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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.03.2025
Delivered on : 02.04.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

W.A(MD)No.1426 of 2022
and
C.M.P(MD)No.11524 of 2022

M/s.Empee Distilleries Limited,
Rep. by its
Chief Executive Officer Mr.P.K.Das,
having office at 72,
Creams Road, Thousand Lights,
Chennai-600 006. ... Appellant/Petitioner

-Vs-

1.The Superintending Engineer,
Pudukottai Electricity Distribution Circle,
Pudukottai.

2.The Executive Engineer, TANGEDCO,
O & M/ Aranthangi.

3.The Assistant Executive Engineer,
TANGEDCO,
O & M/Town
Aranthangi.

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4.The Assistant Executive Engineer,
TANGEDCO,
CO/ Pudukottai. ...Respondents/Respondents

PRAYER: Writ Appeal filed under Clause XV of the Letters of Patent Appeal, against the order of this Court dated 10.11.2022 made in W.P(MD)No.14198 of 2022.

For Appellant	: Mr.P.H.Arvind Pandian Senior Counsel, for Mr.AR.Karthik Lakshmanan
For Respondents	: Mr.Veera Kathiravan, Additional Advocate General assisted by Mr.S.Deenadhayalan Standing Counsel

JUDGMENT

DR.G.JAYACHANDRAN, J.
AND
R.POORNIMA, J.

In this intra Court appeal, the appellant had raised an important question of law whether or not, in view of the subsequent judgment of the Hon'ble Supreme Court in ***State Tax Officer (1) -vs- Rainbow Papers Limited***, reported in ***(2022) SCC online SC 1162***, rendered by the Bench consisting of two judges, the '**clean slate theory'** approved by the Hon'ble Supreme Court in the earlier judgment ***Ghanashyam Mishra & Sons (P) Ltd -vs- Edelweiss Asset Reconstruction Co., Ltd***, reported in ***(2021) 9 SCC 657*** (consists of three learned Judges), will apply to the Tamil Nadu Generation and Distribution Corporation Limited (hereinafter

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referred to as 'TANGEDCO') a functional creditor which failed to participate in the resolution proceedings for recovery of its statutory dues.

Case of the writ petitioner/appellant:-

2.M/s.Empee Distilleries Limited, due to financial debt was subjected to adjudication under the Insolvency and Bankruptcy Code, before the National Company Law Tribunal (hereinafter referred to as 'NCLT'), Chennai. The resolution plan of M/s.SNJ Distilleries Private Limited, was allowed by the NCLT in MA/1250/2019 in CP/280/1B/2018, vide order dated 20.01.2020. The miscellaneous application filed by the promoters / Directors was dismissed.

3.Being aggrieved, the promoters preferred Company Appeal(AT) (Insolvency) No.551 of 2020 before the National Company Law Appellate Tribunal(hereinafter referred to as 'NCLAT'), New Delhi, after considering the submission made on behalf of the promoters and on behalf of the successful resolution applicant, the appeal was dismissed confirming the order passed by the NCLT. Thus, the resolution proposal confirmed by the NCLAT got the approval of the Tribunal. In the said resolution process, the TANGEDCO, which had a claim of Rs.1,23,69,195/- as statutory due and incidentally, the subject matter of the writ petition pending in the High Court, did not participate. Whileso, the successful

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resolution applicant to revive the unit of M/s.Empee Distilleries Limited, Aranthangi, Pudukottai District, attempted to get re-connection of the electricity service. The TANGEDCO the provider of the service declined to give service in view of the uncleared statutory debt, claimed under demand notice dated 08.04.2022 and the consequential order dated 30.05.2022 passed by the first respondent. The appellant, in the writ petition contended that M/s.Empee Distilleries Limited went through a Corporate Insolvency Resolution Process(CIRP). At the instance of union Bank of India in the course of the resolution process, M/s.SNJ Distilleries, came forward for reconstructing and offered a sum of Rs.475 crores. The offer was approved by the Committee of Creditors(COC) on 22.07.2019 and the same was approved by the NCLT vide order dated 20.01.2020, out of Rs.475 crores, 154.28 crores was paid to the Secured Financial Creditors and a sum of Rs.126.77 crores paid towards statutory dues and further a sum of Rs.148.45 crores paid to the unsecured financial creditors following the waterfall principle. Since the electricity department had not submitted any claim before the Insolvency Resolution Professional, the dues were not taken into account during the resolution process.

