NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 346 of 2023

[Arising out of Order dated 06.01.2023 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Principal Bench), in (IB)-386(PB)/2018 in IA-4516/2022]

IN THE MATTER OF:

M/s Uttarakhand Power Corporation Limited (UPCL),
Through its Managing Director,
Victoria Cross Vijeta, Gabar Singh Urja Bhawan,
Kanwali Road, Balliwala Chowk,
Dehradun, Uttarakhand-248001. **...Appellant**

Versus

1. M/s. Shyam Baba Developers & Builders Pvt. Ltd.
Through its Director
Having its Registered Office at:
Matkhera Road, Near Mandi Gate,
Bilaspur, Rampur,
Uttar Pradesh-244921.
Email Id: sanjeevkumaragarwal122@gmail.com **...Respondent No. 1**

2. Mr. Rohit Sehgal
(Liquidator appointed for Shree Shyam Pulp & Board Mills Ltd.)
Insolvency Professional registered with Insolvency Board of India,
Bearing Registration IBBI Regd. No.
IBBI/IPA-001/IP-P00528/2017-18/10953,
Having its Registered Office at:
A-604, Sujjan Vihar, Sector-43,
Gurgaon, Haryana-122002.
Email Id: iamrs101@gmail.com **...Respondent No. 2**

Present:

For Appellant : **Ms. Sonam Anand, Mr. Yakesh Anand and Ms. Deepshikha Sansanwal, Advocates.**

For Respondents : Mr. Krishna Dev Vyas, Ms. Shweta Kapoor and Ms. Aakriti Kapila, Advocates for R-1.

Mr. Deepanshu Badiwal, Advocate for R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by UK Power Corporation Limited has been filed, challenging the Order dated 06.01.2023 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Principal Bench) in I.A. No. 4516/2022 filed by the Respondent No. 1. The Application filed by R-1, the Successful Auction Purchaser of the Assets of the Corporate Debtor in Liquidation has been allowed, aggrieved by which Order, this Appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

i. On an Application filed under Section 7 by the UCO Bank against the Corporate Debtor M/s. Shree Shyam Pulp and Board Mills, Corporate Insolvency Resolution Process (CIRP) commenced by Order dated 27.03.2019. No Resolution Plan having been approved in the CIRP of the Corporate Debtor, the Adjudicating Authority directed for liquidation vide Order dated 16.12.2020.

ii. Liquidator made a public announcement dated 31.01.2020 inviting the claim. The Appellant filed a claim of Electricity Dues of amounting to ₹8,43,99,407/-.

iii. The Liquidator under Order passed by the Adjudicating Authority admitted the claim. In the list of stakeholders issued by Liquidator dated 18.04.2022, the claim of the Appellant to the extent of ₹7,66,95,203/- was reflected as admitted claim.

iv. Liquidator has issued several e-Auctions Notices for sale of the Assets of the Corporate Debtor as per the provisions of the Insolvency and Bankruptcy Code, 2016, (for short `The Code or The IBC').

v. In the seventh e-Auction held on 30.07.2021, the land and building of the Corporate Debtor was sold to M/s. Shyam Baba Developers & Builders Private Limited. Letter of Possession was issued to Respondent No. 1, the Successful Auction Purchaser on 03.09.2021.

vi. An I.A. No.4516/2022 was filed by the Respondent No. 1 seeking directions to the Appellant to energise/restoring of the electricity connection. The I.A. No. 4516/2022 was objected by the Appellant. Adjudicating Authority after hearing both the parties allowed the Application and directed the Appellant to provide electricity connection as prayed for.

vii. Aggrieved by the Order dated 06.01.2023, this Appeal has been filed.

3. We have heard Mrs. Sonam Anand Learned Counsel appearing on behalf of the Appellant, Mr. Krishan Dev Vyas Learned Counsel appearing on behalf of the Respondent No. 1 and Mr. Shashwat Parihar Learned Counsel appearing on behalf of the Respondent No. 2.

