

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 639 of 2018

(Arising out of Order dated 21st August, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench, Allahabad in CA No. 88/ALD/2018 in CP No. (IB) 23/ALD/2017)

IN THE MATTER OF:

Paschimanchal Vidyut Vitran Nigam Ltd.

...Appellant

Vs.

Raman Ispat Private Limited & Ors.

...Respondents

Present: For Appellant: - Mr. Pradeep Misra Mr. Daleep Dhyani and Mr. Suraj Singh, Advocates.

For Respondents:- Mr. Brijesh Kumar Tamber, Ms. Tanisha Setia, Advocates for UoI.

Ms. Purti Marawaha Gupta, Mr. Arvind Kumar Gupta, Ms. Henna George and Ms. V.S. Lakshmi, Advocates for R-1.

Mr. Shivotar Singh, Advocate.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

In the 'Corporate Insolvency Resolution Process' against 'Raman Ispat Private Limited' ('Corporate Debtor'), an application was filed by the 'Liquidator' against the Appellant- 'Paschimanchal Vidyut Vitran Nigam Limited' for direction to release the attached property of 'Raman Ispat Private Limited' ('Corporate Debtor') attached by the Appellant and for issuing direction to the Appellant for submitting their claims to the

‘Liquidator’ of the ‘Corporate Debtor’ appointed under Section 33 of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short).

2. The Adjudicating Authority (National Company Law Tribunal), Allahabad Bench, Allahabad, by impugned order dated 21st August, 2018, allowed the application directing the District Magistrate and Tehsildar, Muzaffarnagar for immediate release of the attached property in favour of liquidator so that he may sell the property, and after realisation of the value of the property it may be distributed in accordance with the relevant provisions of the ‘I&B Code’. The Adjudicating Authority further held that the Appellant- ‘Paschimanchal Vidyut Vitran Nigam Limited’ also comes within the definition of ‘Operational Creditor’, who can realize their dues in the liquidation process in accordance with law.

3. The brief fact of the case is that the ‘Corporate Debtor’ had an agreement dated 11th February 2010 with the Appellant- ‘Paschimanchal Vidyut Vitran Nigam Limited’ for supply of electrical energy. Clause 5 of the agreement provides that “The outstanding dues will be a charge on the assets of the company. Before sale is made the outstanding dues will be cleared and in the alternative, the deed to agreements/sale will specifically mention the outstanding dues and the methods of its payment.”

4. The Electricity Distribution Urban Division 1, Muzaffarnagar raised bills for supply of electrical energy to the ‘Corporate Debtor’ from time to

time which 'Corporate Debtor' was unable to pay due to losses suffered by the 'Corporate Debtor'. As per the final bill dated 27th January 2017, total arrears work out to R. 4,32,33,883/-. Since the Appellant- 'Paschimanchal Vidyut Vitran Nigam Limited' has provided electrical energy to the 'Corporate Debtor', which attached the properties of the 'Corporate Debtor' vide its Order No. 1048 dated 12th January 2016 and Tehsildar, Muzaffarnagar vide its order 1423F dated 23rd January, 2016 and also prohibited the transfer of property by sale, donation or any other mode and create charge due to outstanding dues for supply of electrical energy by the Appellant- 'Paschimanchal Vidyut Vitran Nigam Limited'.

5. Against the 'Corporate Debtor', liquidation order has been passed under Section 33 and the liquidator's duty is to form liquidation estate of the 'Corporate Debtor' in terms of Section 36(1) of the 'I&B Code' and to consolidate claims of creditors in accordance with Section 38 of the 'I&B Code' and then distribute the proceeds of liquidated estate to the creditors in order of priority prescribed under Section 53 of the 'I&B Code'.

6. At this stage, the District Collector has issued notice dated 5th March, 2018 for recovery of outstanding dues of Rs. 2,50,14,080/- for supply of electrical energy by auction of movable and immovable properties located at Khasara No. 0.4710.

7. The Liquidator took plea that unless the attachment orders of the District Collector, Muzaffarnagar and Tehsildar, Muzaffarnagar are set aside by the Tribunal, no buyer would be willing to buy the property of the corporate debtor because of the uncertainty about the authority of the liquidator to sell the property.

8. The Liquidator also took plea that on admission of claim of 'Paschimanchal Vidyut Vitran Nigam Limited', the same will be classified in order of priority prescribed under Section 53 of the 'I&B Code', and the 'Paschimanchal Vidyut Vitran Nigam Limited' would be entitled for pro-rata distribution of the proceeds along with the other secured creditors from the sale of liquidation assets.

9. Learned counsel appearing on behalf of the Appellant submitted that Sections 173 and 174 of the 'Electricity Act, 2003 has overriding effect on all other laws except 'Consumer Protection Act, 1986', 'Atomic Energy Act, 1962' and the 'Railway Act, 1989'.

10. According to learned counsel for the Appellant, Section 238 of the 'I&B Code' cannot override the provisions of Sections 173 and 174 of the 'Electricity Act, 2003'.

11. It was submitted that under the provisions of the 'Electricity Act, 2003' and the 'U.P. Supply Code, 2005, framed under the said Act, 2003 have provisions under Section 42, 45 & 56 of the 'Electricity Act, 2003' and Clauses 4.3 and 6.15 of the 'U.P. Supply Code, 2005' prescribe for

recovery of electricity charges. Thus, the ‘Electricity Act, 2003’ being a Special Act having non-obstante clause will have an overriding effect on the ‘I&B Code’ which is a general Act.

