

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 11002 OF 2022

Orissa Power Transmission Corporation Ltd. and others ***Petitioners***

Mr. Pradipta Kumar Mohanty, Senior Advocate
being assisted by Mr. Pronoy Mohanty, Advocate

-versus-

Collector and District Magistrate, Cuttack and others ***Opp. Parties***

Mr. Swayambhu Mishra,
Additional Standing Counsel

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
02.08.2022**

Order No.

4.
 1. This matter is taken up through Hybrid mode.
 2. This writ petition has been filed by Orissa Power Transmission Corporation Ltd. (hereinafter referred to as 'OPTCL' for convenience) seeking for a direction to Opposite Party No.1-Collector and District Magistrate, Cuttack to take immediate and effective measure along with Opposite Party Nos. 2 to 6 for granting permission in accessing the Right of Way (RoW) for construction of 132 KV Traction line (2 phase) from existing 132/33 KV Grid Substation, Choudwar to proposed RTTS, Charbatia for power supply connectivity as per the work order under Annexure-2 within a stipulated time.
 3. The factual backdrop for filing of the present writ petition is that OPTCL has undertaken drawal of HT line from Grid Substation, Choudwar to proposed RTTS, Charbatia. To facilitate such connectivity, transmission towers have to be

erected. Out of fifty towers forty-two have been erected. Out of said fifty towers four towers fall within premises of Balarpur Industries Limited (erstwhile Titagarh Paper Mill). A proceeding under the Insolvency and Bankruptcy Code, 2016 (for short, 'IBC') in respect of Balarpur Industries is pending before National Company Law Tribunal (NCLT), Mumbai Bench. An Interim Resolution Professional (IRP) has also been appointed and an order has been passed by NCLT on 17th January, 2020. NCLT has issued a series of directions while admitting the petition. Relevant partition of the said order is as under:-

“Therefore, the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this petition prohibiting all the following of item-I, namely:

(i) (a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(ii) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(iii) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(iv) That the order of moratorium shall have effect from 17.01.2020 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order 6 for liquidation of Corporate Debtor under section 33, as the case may be.

(v) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(vi) That this Bench hereby appoints, Mr. Divyesh Desai, having office at B2 402B Marathon Innova, Off Ganpatrao Kadam Marg, Lower Parel (W), Mumbai 400013 and having Registration No.IBBI/PA-001/IPP00169/2017-18/10338 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.”

Further, a PIL in W.P.(C)(PIL) No.6779 of 2020 was also filed before this Court challenging the alleged inaction of Opposite Party Nos.1 to 7 therein, namely, the Labour Commissioner, Collector, Cuttack, D.C.P., Cuttack, Tahasildar, Tangi-Choudwar etc. in overlooking the grievance of the local public of village Daulatabad (Mangala Sahi), PS: Choudwar, District Cuttack for establishing an industrial unit over the land belonging to M/s Balarpur Industries (Opposite Party No.8 therein). While disposing of the said PIL, vide order dated 18th February, 2021, this Court had made certain observations, which is as under:-

“13. Learned counsel appearing for IRP pointed out that once a draft Resolution Plan is prepared, objections can be filed thereto under Section 60 of the IBC by all the stake holders. This would include, according to him, even the local population who may have general apprehensions as to the effect of closure of Opposite Party No.8 and selling away valuable land for non-industrial purposes.

14. It may be noted at this stage that on 17th August 2020 this Court had directed that status quo be maintained with regard to the land. That order is consistent with the status quo already in force as a result of the admission of

the IBC petition against Opposite Party No.8 by the NCLT by order dated 17th January, 2020.

15. *Submissions have been made in the connected writ petitions by learned counsel for the Petitioners about the possibility of the lands in question of Opposite Party No.8 being sold to private entrepreneurs, who may then use it for non-industrial purposes. In light of the orders passed by the NCLT, there is no basis for such apprehension at the present moment.*

16. *The Court considers it appropriate, keeping in view all the above submissions and circumstances, to issue the following directions:*

(i) The status quo order passed by this Court on 17th August 2020 will continue during pendency of the proceedings before NCLT, subject to any further direction that may be passed by the NCLT in the IBC proceedings pending before it.

(ii) The Opposite Party Nos.5 and 7 will ensure that no request for mutation of any land of Opposite Party No.8 is entertained during pendency of the proceedings before the NCLT and without prior permission of the NCLT.

