

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-II

IA (IBC) No.4405 OF 2024 IN CP(IB) No.1842 /MB/2018

[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016]

Mahesh Chand Gupta

Liquidator of Oracle Home Textile Limited

FE-202, Salt Lake City, Sector-III,

1st Floor, Kolkata,

West Bengal - 700106

... Applicant

Vs.

Dakshin Gujrat Vij. Co.Ltd.

Urja Sadan, Nana Varachha Road,

Nr Kapodra Char Rasta

Surat -395006

... Respondent

IN THE MATTER OF

Andhra Bank Ltd

...Operational Creditor

Vs.

Oracle Home Textile Ltd.

...Corporate Debtor

Ordered On: 17.06.2026

CORAM:

HON'BLE SHRI ASHISH KALIA, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Applicant : Adv. Devansh Jain

Respondent : Adv. Manvi Damle

ORDER

[Per : Coram]

1. BACKGROUND

1.1 The present Application has been filed by the Liquidator of Oracle Home Textiles Limited (hereinafter referred to as “the Corporate Debtor”) against Dakshin Gujrat Vij Co. Ltd. (hereinafter referred to as “the Respondent”) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 11 of the NCLT Rules, 2016 seeking following reliefs:-

“(a) That this Hon’ble Tribunal may be pleased to direct the Respondent to provide LT connection supply to the plant of the Corporate Debtor on immediate basis;

(b) That this Hon’ble Tribunal may be pleased to direct the Respondent to adjust the dues of Rs.31,38,079.88/- relating to CIRP period from the security Deposit of Rs.45 lacs after waiving Rs.6,66,985.45 for penalty and interest for which no details have been provided and arrange to refund the balance amount to the Corporate Debtor in its bank account;

(c) Any other order(s)/direction(s) that this Hon’ble Tribunal may deem fit and proper”.

2. FACTUAL MATRIX

2.1 The undisputed facts of the matter are that by an order dated 09.08.2018 passed in CP (IB) No.1842 of 2018, this Tribunal admitted the Corporate Debtor to Corporate Insolvency Resolution Process (CIRP) under provisions of the Code. The Corporate Debtor did not make regular payment of the electricity bills and an amount of Rs.12,71,584.08/- stood due and payable by it as on 09.08.2018. The Respondent electricity company accordingly lodged a claim for an amount of Rs.12,71,584.08/- with the Resolution Professional. The claim was accepted and admitted by the Resolution Professional.

2.2 The Corporate Debtor continued to default in making regular payment of the electricity bills even after being admitted to CIRP. Section 14(2) of the Code obligates the Resolution Professional to regularly make payment of electricity

- charges. But the Resolution Professional failed to make payment of electricity charges.
- 2.3 By an order dated 30.04.2024 passed by this Tribunal, the Corporate Debtor was ordered to undergo liquidation and the Applicant came to be appointed as Liquidator of the Company (In Liquidation). An amount of Rs.31,38,079.88/- remained unpaid for the electrical energy consumed during the CIRP period. Together with statutory interest and penalty Rs.6,66,985.45/-, the outstanding amount stood at Rs.38,05,065.33/-.
- 2.4 The Respondent vide letter dated 15.05.2024 sent a notice to the Applicant for payment of a sum of Rs.38,05,065.33/- towards electricity dues of the Corporate Debtor for the CIRP period. The said amount of Rs.38,05,065.33/- included a sum of Rs.6,66,985.45/- towards penalty and interest for which no details have been provided to the Applicant till date. On account of non-payment of electricity dues, the power supply to the Corporate Debtor's plant was disconnected vide letter dated 31.05.2024 addressed by the Respondent to its Deputy Engineer.
- 2.5 The Liquidator, by his letter dated 05.06.2024, informed the Respondent that the textile mill of the consumer had remained shut since the year 2018 and thus there was no need for a heavy load connection at the premises. The Liquidator, therefore, requested the Respondent to reduce the sanctioned load of connection from 800 KW to 10 KW. The Liquidator was informed that his request for permanently disconnecting the High Tension (HT) Power connection (800 KW) and grant of a new Low Tension (LT) connection (10 KW) could be considered only if all the past dues were paid.
- 2.6 Thereafter, the HT electricity connection was permanently disconnected on 07.06.2024 without providing any LT connection. A separate application was made on 10.06.2024 for grant of new LT connection with a sanctioned load of 10 KW. The Liquidator submitted requisite documents and necessary security deposit for release of the new connection.
- 2.7 The Applicant vide letter dated 23.07.2024 requested the Respondent to adjust the dues of Rs.31,38,079.88/- relating to the CIRP period from the Security

Deposit of Rs.45 lacs after waiving Rs.6,66,985.45/- for penalty and interest (for which no details have been provided) and arrange to refund the balance amount to the Corporate Debtor in its bank account. However, the Respondent did not take any steps to adjust the security deposit against the outstanding dues of the CIRP period.

