulation 37 (c) of the Insolvency and Bankruptcy Board (IRPCP) Regulation, 2016 and has submitted that approval of the prayer for power connection was necessary while sanctioning the resolution plan. In support of his submissions, he has placed reliance upon the judgment of the Hon'ble

Supreme Court in the matter of **Municipal Corporation of Greater Mumbai (MCGM) vs. Abhilash Lal and Others** reported in (2020) 13 SCC 234, in the matter of **DBM Geotechnics and Constructions Private Limited vs. Dighi Port Limited** reported in 2019 SCC OnLine NCLT 8142 and order of the National Company Law Tribunal: New Delhi, Principal Bench in the matter of **Phoenix ARC Pvt. Ltd. Vs. Anush Finleash & Construction Pvt. Ltd.** in (IB) – 1705(PB)/2018. He has further submitted that the appellant has claim of Rs. 25 crores and if he had submitted the claim, then in the resolution plan, he would have got only Rs. 4 lakhs, therefore, appellant did not lodge the claim. He has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Paschimanchal Vidyut Vitran Nigam Limited and Others vs. DVS Steels and Alloys Private Limited and Others** reported in (2009) 1 SCC 210. He has raised the submission that a fiction cannot be enlarged by another fiction and the appellant cannot be directed to give electricity connection even though a claim is extinguished. In support of his submission, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Commissioner of Income Tax (Central), Calcutta vs. Moon Mills Ltd.** reported in AIR 1966 SC 870, in the matter of **Vithaldas Jagannath Khatri (Dead) through Shakuntala Alias Sushma and Others vs. State of Maharashtra Revenue and Forest Department and Others** reported in (2020) 16 SCC 25, in the matter of **Indian Young Lawyers Association and Others vs. State of Kerala and Others** reported in (2019) 11 SCC 1. Final submission of learned counsel for the appellant is that though the appellant cannot raise a claim against the respondent no. 1 but the claim is not extinguished as it can be recovered from others, therefore, appellant cannot be compelled to give the electricity connection without payment of the dues.

5. Learned counsel for the respondent supporting the order of the learned Single Judge and opposing the argument advanced by learned

counsel for the appellant, has submitted that the respondent no. 1 company was admitted to CIRP and on succeeding in the process, all the claims prior to 28th of October, 2019 stood extinguished. He submits that the claim of the appellant was prior to 2019, hence, a pre-CIRP claim stood extinguished. He further submitted that the appellant had not filed the claim before resolution professionals, hence, the claim does not survive. He has also submitted that Section 238 of the IBC has overriding effect and in support of his submission, he has placed reliance upon the judgments of the Hon'ble Supreme Court in the matter of **Ghanashyam Mishra and Sons Private Limited through the Authorised Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director and Others** reported in (2021) 9 SCC 657, in the matter of **Committee of Creditors of Essar Steel India Limited through Authorised Signatory vs. Satish Kumar Gupta and Others** reported in (2020) 8 SCC 531, in the matter of **M/s Shiv Shakti Inter Globe Exports Pvt. Ltd vs. M/s KTC Foods Private Limited and Another in Company Appeal (AT) (Insolvency) No. 650 of 2020** order dated **25th of February, 2022**. He has further submitted that the appellant being an operational creditor is covered under Section 53(f) of the IBC. He has also submitted that the extinguishment of the claim of the appellant is not inequitable because earlier also, under Section 529(A) of the Companies Act, 1956, appellant had last priority and in the case of winding up, it would not have got anything. He has also placed reliance upon the judgment of the Hon'ble Supreme Court dated **17th of February, 2022** in **Civil Appeal Nos. 447-448 of 2013** in the matter of **M/s. Ruchi Soya Industries Ltd. Vs. Union of India and Ors.** in support of his submission that when no claim was lodged by the appellant, the resolution plan is final and rights are frozen. He has further submitted that the provisions of the IBC will prevail over the Electricity Act, 2003 and in this regard has relied upon/distinguished judgments of **Surana**