(iii) After the draft resolution plan is formulated and placed in the public domain inviting objections, it would be open not only to Opposite Party Nos.5 and 7 but for others including the residents of P.O.- Daulatabad (Mangala Sahi) P.S.-Choudwar, District-Cuttack to raise their objections thereto under Section 60 of the IBC which shall thereafter be considered in accordance with law by the NCLT."

Mr. Mohanty, learned Senior Advocate submits that in view of the aforesaid orders passed by NCLT and this Court in aforesaid PIL, Collector, Cuttack-Opposite Party No.1 is not responding to the Petitioner-OPTCL in granting permission to erect towers and draw transmission line within the premises of the Balarpur Industries Ltd. It is his submission that the interim order passed by NCLT shall no way affect the Right of Way of the Petitioner-OPTCL in drawing transmission line within the premises of Balarpur Industries Ltd. There cannot be any hindrance in drawal of HT line and no obstruction should be

made in that regard either by any public authority or local public. Even consent from the land owners are not required for drawal of HT line.

4. In support of his case, Mr. Mohanty, learned Senior Advocate relied upon the following decisions.

- (i) ***Manoranjan Sa and others Vs. State of Odisha and others***, reported in AIR 2019 Orissa 85, wherein this Court at para-14 held as under:-

“14. With regard to consent of the land owners before laying any overhead electric lines or underground water pipelines, it has been settled in the case of Jayantkumar Bhagubhai Patel v. State of Gujarat, AIR 2007 Guj 32 that such consent is not necessary since no damage of permanent nature would be caused and the land could be used for the agricultural purpose.

In case of Soma Oram v. Chairman Steel Authority of India Ltd., 2001 (I) OLR 663 this Court has held that the land owner is entitled to get compensation in accordance with the provisions contained in the Indian Telegraph Act and if the quantum of compensation fixed by the Collector is not satisfactory, it is open to the parties to approach the appropriate forum.”

- (ii) Hon’ble Supreme Court in ***Century Rayon Limited Vs. IVP Limited and others***, reported in 2019 SCC OnLine SC 1521, in which discussing relevant case laws, it is held as under:-

“The decision highlights the imperative and the need for unobstructed access for laying down the electricity transmission lines in the larger public interest as these are essential requirements for growth and development of the country, economy and well-being of the citizens.”

- (iii) In ***Power Grid Corpn. of India Ltd. v. Century Textiles & Industries Ltd.***, reported in AIR 2017 SC 1141, para-20, Hon’ble Supreme Court held as under:-

“20. It is not in dispute that in exercise of powers under the aforesaid provision, the appropriate Government has conferred the powers of telegraph authority vide Notification dated 24-12-2003 exercisable under the Telegraph Act, 1885 upon the Power Grid. It may also be mentioned that a Central transmission utility (CTU) is a deemed licensee under the second proviso to Section 14 of the Electricity Act, 2003. Power Grid is a Central transmission utility and is, therefore, a deemed licensee under the Electricity Act, 2003. This coupled with the fact that Power Grid is treated as authority under the Telegraph Act, 1885, it acquires all such powers which are vested in a telegraph authority under the provisions of the Telegraph Act, 1885 including power to eliminate any obstruction in the laying down of power transmission lines. As per the provisions of the Telegraph Act, 1885, unobstructed access to lay down telegraph and/or electricity transmission lines is an imperative in the larger public interest. Electrification of villages all over the country and availability of telegraph lines are the most essential requirements for growth and development of any country, economy and the well-being/progress of the citizens. The legislature has not permitted any kind of impediment/obstruction in achieving this objective and through the scheme of the Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines.”

(iv) This Court in the case of ***Dharma Munda and others Vs. Collector, Jajpur and others*** [W.P.(C)(PIL) No.2909 of 2012 disposed of on 4th September, 2014], in para-10 held as under:-