4.According to the appellant, the first respondent disconnected electricity service SC No.125 in the year 2019 for nonpayment of current consumption

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charges for the period between September 2013 and May 2018 and also failed to pay monthly minimum charge from July 2018 to October 2018. The Superintending Engineer, Pudukottai Electricity Distribution Circle, issued proceedings dated 16.03.2019 fixing a sum of Rs.22,52,953/- as arrears for the period between April 2018 to October 2018. The Security deposit of Rs.13,63,797/- was adjusted towards due and sum of Rs.8,89,156/- was shown as balance to be collected. Whileso, thereafter in the demand notice dated 08.04.2022 a sum of Rs.1,23,69,195/- which is inclusive of Rs.1,14,80,039/- towards 50% arrears in current consumption charges for the period September 2013 to March 2018, in addition to Rs.8,89,156/- was demanded with 1.5% belated payment of surcharges.

5.On receipt of the demand notice dated 08.04.2022, the appellant replied on 26.04.2022 objecting the demand on the ground that CIRP initiated against M/s.Empee Distilleries Ltd on 01.11.2018 and NCLT passed approved the Resolution Plan (hereinafter referred to as 'RP') on 20.01.2020. The Electricity Department never submitted claim before the Insolvency Resolution Professional (IRP). The arrears in Current Consumption (CC)Charge was not part of the RP. In view of Sections 31(1) and 238 of the Insolvency and Bankruptcy Code, 2016(hereinafter referred to as 'IBC'), claims which are not part of the RP shall

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stand extinguished. However, reiterating it earlier proceedings, the TANGEDCO passed an order dated 30.05.2022 wherein apart from the demand of Rs.8,89,156/- towards arrears of Current Charges also stated that the appellant should give an undertaking in Non-Judicial Stamp paper that it will pay the arrears if any, subject to the outcome of the Writ Petition in W.P.No.26553 of 2013.

6.Alleging the impugned proceedings of TANGEDCO is non-est in law and contrary to the Judgments of Supreme Court in ***Ghanashyam Mishra and Sons Pvt –vs- Edelweise Assets Reconstruction Company Ltd*** and ***Ruchi Soya Industries Ltd –vs- Union of India,*** writ of certiorari filed.

Case of the Respondents:

7.On behalf of the TANGEDCO, the Superintendent Engineer, Pudukottai Electricity Distribution Circle in the counter filed on behalf of the respondents contended that, High Tension Service Connection HTSC 125 was effected on 17.04.2008 for 10MW Bio Mass Power Generation Plant in the name of M/s Empee Distilleries Ltd. The said company against the levy of Start up Power Tariff rate revision, through Bio Mass Association, filed W.P.No. 26553/2013 in Madras High Court and obtained interim order of stay of the revised start up power tariff on condition to pay 50% of the tariff payable. The said writ petition

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got transferred to Tamil Nadu Electricity Regulatory Commission and pending.

8.While so, M/s Empee Distilleries Ltd failed to pay the Consumption charge of Rs.9,14,500/- for the period 04/2018. Hence, the service was disconnected on 21.05.2018. Subsequently, on completion of 6 months disconnection period, the account was closed. After adjusting the caution deposit, the balance amount due from M/s Empee Distilleries Ltd., is Rs.8,89,156/-. The arrears position was duly intimated to the consumer on 03.08.2019. In this communication, it was intimated to the customer that the right to recover the Start-up power tariff will be subjected to outcome of the pending W.P.No. 26553 of 2013.

9.On 04.04.2022, a representation from the representative of M/s.ISR Traders, claiming as the purchaser of the premises to which service HT SC.No. 125 stands, received at the office of the Superintendent Engineer, Pudukottai Electricity Circle. In the said representation, he requested to remove the electrical lines fed to HT Post which is located in the power plant. In response to this request letter, the purchaser of the premises was informed that on payment of the arrears of Rs.1,23,69,195/- the request will be considered, as envisaged under Regulation 17(9) (c) of the Tamil Nadu Electricity Supply Code, 2004. Out of

