



W.P.No.27590 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 10.03.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.27590 of 2023
& W.M.P.No.27042 of 2023

M/s Diamond Engineering (Chennai) Pvt Ltd,
Presently at Door No. 79, Old Mahabalipuram Road,
Sholinganallur, Chennai 600 119
represented by its Chairman of Monitoring Committee/
Erstwhile Insolvency Resolution Professional V.Mahesh.
/versus/

... Petitioner

1. The Chief Electrical Inspector to the Government
Tamil Nadu Electricity Board,
Thiru Vi Ka Industrial Estate,
Guindy, Chennai 600 032.

2. The Superintending Engineering,
Tamil Nadu Electricity Distribution Circle/South
110, K.V.S.S. Complex K.K.Nagar,
Chennai 600 017.

3. The Assistant Engineer (O&M) /
Siruseri CEDC/South-II,
Sholinganallur, Chennai 600 119.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of Constitution of India,
Writ of Certiorarified Mandamus, calling for the records relating to the order dated



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07.09.2023 passed by the 3rd respondent in Lr.No.AEE/O&M/Siruseri/F.Court Case (Diamond Engg)/D.No.263/2023, quash the same consequently direct the respondents not to disconnect the electricity service connection of the petitioner industry in LT SC No.280-005-208.

For Petitioner : Mr.R.Kannan

For Respondents : Mr.M.Suresh Kumar,
Additional Advocate General,
Assisted by Mr.L.Jaivenkatesh,
Standing Counsel, for TANGEDCO

ORDER

The writ petition is filed for a Certiorarified Mandamus, in the nature of writ calling for the records relating to the impugned order dated 07.09.2023 passed by the 3rd respondent and quash the same and consequently direct the respondents not to disconnect the electricity service connection of the petitioner Industry in LTSC No.280-005-208.

2. The case of the petitioner is that the petitioner earlier faced Insolvency and Bankruptcy proceedings under IBC. While so, the National Company Law Tribunal admitted the case against the petitioner's Company and



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initially a Resolution Professional was appointed on 06/06/2017. Thereafter, by

due process of law, a revival plan was submitted by the Resolution Professional and the same is also approved by the Court. All the claims against the petitioner Company are all duly considered in the said revival plan and it has been expressly ordered by the National Company Law Tribunal. It is specifically mentioned that even with reference to Governmental and other dues, no other dues will be permissible except that is sanctioned in the revival scheme. When the due publication is also made and when the respondent authorities were also informed about the said proceedings before the National Company Law Tribunal, without making any claim at the time of formulation of the revival plan, the respondent Authorities are now belatedly passing the impugned order claiming a total sum of Rs.34,91,279/- towards the belated payment surcharge. The same cannot be now made. The matter has been settled by the Hon'ble Supreme Court of India in ***Ghanashyam Mishra & Sons Pvt LD vs. Edelweiss Asset Reconstruction Company Limited [2021]126 Taxmann.com 132 (SC)***. It is made clear by the Hon'ble Supreme Court of India that, once the Resolution Plan is duly approved by the adjudicating authority under sub-section 1 of Section 31, the claims provided in the resolution plan shall stand frozen and will be binding on the



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Corporate Debtor and its Employees, etc., including the Central Government, State

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Government or any Local Authority, Guarantors and others shareholders. No person will be entitled to initiate or continue any proceedings in respect of a claim, which is not part of the resolution plan. The said paragraph No.95 is extracted hereunder for ready reference.

95. In the result, we answer the questions framed by us as under:

(i) That once a resolution plan is duly approved by the Adjudicating Authority under subsection (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;

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be



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effective from the date on which I&B Code has come into effect;

(iii) 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.

3. Therefore, there was no justification for the respondents to have proceeded further. Now, the petitioner wants to surrender and sell away the property in a clean state.

4. When the writ petition was admitted, this Court impose the conditional order directing the petitioner to deposit a sum of Rs.10,00,000/- and on such deposit, an interim order was granted. It is reported that the said sum of Rs.10,00,000/- is already deposited. It is further reported that apart from the aforesaid sum of Rs.10,00,000/-, there is another sum of Rs.10,91,165/- laying as security/caution deposit with the respondent organization. Even though,



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arguments were advanced on merits, without reference to the same, the learned

WEB COUNSEL appearing on behalf of the petitioner would submit that so as to resolve the issue once and for all, the petitioners are willing not to claim back the said sum of Rs.10,00,000/- deposited by them and also the security deposit/caution deposit lying with the respondent and the respondent shall adjust the same as full quit towards all claims of belated payment surcharges.

5. Even though the amount is sought to be paid, the only objection that is made by the Additional Advocate General is that, it is not that the 3rd party Industry has come into place by way of a clean slate theory and it is only the same petitioner and the Directors who are continuing and when they knew about the arrears, they could have also informed the Resolution Professional and the arrears could have been included in the same.

6. I have considered the said submission. Even though, it can be contended that the petitioner could have also informed but when the publication is made pursuant to the proceedings under the I.B.C, and when an express order with reference to waiver of surcharge is made by the NCLT, the least that can be



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expected of the respondent organization is to challenge the order of the NCLT or make such claim in the manner known to law. Be that as it may, the claim does not relate to the payment of the current consumption charges but is only belated payment surcharge. Secondly without further litigating, when the petitioner himself has voluntarily agreed before this Court to forgo the said sum of Rs.10,00,000/- deposited pursuant to the interim direction of this Court and the another sum of Rs.10,91,165/- being the caution deposit, it would be in the best interests of respondents/TANGEDCO to accept the said sum as full quit, rather than undergoing the gruel of a long-drawn litigation. End of the day, it is only the belated payment surcharge.

7. In view of the aforesaid reasons, this writ petition is allowed on the following terms.

(i) The petitioner will not be entitled to claim back the sum of Rs.10,00,000/- deposited by the petitioner by way of the interim order and the other sum of Rs.10,91,165/- in the hands of the respondents being the security/caution deposit.



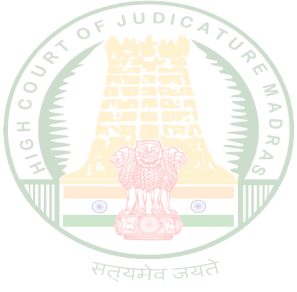
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(ii) The respondents will be entitled to appropriate the said sum of Rs.20,91,165/- towards all claims of belated payment surcharge and the same shall be in full quit.

(iii) The petitioner shall also give a letter/affidavit in the requisite form for the purpose of adjustment of the security deposit and they shall give a letter for permanent disconnection and also adjustment of the claim deposits, there shall be no further claim in respect thereof.

(iv) The respondents shall not make any further claim with reference to the petitioner and further demands cannot be raised in respect of the said arrears. Thereafter, the property will be free from encumbrance of any claims from the respondents/TANGEDCO and the subsequent purchaser will be entitled to apply for fresh connection in which any arrears cannot be claimed.



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8. Consequently, connected Miscellaneous Petition is closed. There

shall be no order as to costs.

10.03.2025

Neutral Citation : No.
bsm

To,

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Siruseri CEDC/South-II,
Sholinganallur,
Chennai 600 119

4. The Government Pleader, High Court, Madras.



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