4. Learned Counsel for the Appellant in support of the Appeal submits that the Respondent No. 1, the Successful Auction Purchaser was liable to pay electricity dues, which were outstanding on the Corporate Debtor. The e-Auction in which the Respondent No. 1 declared Successful Auction Purchaser was "as where is, as is what is and whatever there is basis". When the Auction is on the above conditions which was reflected in the e-Auction notice, Successful Auction Purchaser is liable to clear all liabilities and electricity dues. Successful Auction Purchaser was required to make independent enquiries regarding dues of local taxes, electricity and water charges. Successful Auction Purchaser cannot disown the liability to pay electricity dues, which remained unpaid by the Corporate Debtor. It is submitted that Appellant under statutory provisions of Uttarakhand Electricity Regulatory Commission (the Electricity Supply Code, Release of New Connections and Related Matters) Regulations, 2020 was entitled to charge past Electricity Dues on new owner/occupier. Learned Counsel for the Appellant relied on the Judgment of the Hon'ble Supreme Court in the matter of `Telangana State Southern Power Distribution Company Ltd. & Anr.' Vs. `Srigada Breverages' reported in (2020) 6 SCC 404 and also in the matter of `K.C. Ninan' ***Vs. `Kerala State Electricity Board & Ors.'*** reported in ***2023 SCC OnLine SC 663.*** NCLT in the Impugned Order has relied on the Judgment of this Tribunal on ***`Eastern Power Distribution Company of Andhra Pradesh Ltd.' Vs. Maithan Alloys Limited & Ors.' Comp. App. (AT) (Ins.) No. 961 of 2021,*** which was the case of sale of a going concern, where the outstanding Electricity Dues were contractual and not statutory.

5. Learned Counsel for the Respondent No. 1 refuting the submissions of the Counsel for the Appellant submits that the Appellant had filed claim in the liquidation proceeding which was admitted by the Liquidator. Appellant is entitled for treatment of its dues as per Section 53 of the IBC. Appellant's dues having been dealt in the liquidation process as per the IBC, Appellant cannot insist pre-CIRP dues to be paid by the R-1 before electricity connection is energised/restored. The Successful Auction Purchaser has paid the entire sale consideration of 19.86 Crores. The NCLT has rightly relied on the Judgments of this Tribunal which has been referred to in the Order. Learned Counsel for the Respondent further submits that issue is now well settled by the Judgment of this Tribunal and Hon'ble Supreme Court. Learned Counsel for the Respondent also relies on a recent Judgment of this Tribunal in the matter of ***`M/s. Yarn Sales Corporation through Sh. Rajesh Kumar, Partner' Vs. `Punjab State Power Corporation Ltd. & Anr.'*** in ***Comp. App. (AT) (Ins.) No. 292/2024,*** decided on 02.07.2024.

6. We have considered the submissions of the Counsel for the Parties and perused the record.

7. In the I.A. No.4516/2022, Successful Auction Purchaser had prayed for following:

> *"(a) Direct Respondent No. 1 to energize the electricity connection to the Appellant as per the load requirement of the Applicant;*
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> *(b) Direct Respondent No. 1 to approach Respondent No. 2 liquidator for payment of its dues in accordance with Section 53 of the IB Code;"*

8. The present is the case where Appellant for its pre-CIRP dues on the Corporate Debtor has filed its claim in the liquidation proceeding. Liquidator has filed a Status Report in the present Appeal under the directions issued by this Tribunal dated 21.01.2020. Liquidator in his Status Report has clearly stated that claim of the Appellant was admitted for an amount of ₹7,66,95,203/-. It is further pleaded that e-Auction of land and building was made in favour of R-1 on 30.07.2021. Para 9 and 10 of the Status Report is as follows:

> *"9. That the* ***Liquidator informed the UPCL department that the claim amounting to Rs.7,66,95,203/- (Rupees Seven Crores Sixty-Six Lakhs Ninety-Five Thousand Two Hundred and Three) has been admitted.*** *The list of stakeholders, clearly indicates that the claim of the Appellant was duly admitted. The true copy of letter dated 18.04.2022, along with the list of stakeholders is marked and annexed as* ***ANNEXURE 4 (Colly).***
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> *10. That the Liquidator has conducted seven e-auctions for the sale of the assets of the Corporate Debtor as per the provisions of the IBC 2016. In the 7the-auctiondated 30.07.2021, the liquidator sold the Land and Building situated at Gangapur and Basai, 5KM, Moradabad – Kashipur Road, Kashipur, Tehsil– Kashipur– 244711, Uttarakhand (Freehold Land- 38.52 Acre) to M/s Shyam Baba Developers and Builders Pvt. Ltd. (****Respondent 1****), wherein the reserve price was kept as Rs. 19.86 Crore and the total amount realized was Rs. 19.96 Crore. The Auction was conducted by the Answering Respondents dated 17.06.2021, on "as is where is basis". The Answering Respondents had issued the letter of possession dated 03.09.2021 to the Respondent No. 1. The true copy of the letter of possession of the land sold to the Respondents no. 1, along with the certificates of sale is marked and annexed as* ***ANNEXURE 5 (Colly)."***

9. The Liquidator has also in the Status Report has given details of the distribution of the amount as per Section 53. Paragraph 14 of the Status

Report gives the details of the amount distributed to various stakeholders as per Section 53. Para 14 of the Status Report is as follows:

> *"14. That it is pertinent to mention here that the liquidator has strictly followed the waterfall mechanism as per Section 53 in distributing the realised amount. The distribution as per Section 53 is listed hereunder:*
>
> *TOTAL AMOUNT DISTRIBUTED IN LIQUIDATION AS PER SECTION 53 IS AS UNDER:*

Sl. No.	Stakeholders under section 53 (1)	Amount Admitted (Rs.)	Amount Distributed (Rs.)
1	*(a) CIRP Costs Paid*		*81,84,170*
2	*(a) Liquidation Costs Paid*		*2,09,98,318*
3	*(b) (i)*		
4	*(b) (ii)*	*15,89,20,27,216*	*55,04,10,554*
5	*(c)*		
6	*(d)*	*5,00,77,073*	*0*
7	*(e) (i)*		
8	*(e) (ii)*		
9	*(f)*	*35,60,60,629 (Includes an amount of Rs.7,66,95,203/- payable to Uttrakhand Power Corporation Limited)*	*0*
10	*(g)*		
11	*(h)*		

10. Further, in Para 15 of the Status Report, details of the payment made to secure Lenders have been reflected. The amount admitted of the Secured Creditors of ₹15,89,20,27,216/- out of which amount distributed to the Secured Financial Creditor was ₹55,04,10,554/-. The distribution as noted in Para 14 and 15 clearly indicate that no amount came to the share of the Appellant as per the waterfall mechanism. Adjudicating Authority has relied on the Judgment of this Tribunal in ***`Eastern Power Distribution Company of Andhra Pradesh Ltd.' (Supra).*** The Order of this Tribunal in the aforesaid Judgment has been extensively quoted. It is useful to quote Para 19 of the Judgment which is as follows:

> *"19. This Tribunal again had occasion to consider a case pertaining to electricity dues in insolvency proceeding in Company Appeal (AT) (Insolvency) No. 13 of 2021 decided on 14.03.2022, 'Damodar Valley Corporation vs. Karthik Alloys Limited & Anr.', 2022 SCC OnLine NCLAT 109. This Tribunal held that payment of creditors including Operational Creditors i.e. Electricity Supply Provider shall be dealt with as per the Resolution Plan or Liquidation, as the case may be. In Para 30, this Tribunal laid down following:-*
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> > *"30. We note that the context in the matter of Telangana Southern State Power Distribution Company Limited versus Srigdhaa Beverages (2020 SCC OnLine SC 478) cited by Learned Senior Counsel for Appellant is also distinguished from that in the present case, since in the Telangana Southern State Power case auction-purchase of the asset had taken place, whereas in the present case the corporate debtor is under insolvency resolution and the settlement of past debts of financial and operational creditors will be considered under resolution plan or liquidation, as the case may be. Hence DVC, which is an operational creditor, or any other creditor cannot claim and be given priority in payment of its pre-CIRP debt before the resolution plan is finalised and approved by the Adjudicating Authority."*