Power Limited and Gimpex Private Limited (Operational Creditor) vs. Surana Power Limited (Corporate Debtor) reported in **2019 SCC OnLine NCLT 43** and **Innoventive Industries Limited vs. ICICI Bank and Another** reported in **(2018) 1 SCC 407**. He has further submitted that the provisions of Section 43 of the Electricity Act, 2003 are mandatory wherein the appellant has duty to supply electricity. He has also submitted that the respondent has invested Rs. 40 crores in the industry and no electricity connection has been given till now and the attempt of the appellant electricity company is to frustrate the efforts of respondent no. 1 by involving it in legal battle. He has submitted that Regulation 4.6.1 of West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulation, 2013 has no application and that Regulation 4.6.4 is not applicable because respondent is not a defaulter and even otherwise, it is contrary to the provisions of the IBC and therefore, cannot be made applicable. He has also submitted that the earlier agreement, prior to the CIRP, is contrary to the resolution plan, hence, cannot be attracted being specifically covered by Section 238 of the IBC and now respondent will enter into fresh agreement for electricity connection. He has further submitted that the plan has already been approved by the adjudicating authority under Section 30 (2)(e) of the IBC and the appellant has not challenged the plan, therefore, it is binding. He has further submitted that since there was no factual controversy in the matter and only legal issue was involved, therefore, learned Single Judge, by the order dated 14th of February, 2022, had permitted the appellant to file copies of relevant documents on which they wanted to rely upon having regard to the fact that there was no factual objection. He has also submitted that the current view of the NCLAT in the matter of **Damodar Valley Corporation vs. Dimension Steel and Alloys Private Limited and Others** in **Company Appeal (AT) (Insolvency) No. 62 of 2022** dated

23rd of May, 2022 is the same as the one taken by the learned Single Judge and that was also an identical case.

6. We have heard the learned counsel for the parties and perused the record. The undisputed position in this case is that the appellant had entered into the agreement dated 15th of November, 1997 for the supply of electrical energy at extra high/high-voltage with the respondent no. 1. The electricity supply to the respondent no. 1 was disconnected on 29th of November, 2014. The CIRP was initiated in respect of respondent no. 1 under the provisions of Insolvency and Bankruptcy Code, 2016 by the order of the NCLT dated 28th of October, 2019. The resolution professionals had invited claims on 31st of October, 2019. The appellant had not submitted any claim before the resolution professionals. The resolution plan was approved by the NCLAT on 10th of November, 2021. Hence, it is not in dispute that the claim of dues to the extent of Rs. 25 crores by the appellant as against the respondent, is for a period prior to date of announcement of CIRP.

7. Section 31 of the IBC relates to approval of the resolution plan and in terms of Section 31(1) of the IBC on approval, the resolution plan becomes binding on corporate debtor and its employees, members, creditors including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force. It has not been disputed before this Court that under Section 31(1) of the IBC, the resolution plan is binding on the appellant. Section 53 of the Code which relates to distribution of assets and it has also not been disputed that the appellant is covered by Section 53(f) of the IBC because it is an operational creditor.

8. In terms of Section 238 of the IBC, the provisions of the Court have overriding effect. Section 238 of the IBC provides as under:

“238. Provisions of this Code to override other laws

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in

any other law for the time being in force or any instrument having effect by virtue of any such law.”

9. Hon’ble Supreme Court in the matter of **Ghanashyam Mishra (supra)** has considered the scope of Section 31(1) of the IBC and has held that once the resolution plan is sanctioned under Section 31(1) of the IBC, the claims provided in the plan will stand frozen and all such claims which are not part of the plan will stand extinguished. Hon’ble Supreme Court in this judgment has held that:

“**102.1.** 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 Government, any State Government 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.

102.2. The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.

102.3. Consequently all the dues including the statutory dues owed to the Central Government, any State Government 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.”

10. In the matter of **Committee of Creditors of Essar Steel India Limited (supra)**, Hon’ble Supreme Court has expressed that a successful resolution application cannot be faced with undecided claim after the resolution plan is accepted as this would amount to a hydra head popping up, leading to the uncertainty of amounts payable by a prospective resolution applicant. In this judgment, Hon’ble Supreme Court had held that:

“**106.** Following this judgment in *V. Ramakrishnan case*, it is difficult to accept Shri Rohatgi's argument that that part of the resolution plan which states that the claims of the guarantor on account of subrogation shall be extinguished, cannot be

applied to the guarantees furnished by the erstwhile Directors of the corporate debtor. So far as the present case is concerned, we hasten to add that we are saying nothing which may affect the pending litigation on account of invocation of these guarantees. However, NCLAT judgment being contrary to Section 31(1) of the Code and this Court's judgment in *V. Ramakrishnan case*, is set aside.