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Rs.1,23,69,195/- total arrears, the substantial due payable to TANGEDCO is Rs.1,14,80,039/-, due payable towards the Start-up power tariff, which is a subject matter of litigation since 2013(in W.P.No.26553 of 2013 before High Court and latter transferred to the Regulatory Authority) and still pending. When CIRP commenced in the matter of M/s Empee Distilleries Ltd as per the provisions of IBC, the fact about the uncleared demand and stay by the Court ought to have been disclosed by the promoters or after appointment of IRP, he should have collected information through Information Utilities(IU) defined under section 3(21) of the IBC and placed before the committee of creditors as well the Adjudicating authority for arriving at subjective satisfaction regarding the plan proposal. That apart, claim invitation as per Section 18 of the Code, ought to have been done in accordance with the procedure laid under the IBC and its Regulation. Whereas, the promoters and the Resolution Professional failed to place before the Committee of creditors, the information about the due payable and the litigation pending. Thus, the resolution plan suffers irregularity on account of non disclosure of the statutory dues payable and for not disclosing the connected litigation pending.

10.Relying Regulation 17 (9) of the Electricity Supply Code which fasten permanent liability on the premises, which has to be cleared by whomsoever seeks

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reconnection or new connection, either by purchase or transfer or lease, the respondents TANGEDCO, had questioned the maintainability of the writ petition challenging the impugned notice issued adhering the regulations of the Tamil Nadu Electricity Supply Code.

Learned Single Judge Conclusion:

11.On considering the rival contentions made on either side, the Learned Judge, considering the dictum laid in ***Ghanashyam Misra(cited supra)*** and the subsequent judgment rendered in ***Rainbow paper Limited (cited supra)***, had observed that for the reason the statutory dues not included in the claim, resolution plan approved by NCLT in invalid. However, the TANGEDCO had not initiated the proceedings to set-aside the resolution plan followed by the approval of the NCLT. Therefore, the TANGEDCO cannot enforce the claim as demanded under the impugned notice. At the same time, the petitioner (subsequent purchaser) cannot have a right to seek reconnection of the service without clearing the arrears in view of the bar under Regulation 17(9).

12.The learned single Judge finally concluded saying, in view of *Ghanashyam Misra case and Ruchi soya case*, TANGEDCO cannot go after the petitioner to enforce its claim. But, when the petitioner comes to TANGEDCO for

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reconnection or seek fresh connection, the TANGEDCO can say ‘ Sorry’.

Grounds raised in the appeal:

13.The intra Court appeal, directed against the single Judge order is pegged on the premises that, under the regime of IBC, statutory debt no more enjoys the primacy over other debts claiming it as ‘Sovereign’s debt or crowns debt’. Following the waterfall mechanism, based on the order of priority as laid under IBC, all the Statutory dues as per the claims, were settled without any infraction of law and procedure. The respondents cannot stay away from participating in the resolution proceedings and still claim their dues which has extinguished after approval of resolution plan and its execution. The clean slate theory envisaged by three Judges Bench of the Hon'ble Supreme Court in *Ghanashyam Misra case* followed by *Ruchi Soya case* holds the field and there cannot be a deviation unless the same is reviewed by a larger Bench.

14.A conjoint reading of Section 31(1) and Section 238 of IBC, it is clear there can be no two opinions on the legal position that the resolution plan approved by the Adjudicating Authority binds all the stake holders including functional creditors to whom statutory dues payable. [Section 31(1)]. The provision of IBC shall have a overriding effect on all other law for the time being

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in force which are all inconsistent. (Section 238). Further, Sections 13 and 15 of the Code, makes it clear that any potential claim whether or not reduced into judgment should be lodged before the Resolution Professional, pursuant to the public publication. Which means, the outcome of the pending writ petition will have no bearing on the resolution plan. Hence, the stale claim of the TANGEDCO cannot be revived taking umbrage of the pending litigation.

15.Mr.P.H.Arvind Pandian, learned Senior Counsel appearing for the Appellant submitted that, the judgment of two judges Bench in *Rainbow case* is not a binding precedent to overrule the dictum laid in *Ghanasyam Misra case* delivered by three judges after considering the impact of the amendment to section 31 of IBC w.e.f 05.08.2019. The facts in *Rainbow Papers* are different from the facts of the case in hand. In Rainbow Papers case, wherein a belated claim of statutory due was made before Resolution professional and when the same was rejected, it was challenged before the Adjudicating Authority. In the present case, the Respondents not even filed its claim before RP. Further, it is never the intention of the purchaser to deny the payment of statutory dues. The Public Announcement through paper publication was duly effected and pursuant to that, the Commercial Department of Tamilnadu Government, which is similarly placed as the respondent made its claim in respect of tax due. The said statutory

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due was considered and paid in full. In such circumstances, the statutory dues not claimed before RP cannot be revived at a latter point of time relying on the Regulations of the Electricity Supply Code, which is repugnant to IBC.