2.8 Further, the Applicant requested the Respondent to provide the LT connection urgently for which the application along with fresh security deposit had already been made on 10.06.2024. However, despite efforts made by the Liquidator to obtain the new LT connection, the Respondent failed to provide the said connection. In these circumstances, the Liquidator had no option but to approach this Adjudicating Authority seeking necessary directions to the Respondent for providing immediate LT connection to the plant of the Corporate Debtor so as to ensure safety and security of assets of the Corporate Debtor and complete the liquidation process of the Corporate Debtor expeditiously.

3. **FINDINGS**

3.1 Heard the Ld. Counsel for the parties and perused the materials placed on record.

3.2 As regards **prayer clause (a)** of the instant IA, it is observed from the record that during the pendency of this Application, this Tribunal by interim order dated 25.10.2024 directed the Applicant to deposit a sum of Rs.5,00,000/- with the Respondent. In compliance, the Applicant deposited the said amount and the Respondent restored the electricity supply to the Corporate Debtor's plant by providing a fresh LT connection on 13.12.2024 in terms of the order of this Tribunal. Thus, the relief sought by the Applicant in terms of prayer clause (a) already stands **allowed**.

3.3 With regard to **prayer clause (b)**, there is no dispute between the parties in respect of pre-CIRP dues of Rs.12,71,584/- (rounded off) owed to the Respondent which are treated as operational debt and are required to be paid as per Section 53 of the Code. It is noted that the Respondent has already filed its claim with the erstwhile RP in this regard. It is well-settled that the pre-CIRP dues are required to be settled in accordance with the waterfall mechanism provided under Section

53 of the Code, as held by the Hon'ble NCLAT in ***Damodar Valley Corpn Vs. Karthik Alloys Ltd. (2022) ibclaw.in 224 NCLAT*** and ***Eastern Power Distribution Company of Andhra Pradesh Limited Vs. Maithan Alloys Ltd & Ors. (2022) ibclaw.in 393 NCLAT***.

- 3.4 In so far as electricity dues of Rs.31,38,080/- (rounded off) relating to the CIRP period (from 09.08.2018 to 30.04.2024) are concerned, the Applicant itself has sought adjustment of the same from the Security Deposit of Rs.45 lakhs lying with the Respondent to which the latter has agreed in its Additional Affidavit. Therefore, such adjustment being legally permissible is allowed.
- 3.5 The only bone of contention between the parties is the claim of purported interest and penalty amount of Rs.6,66,985.45/- made by the Respondent for which no details/ calculation/ bills have been placed on record till date. According to the Respondent, the said amount of Rs.6,66,985.45/- represents penalty for delay in payment of electricity charges during the CIRP period. As held by the Hon'ble Supreme Court in ***Sundaresh Bhatt, Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs (2022) ibclaw.in 103 SC***, once moratorium under Section 14 or Section 33(5) of the Code is imposed, the statutory authorities have a limited jurisdiction only. They may assess or determine the quantum of tax, interest, fines or penalties but they cannot enforce recovery of such dues which would be violative of moratorium under Section 14 of the Code.
- 3.6 In ***Paschimanchal Vidyut Vitran Nigam Limited Vs. Raman Ispat Private Limited (2023) 7 SCC 621***, the Hon'ble Supreme Court clarified that Section 238 of the Code takes precedence over the Electricity Act, 2003. Therefore, the provisions of the Code will prevail over those of the Electricity Act, 2003 in the present case also by virtue of the non-obstante clause in Section 238 of the Code. It is an admitted fact that the penalty of Rs.6,66,985.45/- was not existing on the insolvency commencement date (09.08.2018) and that the same was determined and imposed by the Respondent after the commencement of CIRP of the Corporate Debtor. It is well-settled that a penalty imposed after commencement of CIRP does not constitute a valid claim for the purpose of the resolution process

and such claims do not impact the CIRP. Therefore, we are of the considered view that the penalty of Rs.6,66,985.45/- levied by the Respondent during the CIRP period cannot be allowed to be adjusted from the Security Deposit.

3.7 However, the Respondent is at liberty to submit its claim in this regard to the Applicant/Liquidator who will consider the same and allow it in accordance with the waterfall mechanism prescribed under Section 53 of the Code. It is settled law that any creditor who files belated claim has to suffer the consequence in so far as it is entitled to receive only the amount from the left over assets of the Corporate Debtor and has no right to disturb the distribution already made as per the waterfall mechanism.

3.8 In its Additional Affidavit, the Respondent has pointed out that Security Deposit aggregating Rs.50,09,782/- (Rs.45,09,782/-+ Rs.5,00,000/-) is available with it. The Respondent is, therefore, directed to adjust the dues of Rs.31,38,080/- pertaining to the CIRP period from the said Security Deposit and refund the balance amount of Rs.18,71,702/- to the Corporate Debtor's Account within 30 days from the uploading of this order. Thus, **prayer clause (b)** of the IA is also **allowed** in terms of aforesaid directions.

3.9 In the result, **IA 4405/2024 stands allowed and disposed of.**

Sd/-

**SANJIV DUTT
MEMBER (TECHNICAL)**

Sd/-

**ASHISH KALIA
MEMBER (JUDICIAL)**