“10. The OPTCL is a Government of Orissa undertaking and is a State Transmission Utility under Section 39 of the Electricity Act, 2003 and the deemed transmission Licensee for transmission of electricity in the State of Orissa under the provisions of the Electricity Act, 2003. It is the licensee for transmission of electricity granted by the Orissa Electricity Regulatory Commission under the provisions of the Electricity Act, 2003. The OPTCL has been duly authorized under Section 164 of the Electricity Act, 2003 by the Government of Orissa in their orders dated 09.03.2006 notified in Extraordinary Gazette No.406

dated 24.03.2006 to exercise all the power of the Telegraph Authority as are available under Part-III of the Indian Telegraph Act, 1885 to undertake construction of transmission line including to place any electric line, towers, etc. on and over the land or building as the case may be in the State of Orissa. The opposite parties have been constructing the EHT Transmission Line, i.e., Rengali-Meramundali-Duburi 400 KV, DC line by observing all the formalities and maintaining the proper ground clearance and safety measures as stipulated in the Electricity Act and the Rules framed thereunder. The said Electricity line is very much vital for the purpose of public in order to provide reliable and steady power supply as well as to meet the power demand of Jajpur and other areas.”

4.1 It is his submission that vide order dated 9th March, 2006 published in Gazette dated 24th March, 2006 (Annexure-1), OPTCL has been conferred with power to exercise and act as the Telegraph Authority under the Indian Telegraph Act, 1885, as required under Section 164 of the Electricity Act, 2003. He, therefore, submits that there cannot be any hindrance in drawing transmission line by erecting towers in the premises of Balarpur Industries. The aforesaid orders cannot also stand on the way to erect towers within the premises of M/s. Balarpur Industries. Collector has to give formal permission in the regard. Due to his inaction, the Petitioner-OPTCL in particular and the public in general are deprived of quality power supply. Hence, this Writ Petition has been filed for the aforesaid relief.

5. Mr. Mishra, learned ASC referring to counter affidavit submits that in view of interim orders passed by NCLT as well as observation of this Court in PIL, Collector, Cuttack is not in a position to permit the Petitioner to erect towers and draw transmission line within the premises of Balarpur Industries. It is his submission that Section 60 (5)(c) of the Insolvency and

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<i>(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—</i>		
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<i>(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.”</i>		

5.2 In support of his contention, Mr. Mishra, learned ASC placed reliance on a decision of the Hon'ble Supreme Court in the case of ***Embassy Property Developments (P) Ltd. v. State of Karnataka***, reported in (2020) 13 SCC 308, wherein at para-37, the Hon'ble Court held as under:-

speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the Government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase “arising out of or in relation to the insolvency resolution” appearing in clause (c) of sub-section (5). Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of the IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under Section 260-A of the Income Tax Act, 1961. Therefore the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results. [It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression “operational debt” under Section 5(21), making the Government an “operational creditor” in terms of Section 5(20). The moment the dues to the Government are crystallised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the adjudicating authority, namely, the NCLT.]”

6. Heard learned counsel of the parties at length; perused the provisions of law and case laws cited before this Court. The interim order passed by NCLT includes prohibition of transfer, encumbrance, alienation or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein, namely, Balarpur Industries Ltd.

7. Mr. Mohanty, learned Senior Advocate for the Petitioner referring to dictionary meaning of the term ‘*encumber*’, submits that it does not include the ‘*Right of Way*’; rather its ordinary meaning is ‘*hamper*’ and ‘*burden*’. The Right of Way for erection of towers and drawal of HT line does not come under ‘*encumbrance*’.

8. It is difficult for the Court to accept the such interpretation, because this Court is neither sitting over the

interim order dated 17th August, 2020 passed by the NCLT nor is competent to interpret the order passed by the Hon'ble Division Bench of this Court in W.P.(C) (PIL) No.6779 of 2020. On perusal of materials on record, it appears that apparently the interim order is operating in respect of the property over which Petitioner-OPTCL is proposing to erect tower and draw HT line, in view of the interim order, the Collector, Cuttack is not competent to grant permission as sought for until and unless the same is modified by the competent Court granting Right of Way to Petitioner-OPTCL for the aforesaid purpose. Further, this Court while disposing of the PIL made an observation to the effect that after the draft resolution plan is formulated and placed in the public domain inviting objections, it would be open not only to Opposite Party Nos.5 and 7 therein but also for others including the residents of Daulatabad (Mangala Sahi), Choudwar, District-Cuttack to raise their objections thereto under Section 60 of the IBC which shall thereafter be considered in accordance with law by the NCLT.

9. In view of the above, the relief sought for cannot be granted in the writ petition in the present form. Accordingly, the writ petition stands disposed of with an observation that if Petitioner-TPCODL so advised may work out its remedy in competent Court of law.

(K.R. Mohapatra)
Judge

s.s.satapathy