107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”

11. Similar issue came up before the Hon’ble Supreme Court in the matter of **M/s. Ruchi Soya Industries Limited vs. Union of India and Others** wherein by the judgment dated **17th of February, 2022** passed in **Civil Appeal No. 447-448 of 2013**, after taking note of the judgment of **Ghanashyam Mishra (supra)**, the Hon’ble Court held that:

“Admittedly, the claim in respect of the demand which is the subject matter of the present proceedings was not lodged by the respondent no. 2 after public announcements were issued under Sections 13 and 15 of the IBC. As such, on the date on which the Resolution Plan was approved by the learned NCLT, all claims stood frozen, and no claim, which is not a part of the Resolution Plan, would survive.

In that view of the matter, the appeals deserve to be allowed only on this ground. It is held that the claim of the respondent, which is not part of the Resolution Plan, does not survive. The amount deposited by the appellant at the time of admission of appeals along with interest accrued thereon is directed to be refunded to the appellant.”

12. Thus, the law is well settled that on the approval of the resolution plan in terms of Section 31 of the IBC, the dues including the statutory

dues of the Government or local authority, if not part of the resolution plan, gets extinguished and no proceedings in respect thereof for a period prior to the date of approval under Section 31 would continue.

13. Learned counsel for the appellant has placed reliance upon one of the clause of the agreement dated 15th of November, 1997 relating to right of the appellant to disconnect the supply of electrical energy on non-payment of appeal and reconnection on full payment but after the approval of the resolution plan, the said clause of the earlier agreement has no effect as the resolution plan and provisions of IBC will prevail over the instrument also in terms of Section 238 of the IBC.

14. Learned counsel for the appellant has also placed reliance upon Clause 4.6.1 and 4.6.4 of the West Bengal Electricity Regulation Commission (Electricity Supply Code) Regulation, 2013 relating to termination of the agreement on continuous disconnection of power supply and new service connection only on payment of outstanding dues against the deemed terminated consumer. This regulation cannot be pressed into service by the appellant as it runs counter to the scheme of the IBC as also the judgment of the Hon'ble Supreme Court in the matter of **Ghanashyam Mishra (Supra), Committee of Creditors of Essar Steel India Limited (supra)** and also in view of the overriding effect of the IBC in terms of Section 238 of the IBC. He has placed reliance upon Section 56 of the Electricity Act, 2003 relating to disconnection of supply in default of payment. The said provision has no relevance as the disconnection was already done in the year 2014 and now it is the issue of reconnection/fresh connection to the respondent no. 1 after approval of resolution plan.

15. Learned counsel for the appellant has also raised the plea that though in the resolution plan respondent no. 1 had made a prayer for approval and permission of power HT connection without any penalty

claims, dues, fees, charges and only on payment of prospective charges but the said prayer was not granted.

16. It is undisputed before this Court that the claim of the appellant to recover the earlier dues of about Rs. 25 crores as against the respondent no. 1 does not survive. As per the judicial pronouncement noted above on the facts of this case, such a claim extinguishes on approval of resolution plan. Section 43 of the Electricity Act, 2003 casts a duty upon the distribution licensee to supply electricity on request. Section 43 of the Electricity Act, 2003 reads as under:

“43. Duty to supply on request. – (1) [Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in the case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area

[*Explanation.* – For the purposes of this sub-section, “application” means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.]

(2) It shall be the duty of every distribution licensee to provide, if required, electric plang or electric line for giving electric supply to the premises specified in sub-section (1):

Privided that no person shall be entitled to demand, or to continue to receive, from the licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.”

17. Having due regard to the aforesaid provision, it is not open to the appellant to contend that though the earlier dues are not recoverable from

the respondent no. 1, yet, the appellant will not supply electricity to the respondent. The counsel for respondent no. 1 has made it clear before this Court that it is ready to pay the fresh connection/reconnection charges to the appellant.