11. It is useful to refer to Judgment of this Tribunal in the matter of ***`Chinar Steel Segments Centre Pvt. Ltd.' Vs. `Samir Kumar Agarwal, Liquidator of Bhaskar Shrachi Alloys Limited (in Liquidation) and Anr.'*** in ***Comp. App. (AT) (Ins.) No. 1355/2022,*** decided on 11.10.2023. In the above case also, Successful Auction Purchaser filed an Application seeking direction to provide new electricity connection to the factory premises which Application was opposed by the Damodar Valley Corporation. Adjudicating Authority rejected the Application against which the Appeal was filed. One of the questions framed in the Appeal was as to whether Successful Auction Purchaser was entitled for the reliefs claimed. In Paragraph 37 of the Judgment of this Tribunal, reliance was placed on the two Judgments of the Hon'ble Supreme Court, which, according to this Tribunal fully covers the issue. Paragraphs 37 and 38 of the Judgment following has been stated:

> ***"37.*** *The issues raised in the present Appeal are fully covered in favour of the Appellant by a recent judgment of the Hon'ble Supreme Court dated 11.09.2023 in Civil Appeal No.5556 of 2023-* ***"Tata Power Western Odisha Distribution Limited (TPWODL) & Anr. vs. Jagannath Sponge Private Limited".*** *Appellant in the above case was also insisting for payment of arrears of electricity dues. The Hon'ble Supreme Court relied on the earlier judgment of the Hon'ble Supreme Court in* ***"Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Limited & Ors.- 2023 SCC Online SC 842"*** *and has also noted the judgment of the Hon'ble Supreme Court in* ***"Embassy Property Developments Pvt. Ltd."*** *and distinguished the same. It is useful to extract the entire judgment of the Hon'ble Supreme Court dated 11.09.2023, which is to the following effect:-*
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> > *"In our opinion, the legal issue is covered by the judgment of this Court in "Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Limited and Others"1 and the order of this Court in*

"Southern Power Distribution Company of Andhra Pradesh Limited vs. Gavi Siddeswara Steels (India) Pvt. Ltd. and Another."2 The appellant – Tata Power Western Odisha Distribution Limited cannot insist on payment of arrears, which have to be paid in terms of the waterfall mechanism, for grant of an electricity connection. However, the successful resolution applicant will have to comply with the other requirements for grant of electricity connection. The clean slate principle would stand negated if the successful resolution applicant is asked to pay the arrears payable by the corporate debtor for the grant of an electricity connection in her/his name.

In "Embassy Property Developments Private Limited vs. State of Karnataka and Others"3, this Court clarified that a decision by public authority etc. may fall within the jurisdiction of the tribunals constituted under the Code, where the issue relates to or arises out of the dues payable to an operational or financial creditor, by observing:

> *"37...It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression "operational debt" under Section 5(21), making the Government an "operational creditor" in terms of Section 5(2). The moment the dues to the Government are crystallised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the adjudicating authority, namely, the NCLT."*

The above-quoted observations from Embassy Property Developments Private Limited (supra) would confer jurisdiction on the tribunal constituted under the Code insofar as the appellant – Tata Power Western Odisha Distribution Limited is insisting on payment of the dues of the corporate debtor for restoration/grant of the electricity connection. The dues of the corporate debtor have to be paid *in the manner prescribed in the resolution plan, as approved by the adjudicating authority. The resolution plan is approved when it is in accord with the provision of the Code. Thus, the issue of corporate debtor's dues falls within the fold of the phrase 'arising out of or in relation to insolvency resolution' under section 60(5)(c) of the Code.*

Therefore, we do not find any good ground and reason to interfere with the impugned judgment(s)/order(s) and hence, the present appeals are dismissed.