16.To buttress his argument, the Learned Counsel relies on the following judgments, which has accepted the dictum laid in *Ghnashyam Mishra case* and followed : -

1.West Bengal State Electricity Distribution Company Ltd –vs- Srivasavi Industries Ltd and another:

2.Paschimanal Vidyut Vitran Nigam Ltd –vs- Raman Ispat Pvt Ltd:

3.***Southern power Distribution Company of Andhra Pradesh Ltd –vs- Gavi Siddieswara Steels (India) Ltd and another***:

4)***Tata Power Western Odisha Distribution Ltd –vs- Jaganath Sponge Ltd;***

5)***The Commissioner Central Excise and Service Tax, Bhavnaar –vs- Eliance Naval and Engineering Ltd;***

6)***The Commissioner of Sales Tax, Orissa and Srei Equipment Finance Ltd:***

7)***The Commissioner of Central Excise and Service Tax, Vadodara –vs- EMCO Ltd***;

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8)***Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Taxes and Customs. (Civil Appeal No. 7667 of 2021)(2022) ibclaw.in 103 SC***

Submission on behalf of the Respondents:

17.The Learned Additional Advocate General, assisted by the Learned Standing Counsel Mr. S.Deenadayalan, learned Standing Counsel for TANGEDCO reiterating the counter filed and submitted that the clean slate theory will not efface the obligation of the subsequent purchaser from paying the statutory dues, if it want the service of the Electricity Board. The right of the TANGEDCO refusal to give reconnection of the service in view of the unpaid debt, is not repugnant to IBC to have a overriding effect. If the request of the writ petitioner is acceded, it will amount to giving a premium for a defaulter, bestowing double benefit to it and make it undue enrichment at the cost of the State exchequer. Hence, submitted that, the duty to supply electricity under Section 43 of th Electricity Act, 2003 is not absolute, and it is subject to such charges and compliances stipulated by TANGEDCO as part of the application for supply of electricity. Even if clean slate theory to be applied, it cannot give a right vest with the owner of the premises to get reconnection of the service or fresh connection to the property which has fallen under the category of defaulter.

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18.In support of the above argument, the Learned Additional Advocate General rely on the judgments of the Hon'ble Supreme Court rendered in

(i)***Sales Tax Officer -vs- rainbow Papers 2022 (13) SCR 808***.

(ii)***K.C.Ninan –vs- Kerala State Electricity Board and others: (2023 Supreme (SC) 555).***

19.The point for consideration is, in the given facts and circumstances, whether the appellant is entitle to get the electricity service without paying the debt of the erstwhile owner of the premises. ?

20.In ***Ghanashyam Mishra case***, the clean slate theory was propounded and highlighted. The Hon'ble Supreme Court, in this judgement has held that once the resolution plan has been duly approved by the judicial authority in accordance with Section 31(1) of IBC., the claims formulated in the plan of resolution are valid and binding against the company's debtors and their employees, members, creditors, and the Central and State Governments. Hence, if concern Departments of the Central or State Governments do not submit a proof of claim form to the Resolution Professional(RP) or the Interim Resolution Professional (IRP) or participate in the settlement procedure, their rights are immediately extinguished. This application is necessary to assert their rights regarding statutory dues, such as

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taxes, levies, or other charges owed by the corporate debtor.

21.The Hon'ble Supreme Court subsequently, in *Rainbow Paper's case*, considering the waterfall arrangement envisaged under Section 53 of IPC and Section 238 of IBC, which provides primacy to the provisions of IBC over any other law being in force and its effect on Section 48 of the Gujarat Value Added Tax Act, 2003 (GVAT Act) has held that, “first charge” on the property of the assesses under GVAT ACT to be a security and the VAT department to be a secured creditor. It was noted that a security interest could be created by operation of law and the definition of secured creditor under the IBC does not exclude any Government or Government authority.