12. Reliance has been placed on the decision of the Hon’ble Supreme Court in **“Gujarat Urja Vikas Nigam Ltd. vs. Essar Power Ltd.– (2008) 4 SCC 755”** and the decision of the Hon’ble Supreme Court in **“Employees Provident Fund Commissioner vs. Official Liquidator of Esskay Pharmaceuticals Ltd.– (2011) 10 SCC 727”** to suggest that the Employees Provident Fund and the ‘Miscellaneous Provisions Act, 1952’ will override on the provisions of the ‘Companies Act, 1956’.

13. Sections 173 and 174 of the ‘Electricity Act, 2003’ read as follows:

“173. Inconsistency in laws— *Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989.”*

“174. Act to have overriding effect— *Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for*

the time being in force or in any instrument having effect by virtue of any law other than this Act.”

14. The ‘Electricity Act, 2003’ was enacted and came into force w.e.f. 26th May, 2003 when the ‘I&B Code’ was not in existence. The decision of the Hon’ble Supreme Court in **“Gujarat Urja Vikas Nigam Ltd. vs. Essar Power Ltd.”** (Supra) was also a decision prior to the ‘I&B Code’ and related to the ‘Electricity Act, 2003’ wherein the Hon’ble Supreme Court held that the ‘Electricity Act, 2003’ will have overriding effect on the ‘Arbitration and Conciliation Act, 1996’.

15. Learned counsel for the Appellant has also relied on the Hon’ble Supreme Court’s decision in **“Board of Trustees, Port of Mumbai vs. Indian Oil Corporation & Anr.— (1998) 4 SCC 302”** wherein it has held that the provisions of ‘Major Board Trust Act, 1963’ will have overriding effect over the Companies Act, 1956.

16. However, the aforesaid decision is not also applicable since ‘I&B Code’ being a complete Code and has come into force w.e.f 1st December, 2016.

17. Section 238 of the ‘I&B Code’ is having overriding effect on any other law for the time being in force and reads as follows:

238. Provisions of this Code to override other laws.—*The provisions of this Code shall have effect,*

notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

18. In view of Section 238 of the 'I&B Code', the 'I&B Code' will have overriding effect on all laws which are for the time being in force, including the 'Electricity Act, 2003' and Rules and Regulations framed thereunder.

19. The 'I&B Code' being a subsequent Act of parliament, the 'Electricity Act, 2003' cannot override any provisions of the 'I&B Code'.

20. If a conflict arises between one parliamentary law and other parliamentary law, the subsequent parliamentary law has overriding effect on the earlier parliamentary law. It is settled that earlier parliamentary law inconsistent must give away to subsequent parliamentary law.

21. We have noticed Section 238 of the 'I&B Code' which is a subsequent parliamentary law, which talks of overriding effect on all existing laws, therefore, we hold that the 'I&B Code' will have overriding effect on the 'Electricity Act, 2003, if any of the provisions of the 'Electricity Act, 2003' is inconsistent with the provisions of the 'I&B Code'.

22. As per sub-section (5) of Section 33, when a liquidation order has been passed, no suit or other legal proceeding can be instituted by or against the 'Corporate Debtor'. Though, a suit or other legal proceeding may be instituted by the liquidator, on behalf of the 'Corporate Debtor' with the prior approval of the Adjudicating Authority.

23. The provisions of sub-section (5) of Section 33 shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator, as quoted hereunder:

“33. Initiation of liquidation. –(5) *Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:*

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

24. Section 35(1) deals with ‘powers and duties of liquidator’. Under clause (d) therein, the Liquidator is required to take such measures to protect and preserve the assets and properties of the ‘Corporate Debtor’ as it considers necessary. Under clause (e) of Section 35(1), the Liquidator is duty bound to carry on the business of the ‘Corporate Debtor’ for its beneficial liquidation. Under clause (f) of Section 35(1), the Liquidator can only sell the immovable and movable property subject to Section 52 and have power to transfer such property to any person or body corporate, relevant of which reads as follows:

“35. Powers and duties of liquidator.— (1)

Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:-

(a) *to verify claims of all the creditors;*

xxx xxx xxx

(d) *to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;*

(e) *to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;*

(f) *subject to section 52, to sell the immovable and movable property and actionable claims of the*

corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified:

[Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant;]”

25. If there is any amount due to any creditor, he can file claim before the Liquidator who is required to verify the claims under Clause (a) of sub-section (1) of Section 35 and thereafter, on consolidation of claims under Section 38. After verification of claims under Section 39, it is the Liquidator who is entitled to admit or reject the claim under Section 40.

26. The District Collector cannot initiate proceeding for any outstanding dues for supply of electrical energy nor can auction movable and immovable properties. Though it is open to the Electricity Authority of the Collector to file claim before the Liquidator.

27. In view of the aforesaid factual position of law, no interference is called for against the impugned order dated 21st August, 2018 passed by the Adjudicating Authority.

28. The appeal is accordingly dismissed. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member(Judicial)

NEW DELHI
15th May, 2019

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