D/L. 14.
January 17, 2024.
MNS.

WPA No. 26499 of 2023

Gloster Nuvo Limited and others
Vs.
CESC Limited and another

Mr. Ranjan Bachawat,
Mr. Debnath Ghosh,
Mr. Shaunak Mitra,
Ms. Pubali Sinha Chowdhury,
Mr. Satwik Beriwala

… for the petitioners.

Mr. Om Narayan Rai,
Mr. Debanjan Mukherji

…for the CESC Limited.

1. Affidavit-of-service filed in Court today be kept on record.
2. Since all the material documents have been annexed to the writ petition and have been addressed by both sides, no affidavits have been directed. It is, thus, deemed that none of the allegations made in the writ petition are admitted by the respondents.
3. Learned senior counsel appearing for the petitioners argues that the petitioners were the successful resolution applicants and purchased a Company and intended to set up a heavy-duty industry. For such purpose, the petitioners applied for High-Tension (HT)

electricity connection. Initially Low-Tension (LT) electricity connection was being enjoyed by the petitioner. Subsequently, when the petitioners sought for HT electricity connection, the CESC Limited gave a quotation of about Rs.3.70 crore as the charges to be borne by the petitioners for obtaining such HT electricity connection.

4. The petitioners paid such amount. Thereafter, however, the CESC Limited raised an additional claim of a huge amount by way of alleged outstanding dues. Such outstanding dues, even as per the communication of the CESC Limited, pertained to a period starting from February 12, 2007, which is about 16 years back.

5. It is argued that, as settled by several judgments of the Supreme Court as well as this Court, once a successful resolution applicant purchases a property, the said applicant acquires the property on a "clean slate".

6. Since the approval of a resolution plan under the scheme of the Insolvency and Bankruptcy Code, 2016 (IBC) obliterates all previous

dues, there is no question of any outstanding dues remaining further.

7. For such proposition, learned senior counsel cites the judgments of *Tata Power Western Odisha Distribution Limited (TPWODL) & Anr. Vs. Jagannath Sponge Private Limited* and *Southern Power Distribution Company of Andhra Pradesh Limited Vs. Gavi Siddeswara Steels (India) Pvt. Ltd. and another* of the Supreme Court as well as *Sri Vasavi Industries Limited and Another Vs. West Bengal State Electricity Distribution Company Limited*, rendered by this court as well as the Division Bench order affirming the same.

8. It is also argued by learned senior counsel that contrary to the arguments sought to be advanced in their communications by the CESC Limited, the provision of the IBC overrides the Electricity Act, 2003 insofar as the obliteration of past dues is concerned.

9. Learned senior counsel also places reliance on Section 238 of the IBC, which provides that the said Code has an overriding effect on all extant law. Section 31 of the said Code is also relied on in support of the contentions of the petitioners.

10. Learned counsel appearing for the CESC Limited places reliance on the correspondence between the CESC Limited and the petitioners.

11. It is contended that by way of a communication dated November 2, 2022, it was clearly mentioned by the CESC Limited while agreeing to give HT electricity connection to the petitioners that the said agreement was subject to obtaining clearance from the Senior Manager (Commercial-HT) of the CESC Limited in respect of outstanding dues lying at the premise, if any.

12. Subsequently, while reiterating the agreement and quoting an amount of Rs.3.70 crore, it was reiterated by the CESC Limited vide letters dated January 25, 2023 and January 27, 2023 that the other terms and conditions remained unaltered, with particular reference to the communication dated November 2, 2022, which spoke about obtaining clearance from the Senior Manager (Commercial-HT) of the CESC Limited regarding outstanding dues.

13. Thus, in view of the concluded contract between the parties, which obligated the

petitioners to pay the outstanding dues, the petitioners cannot now resile from such position in law.

14. A bare perusal of the correspondences referred to by the CESC Limited shows that the clause in the letter dated November 2, 2022 regarding obtaining clearance from the Senior Manager (Commercial-HT) of the CESC Limited was merely an empty formality. It is noted that no specific outstanding dues was mentioned in the said letter or subsequently prior to the claim first being made by the CESC Limited after raising quotation and the petitioners paying such amount. Hence, mere mention of unquantified "outstanding dues" does not and cannot form the part of a conscious agreement between the parties.

15. In any event, any agreement against the law is also not binding on the parties.

16. The provisions of the IBC as interpreted in the judgment cited by learned senior counsel for the petitioners clearly envisage that when a successful resolution applicant purchases a property after the approval of a resolution plan, all previous dues get obliterated.

17. The purchase is on a clean slate, as held by the Supreme Court.
18. Hence, even if there were to be an agreement for payment of outstanding dues, such outstanding dues, under the purview of the IBC, would be nil. As such, nothing hinges on the said clause in the correspondence relied on by the CESC Limited.
19. Another aspect has to be looked into. The provision in the said correspondences was merely that a clearance has to be obtained from the Senior Manager (Commercial-HT) of the CESC Limited, which is not necessary in law or as per procedure.
20. As such, obtaining a clearance did not, by any stretch of imagination, tantamount to a specific claim of any particular outstanding dues at all or, for that matter, any obligation to pay such amount.
21. Thus, the said clause did not cast any obligation on the petitioners at any point of time to pay any outstanding amount to the CESC Limited.
22. On a more basic premise, the claim sought to be raised by the CESC Limited is 16 years' old. Hence, the same is stale and the

proverbial ‘deadwood’. The CESC Limited’s claim would even otherwise be time-barred, both under the general law of limitation and as per Section 56(2) of the Electricity Act, 2003.

23. Moreover, the CESC Limited has not established any semblance of nexus between the alleged defaulter and the present petitioners/proposed consumers to entitle the CESC Limited to make such claim of outstanding dues in the first place.

24. Thus, the insistence of the CESC Limited post facto, after having raised specific quotation of Rs.3.70 crore, which has also been paid by the petitioners, by a back-dated subsequent letter, is palpably *de hors* the law and beyond the authority of the CESC Limited.

25. Hence, the insistence of the CESC Limited for the petitioners to pay the alleged outstanding dues as a pre-condition for the HT electricity connection being given to the petitioners is required to be set aside, being arbitrary and illegal.

26. Accordingly, WPA No. 26499 of 2023 is allowed on contest, thereby setting aside the communications dated January 31, 2023 and April 4, 2023 whereby the CESC Limited

insisted upon payment of purported outstanding dues by the petitioners for giving HT electricity connection to the petitioners.

27. Such claim of the CESC Limited from the petitioners by way of outstanding dues is accordingly quashed.

28. The CESC Limited is directed to give the HT electricity connection in terms of the application of the petitioners at the earliest, positively within four weeks from date, of course, subject to compliance of all other formalities by the petitioners but without insisting upon payment of any outstanding dues by the petitioners.

29. There will be no order as to costs.

30. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)