18. The counsel for the respondent has pointed out the recent view of the Tribunal in similar matters by placing reliance upon the order of the National Company Law Appellant Tribunal: Principal Bench, New Delhi dated 25th of February, 2022 in **Company Appeal (AT)(Insolvency) No. 650 of 2020** in the matter of **M/s Shiv Shakti Inter Globe Exports Pvt. Ltd. vs. M/s KTC Foods Private Limited and Another**, wherein NCLAT has held that:

“21. Adverting to the contention of the Learned Counsel for the Appellant that the Adjudicating Authority has erred in denying the sale of the ‘Corporate Debtor’ as a ‘going concern’ to the Appellant without including any contingent liabilities, we hold that it is a settled law that when the sale proceeds of a ‘Corporate Debtor’ are duly distributed in the Order of priority and in the manner prescribed under Section 53 of the Code, claims of any other Creditor cannot be entertained contrary to the provisions entailed under Section 53; subsequent to the distribution of sale proceeds under Section 53 no other entity including any Government entity can claim any past unpaid or outstanding dues against the Appellant who has purchased the ‘Corporate Debtor Company’ as a ‘going concern’. It is significant to mention that the second Respondent/Liquidator has specifically submitted that even these claims by the Uttar Haryana Bijili Vitran Nigam were not submitted in the prescribed form either during the CIRP Process or at the Liquidation stage. We are of the considered view that at this stage subsequent to the sale of the ‘Corporate Debtor Company’ as a ‘going concern’, these claims cannot be foisted upon the Appellant. The scope and objective of the Code is to extinguish all claims specifically the ones which were not even made during the CIRP or in the Liquidation stage, to aid the purchaser of the Company as a ‘going concern’ to start on a ‘clean slate’. The Hon’ble Supreme Court in *‘Ghanshyam Mishra & Sons Pvt. Ltd’ Vs. ‘Edelweiss Asset Reconstruction Company Ltd. & Ors’, Civil Appeal No. 8129 of 2019* and in *‘CoC of Essar Steel India Ltd.’ Vs. ‘Satish Gupta & Ors.’ (2020) 8 SCC 531* has laid down the proposition that the purchaser of the Company even in the Liquidation stage cannot be burdened with past liabilities when it is not mentioned in the ‘Sale Notice’.

22. It is no longer *Res Integra* that while approving a ‘Corporate Debtor’ sale 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. The Impugned Order in I.A. 889 of 2020 is modified to the extent that the sale of the first Respondent as a ‘going concern’ is upheld and the direction sought for in prayer (c) & (e) in CA No. 1189 of 2019 seeking extinguishment of past/remaining unpaid outstanding liabilities including contingent liabilities, prior to the sale as a ‘going concern’, after payment of sale proceeds distributed in accordance with Section 53 of the Code, is allowed.

This Appeal is allowed to the extent indicated above.”

19. Learned counsel for the respondent has also referred to the order of the National Company Law Appellate Tribunal, Principal Bench, New Delhi dated 23rd of May, 2022 in the matter of **Damodar Valley Corporation vs. Dimension Steel and Alloys Private Limited and Others**, wherein, considering somewhat similar issues, the NCLAT, taking note of the judgment of the Hon’ble Supreme Court in the matter of **Ghanashyam Mishra (Supra)** and considering Regulations 4.6.1 and 4.6.4 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2013 has held that the regulations cannot be pressed into service when resolution plan is approved in the CIRP under the IBC.

20. In the matter of **Innoventive Industries Limited (supra)**, Hon’ble Supreme Court has considered the issue of repugnancy of earlier State Law and the latter Parliamentary Law in reference to the provisions of the IBC and has held that:

“**60.** It is clear, therefore, that the earlier State law is repugnant to the later Parliamentary enactment as under the said State law, the State Government may take over the management of the relief undertaking, after which a temporary moratorium in much the same manner as that contained in Sections 13 and 14 of the Code takes place under Section 4 of the Maharashtra Act. There is no doubt that by giving effect to the State law, the aforesaid plan or scheme which may be adopted under the Parliamentary statute will directly be hindered and/or obstructed to that extent in that the management of the relief undertaking, which, if taken over by the State Government, would directly impede or come in the way of the taking over of the management of the corporate body by the interim resolution professional. Also, the moratorium imposed under Section 4 of