22. At this juncture, it is also pertinent to refer the judgment dated 17.07.2023, by the Hon'ble Supreme Court in ***Paschim Anchal Vidyut Vitran Nigam Limited vs. Raman Ispat Private Limited and Others,*** **{2023 SCC OnLine SC 842 (“Raman Ispat”)}**, in which, while dealing with the interplay between the Electricity Act, 2003 and the IBC, the Apex Court has held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the later containing two specific provisions which open with non-obstante clauses (i.e., Section 173 and 174). The Hon'ble Supreme Court, in this case, has

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observed that:

> *" i) Rainbow Papers did not notice the 'waterfall mechanism' under Section*
>
> *53 – the provision had not been adverted to or extracted in the judgment;*
>
> *ii. Whilst the GVAT Act creates first charge in favour of the State, the separate and distinct treatment of amounts payable to secured creditor on the one hand, and dues payable to the government on the other under the waterfall mechanism in Section 53 clearly signifies Parliament's intention to treat the latter differently - and in the present case, having lower priority. This is also evident from the Preamble to the IBC; and*
>
> *iii. Rainbow Papers has to be confined to the facts of that case alone."* *(emphasis added)*

It is also to be noted that the review petitions filed in Rainbow case were dismissed on 31.10.2023 leaving the field to hold by Rainbow papers, subject to clarification made in *Pachachim Anchal Vidyut Nigam Ltd (Raman Ispad case)*.

23.In the case in hand, in the impugned judgement dated 10.11.2022, the Learned Single Judge, after taking note of provisions in TNE Code, which are analogous to Section 48 of GVAT Act, has held that the right of TANGEDCO to demand the arrears of CC charges as pre-condition to give reconnection to the appellant is not in violation of law.

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24.In view of the subsequent march of law through judicial pronouncements, *Gnanashyam case and Rainbow papers case* has to read in harmony. These two judgments if read together, make it clear that after approval of the resolution plan and its effective implementation, the new management will have the benefit of starting its business with 'clean slate'. Provided, the Statutory creditors are treated par with secured creditors and the terms in the special statute of the service provider like EB, Telcom etc if specifically create first charge on the assets of the corporate debtor, it will not suffer the mischief of repugnance with IBC.

25.Independent of the interpretations and the understanding of Section 31 of IBC, which speaks about extinguishment of claims after RP on approval by the NCLT (Adjudciating Authority) and discharge of debt, as per Section 53 of IBC, which envisages the waterfall arrangement, we also find the respondent /TANGEDCO had successfully made out a case of serious lapse in public announcement of a CIRP and claim invitation. Violation of Sections 13 , 15 and 18 of IBC and Regulations 4 , 6 and 7 found apparently.

> ***Section 31: Approval of resolution plan.-****(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the*

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requirements as referred to in sub-section (2) of section 30, it shall by order approve3 the resolution plan which shall be binding on the 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 the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan."

26.Under Section 31(1) of IBC, the resolution plan approved by the Committee of Creditors (CoC) and submitted to the Adjudicating Authority must be in compliance of Section 30(2) and satisfy the Authority. If the resolution plan is not in conformity with the requirement referred in sub-section (1) of section 31 of IBC, the Adjudicating Authority under sub-Section (2) of section 31 of IBC may by order reject the resolution plan, be submitted to the Committee of creditors.

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27.Section 18(a) of IBC and Regulation 4 of IBC., cast a duty on IRP/RP to collect all information regarding the Corporate Debtor as well as gives right to the IRP or IP to have access to books.

> **"Section 18: Duties of interim resolution professional.-(1)***The interim resolution professional shall perform the following duties, namely:—*
>
> *(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to —*
>
> *(i) business operations for the previous two years;*
>
> *(ii) financial and operational payments for the previous two years;*
>
> *(iii) list of assets and liabilities as on the initiation date; and*
>
> *(iv) such other matters as may be specified;*
>
> *(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;*
>
> *(c) constitute a committee of creditors;*
>
> *(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;*
>
> *(e) file information collected with the information utility, if necessary; and*

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(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.

Explanation.—For the purposes of this1[section], the term "assets" shall not include the following, namely:—

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator."

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Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

"4. Access to books. *(1) Without prejudice to section 17(2)(d), the interim resolution professional may access the books of account, records and other relevant documents and information, to the extent relevant for discharging his duties under the Code, of the corporate debtor held with-*

(a) depositories of securities;

(b) professional advisors of the corporate debtor;

(c) information utilities;

(d) other registries that records the ownership of assets;

(e) members, promoters, partners, board of directors and joint venture partners of the corporate debtor; and

(f) contractual counterparties of the corporate debtor.

