IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 19410 OF 2024

Girnar Spintex Industries Ltd. ...Petitioner
Vs.
State of Maharashtra & Anr. ...Respondents

Mr. Piyush Raheja with Mr. Akash Loya, Mr. Sanath Warkar i/b. Mr. Dhaval Ved for Petitioner.

Mr. A. I. Patel, Addl. GP with Mr. M. M. Pabale, AGP for State.

Mr. Kiran Gandhi i/b. Little & Company for Respondent No.2.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
DATED: 04 FEBRUARY 2025

P.C.

1. This petition under Article 226 of the Constitution of India is filed by the petitioner praying for the following substantive reliefs:-

> "a. issue Writ of Certiorari or any other writ in the nature of Certiorari or any other appropriate writ or directions to quash and set aside the impugned letters dated 5th September 2024, 16th October 2024 and 6th November 2024 by which the Respondent No.2 has allegedly demanded from the Petitioner to pay the past arrears of the old consumer of M/s. Amit Spinning Industries Ltd.
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> b. issue Writ of mandamus or any other writ in nature of mandamus or any other writ directing the Respondent No.2 to adjust the amount of Rs. 69,46,850/- paid by the Petitioner under protest;
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> c. issue Writ of mandamus or any other writ in nature of mandamus or any other writ directing the Respondent No.2 be restrained from taking any coercive steps of disconnecting electricity supply as stipulated under the letters dated 16th October 2024 and 6th November 2024."

2. Primarily the grievance of the petitioner is in regard to the demand which is raised by respondent no.2 Maharashtra State Electricity Distribution Company Ltd. (for short, "**MSEDCL**") by issuing the impugned communication dated 05 September 2024 (Exhibit-H) whereby an amount of Rs.6,31,74,394.3 has been stated to be arrears to be paid by the petitioner under a scheme stated to be "Mahavitaran Abhay Scheme 2024" (for short, "the **scheme**") applicable to the supply connections disconnected prior to 31 April 2024. In such communication, it is stated that as on 31 March 2024, the petitioner's arrears amount to Rs.2,34,45,616.1 and the interest on the said amount is Rs.3,97,28,778.2. The petitioner was called upon to take advantage of the scheme and deposit the said amount before 30 November 2024. The petitioner disputed the said communication by its letter dated 17 September 2024 addressed to the Office of the Superintending Engineer, Kolhapur Circle, Vidyut Bhavan. A detailed representation also referring to the decision in the proceedings before the Supreme Court *inter se* between the parties namely Civil Application No. 4304 of 2007 decided on 28 February 2020 was made by the petitioner to the respondents. The petitioner also made a reference to the NCLT proceedings and the initiation of Corporate Insolvency and Resolution Process (CIRP) and the applicability of the provisions of the Insolvency and Bankruptcy Code, 2016 (for short, "**IBC**"), thereby

contending that there is no liability on the part of the petitioner to make payment of such arrears of electricity dues. Subsequent to the said representation dated 17 September 2024, another representation dated 21 October 2024 came to be made by the petitioner after a further notice dated 16 October 2024 was issued by MSEDCL to the petitioner. Such correspondence continued between the parties. As seen from the record on 06 November 2024 the MSEDCL addressed another letter to the petitioner demanding the said amounts. Again a reply to the same was addressed by the petitioner on 25 November 2024 and 29 November 2024. It is on such premise, as the dispute between the parties could not be resolved, the present petition came to be filed making the prayers as noted by us hereinabove. The petitioner in challenging the impugned demand, contend that in view of the IBC proceedings and the law laid down by the Supreme Court in **Ghanshyam Mishra & Sons Pvt. Ltd. vs. Edelweiss Asset & Reconstruction Co. Ltd.**[1], the claims as made by the MSEDCL cannot be sustained in law.

3. Reply affidavits are filed by the respondents.

4. On 27 January 2025 after hearing the parties, we had adjourned the proceedings to 03 February 2025 to enable learned counsel for the respondents to take instructions in regard to the break up of the amounts as

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demanded by the MSEDCL when we ordered that the same be provided to the petitioner. Some of the details in regard to the CPP (Captive Power Plant) have been provided and a copy of the same is also placed on record setting out the adjustment dates and adjustment amounts. On behalf of the petitioner, it is contended that there is no liability to pay the purported CPP arrears. It is also contended that also in regard to the energy charges, there is no liability of the petitioner to pay the same in view of the order passed by the NCLT dated 31 July 2018, as also in view of the order passed by the Supreme Court in **Ghanshyam Mishra & Sons Pvt. Ltd. vs. Edelweiss Asset & Reconstruction Co. Ltd.** (supra). This is the complexion of the proceedings before us.

5. We have heard learned counsel for the parties.

6. We note that there is a chequered history of litigation which in fact emanated before the Maharashtra State Electricity Regulatory Commission (for short, "**MERC**") in the MERC passing an order dated 21 May 2004 on a batch of proceedings in which the petitioner was one of the petitioners in case No. 34 of 2002. The order dated 21 May 2004 passed by the MERC was assailed by the MSEDCL before the Appellate Tribunal for Electricity (for short, "**APTEL**") which ultimately passed an order dated 30 May 2007 dismissing the appeal filed by the MSEDCL against the order passed by the MERC. Such order passed by the APTEL was challenged by the MSEDCL

before the Supreme Court in the proceedings in Civil Appeal No. 4304 of 2007. The Supreme Court by its judgment dated 28 February 2020 on Civil Appeal No. 4304 of 2007 (Maharashtra State Electricity Distribution Co. Ltd. vs. Union of India & Ors.) partly allowed the appeal filed by the MSEDCL in terms of what was observed in paragraphs 27 and 28 of the said decision. According to the petitioner, this decision was required to be taken into consideration along with the other proceedings before the NCLT in the MSEDCL issuing the impugned communication dated 05 September 2024.

7. Having perused the impugned communication raising demand on the petitioner as noted hereinabove, as also the further demand notices, we are informed that the Superintending Engineer is required to take into consideration the detailed replies which are submitted on behalf of the petitioner in view of the letter dated 17 September 2024 and subsequent replies and after hearing the petitioner, pass a detailed order. We are informed by Mr. Raheja, learned counsel for the petitioner that the petitioner is ready and willing to make a fresh representation annexing all the appropriate documents/orders so that an appropriate view can be taken by the concerned officer. We may also observe that in the intervening period, the petitioner has deposited with the MSEDCL approximately Rs.

69 Lakhs without prejudice to his rights and contentions under protest and in view of such deposit, the petitioner's supply has not been disconnected.

8. In this view of the matter, we are of the opinion that it would be in the interest of justice that the petition is disposed of in terms of the following order :-

ORDER

i. Let a detailed representation be made by the petitioner to the Superintending Engineer, Kolhapur Division within a period of two weeks from today along with all the necessary documents which the petitioner intends to rely.

ii. The petitioner be heard by the concerned officer on all such materials and on such representation within a period of two weeks.

iii. After a hearing on such representation, a reasoned order be passed by the Superintending Engineer on any demand which the petitioner would be liable to pay.

iv. All contentions of the parties in that regard are expressly kept open.

v. We clarify that we have not examined the merits of the rival contentions and it is for the Superintending Engineer to apply his mind and take an appropriate decision.

vi. Disposed of in the aforesaid terms. No costs.

vii. In the event there is any order adverse to the petitioner or any demand which is not acceptable to the petitioner for a period of three weeks from the date of communication to the petitioner, no coercive action shall be taken against the petitioner.

(ADVAIT M. SETHNA, J.) **(G. S. KULKARNI, J.)**