the Maharashtra Act would directly clash with the moratorium to be issued under Sections 13 and 14 of the Code. It will be noticed that whereas the moratorium imposed under the Maharashtra Act is discretionary and may relate to one or more of the matters contained in Section 4(1), the moratorium imposed under the Code relates to all matters listed in Section 14 and follows as a matter of course. In the present case, it is clear, therefore, that unless the Maharashtra Act is out of the way, the Parliamentary enactment will be hindered and obstructed in such a manner that it will not be possible to go ahead with the insolvency resolution process outlined in the Code. Further, the non obstante clause contained in Section 4 of the Maharashtra Act cannot possibly be held to apply to the Central enactment, inasmuch as a matter of constitutional law, the later Central enactment being repugnant to the earlier State enactment by virtue of Article 254(1), would operate to render the Maharashtra Act void vis-à-vis action taken under the later Central enactment. Also, Section 238 of the Code reads as under:

“238. Provisions of this Code to override other laws.—The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

It is clear that the later non obstante clause of the Parliamentary enactment will also prevail over the limited non obstante clause contained in Section 4 of the Maharashtra Act. For these reasons, we are of the view that the Maharashtra Act cannot stand in the way of the corporate insolvency resolution process under the Code.”

21. Thus, in case of conflict with the State legislation, the provision of IBC will prevail. Hence, it is clear that the provisions of the IBC will prevail over the State Electricity Regulation.

22. Learned counsel for the appellant has placed reliance upon the judgment of the Hon’ble Supreme Court in the matter of **Jaypee Kensington Boulevard Apartments Welfare Association and Others vs. NBCC (India) Limited and Others** reported in **(2022) 1 SCC 401**, but the issue involved therein was different relating to approval of the statutory authority wherein Regulation 37 of CIRP Regulations itself provides for various measures including necessary approval from the Government and other authorities. In that background, the Hon’ble Supreme Court has held that YEDA established under the Act and its approval remains *sine qua non* for validity of resolution plan. Hence, that judgment has no

application in the facts of the present case. He has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Abhilash Lal (supra)** but in that case, the issue was relating to authorization from Municipal Corporation for transfer/creation of interest in property owned by the Corporation and in that background, the Hon'ble Supreme Court held that Section 238 of the IBC cannot be read as overriding the Municipal Corporation's right, its public duty to control and regulate how its properties are to be dealt with. He has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Paschimanchal Vidyut Vitran Nigam Limited (supra)**. The said judgment relates to the issue of recovery of electricity dues from the purchaser of sub-divided plot and it has been held that in the absence of a contract to the contrary, the electricity supplies cannot recover due from earlier predecessor in title or possession from the purchaser as there is no privity of contract. This judgment does not deal with the issue involved in the present case. In none of the aforesaid judgments, the issue of extinguishment of the claim of operational creditor on approval of the resolution plan was involved, hence, the appellant cannot be extended benefit of those judgments.

23. So far as the argument advanced by the learned counsel for the appellant placing reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Indian Young Lawyers Association (supra)**, **Vithaldas Jagannath Khatri (supra)** and **Commissioner of Income Tax (Central), Calcutta (supra)** about enlargement of one fiction by another, this Court finds that on extinguishment of the right to recover, if a duty is cast under the Electricity Act, 2003 to supply the electricity, then the appellant cannot escape from performing the said duty.

24. So far as the argument of learned counsel for the appellant that it had no opportunity to file the affidavit-in-opposition before the learned Single Judge, we find that considering the fact that mainly legal issue was

involved in the writ petition, learned Single Judge by order dated 14th of February, 2022 had permitted the appellant to serve copies of relevant documents to the counsel for the respondent with the understanding that unless the respondent (writ petitioner) had a factual objection as to the veracity of such documents, the writ petition would be heard finally. Thereafter, appellant had filed documents, written arguments relying upon several judgments. Hence, appellant has been granted sufficient opportunity before the learned Single Judge.

25. Having regard to the above analysis, we find that the right of the appellant to recover the amount which was due prior to the resolution plan had extinguished on the approval of the resolution plan. The appellant is now required to provide the electricity connection to the respondent in terms of the Electricity Act, 2003, hence, learned Single Judge has not committed any error in allowing the writ petition and issuing requisite direction in this regard. We find no error in the order of the learned Single Judge, hence, no case for interference is made out. The appeal is accordingly, dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
12.07.2022

PA(RB)

(A.F.R. / N.A.F.R.)