2.the personnel of the corporate debtor, its promotors or any other person associated with the management of the corporate debtor shall provide the information within such time and in such format as sought by the interim resolution professional or the resolution professionsal, as the case may be

3.The creditors shall provide to the interim resolution professional or resolution professional, as the case may be, the information in respect of assets and liabilities of the corporate debtor from the last valuation report, stock statement, receivables statement, inspection reports of properties, audit report, stock audit report, title search report, technical officers reprot, bank account statement and such other information which shall assist the interim resolution

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professionsal or the resolution professionsal in preparting the information memorandum, getting valuation determined and in conducting corporate insolvency resolution process."

28.Admittedly, the notices of demand impugned in the writ petition are in respect of due payable to TANGEDCO by M/s.Empee Distilleries Ltd. A substantial portion of the due is in respect of revised rate of start up tariff. The substantial due payable to TANGEDCO under this head is Rs.1,14,80,039/-, which is the subject matter of W.P.No.26553 of 2013 before the High Court and later transferred to TNERA. The said litigation was pending, when CIRP commenced in the matter of M/s.Empee Distilleries Ltd. Hence, the pendency of litigation over the statutory due was well within the knowledge of the promoters of the company and subsequently to the IRP who took charge of the Company. They are under a responsibility to collect information about the assets and liabilities from sources and place it before the Committee of creditors(CoC).

29.We find only a paper publication in a daily about the initiation of CIRP. Except this, there is no other material available to satisfy that the RP was finalised after disclosing the sub judiced statutory debt payable to TANDGEDO.

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30.The Learned Senior Counsel for the appellant argued that it is the claimants responsibility to participate in the resolution proceedings on seeing the public announcement. Failure to participate in the proceedings will extinguish the claim. The said argument may be tenable only if the promoter and the IRP had not screened the debts which are within their knowledge and the details of debts available from reasonable sources mentioned in the rules. They cannot take unfair advantage of their own failure to disclose the debt, which is subject matter of a litigation and thereafter claim the protection of 'clean slate' theory. Before erasing / extinguishing the debt, it should have been disclosed if the information about the debt was within their knowledge. In the instant case, the promoters and the IRP cannot claim ignorance of the litigation pending over the payment for not disclosing it at the first instant. Therefore, this peculiar fact in this case, which has never been found in any of the cases cited, makes it unique. The said fact is sufficient to hold against the appellant who claims immunity from claims after settlement of Resolution plan.

31.Looking from the eyes of TANGEDCO, the slate carried by the appellant is not clean. Debts will get Extinguished only if a known debt is disclosed to the committee of creditor. IRP/ RP cannot exclude information about a debt which is fairly available on the records and books of accounts.

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32.It should be bear in mind that the IRP is responsible for carrying out the objectives of the Code without any lapse or compromise. Under Section 18(a) of the IBC, the IRP is required to collect all information relating to the assets, finances, and operations of the Corporate Debtor CD to determine its financial position, including information relating to:

- business operations for the previous two years;
- financial and operational payments for the previous two years;
- assets and liabilities as on the date of initiation; and
- other matters as may be specified.

33.Had the IRP in this case resorted for collection of financial information about M/s.Empee Distilleries Ltd, from the Information Utilities (IU) which is the repository of financial information about debtors, the statutory debt of TANGEDCO would have come to light. When the CIRP is triggered, it is envisaged that defaults, if any, will have been recorded in an IU, and this evidence may be used by the Adjudicating Authority.

34.Therefore, we find that due to the lapse on the part of IRP and the promoter not furnishing / collecting the informations regarding debts properly, the RP in so far as the claim of TANGEDCO which is subjudice before a statutory Appellant Body not extinguished. The appellant cannot as a matter of right seek

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for re connection without clearing the arrears, of course subject to the out come of the litigation pending.

35.As a result, the Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

G.J., J.] & [R.P., J.]
02.04.2025

NCC : Yes / No
Index : Yes / No
Ns
To
1.The Superintending Engineer,
Pudukottai Electricity Distribution Circle,
Pudukottai.
2.The Executive Engineer, TANGEDCO,
O & M/ Aranthangi.
3.The Assistant Executive Engineer,
TANGEDCO,
O & M/Town
Aranthangi.
4.The Assistant Executive Engineer,
TANGEDCO,
CO/ Pudukottai.

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AND

R.POORNIMA, J.

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Predelivery Judgment made in
W.A(MD)No.1426 of 2022
and
C.M.P(MD)No.11524 of 2022

02.04.2025

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