Pending application(s), if any, shall stand disposed of."

***38.** In view of the law laid down by the Hon'ble Supreme Court in **"Tata Power Western Odisha Distribution Limited"** (supra), submission advanced on behalf of the Respondent- Damodar Valley Corporation cannot be accepted. The Respondent cannot insist that unless the arrears of the electricity dues which dues were payable by the Corporate Debtor prior to disconnection are paid by the Appellant only then communication can be issued. The stand taken by the Respondent is contrary to the law laid down by this Tribunal as well as the Hon'ble Supreme Court as noted above.*

12. Learned Counsel for the Appellant has placed reliance on the Judgment of the Hon'ble Supreme Court in ***`Telangana State Southern Power Distribution Company Ltd. & Anr.' (Supra).*** The above Judgment of the Hon'ble Supreme Court was also noticed and distinguished by this Tribunal in ***`Chinar Steel Segments Centre Pvt. Ltd.' (Supra).*** It is useful to notice Paragraph 30 to 32 of the Judgment of this Tribunal in ***`Chinar Steel Segments Centre Pvt. Ltd.' (Supra)*** which are as follows:

"30.** The above judgment fully supports the submission of the Appellant. No liability can be fastened by Respondent No.2 of its past dues for which he has already filed a claim in the liquidation proceedings which stands satisfied as per distribution* *carried out by the liquidator under Section 53 of the IBC. Counsel for the Appellant has also referred to the judgment of the Hon'ble Supreme Court in* ***"Telangana State Southern Power Distribution Company Limited and Anr. vs. Srigdhaa Beverages- (2020) 6 SCC 404". *Judgment of the Hon'ble Supreme Court in the above case was a case where auction was conducted under the SARFAESI Act, 2002 and in the auction notice outstanding dues including electricity was also clearly mentioned. Paragraph 3 of the judgment is as follows:-*

> *"3. In order to appreciate the controversy before us, it is necessary to reproduce some of the relevant clauses of the auction notice:- "The property described below is being sold on "AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS" under Rules 8 and 9 of the Security Interest (Enforcement) Rules (hereinafter referred to as "the Rules") for the recovery of the dues detailed as under:-*

The total amount due as on 30-4-2017	*Rs. 13,97,26,258.77/- (Rupees thirteen crores ninety- seven lakhs twenty-six thousand two hundred fifty- eight and paisa seventy-seven) with future interest and costs till date of payment Accounts Nos. (1) 373OSLB140940002 and (2) 30151010006439*
Details of encumbrances over the property, as known to the bank	*For Property No. 1: Nil* *For Property No. 2: Subsequent to our MOD, the following transactions observed in EC* *1. As per Doc No. 2611/2016 dated 15-6-2016, the mortgager has sold*

	the property to the extent of 540 sq. yd. to private party, for worth of Rs. 9,72,000. *2. As per Doc No. 657/2015 dated 5-2-2015, the mortgager has sold the property to the extent of 620.83 sq. yd. to the Executive Officer, Ramapally Gramapanchayat for worth of Rs. 12,42.000.* *3. As per Doc No. 2721/2014 dated 5-8-2014, the mortgager has sold the property to the extent of 204.75 sq. yd. to the Gramapanchayat Executive Officer, Ramapally for worth of Rs. 2,48,000.*
Details outstanding of dues of local Government (property tax. water sewerage, electricity bills, etc.)	*Rs. 83,17,152 (Rupees eighty-three lakhs seventeen thousand one hundred fifty-two only)*
Reserve price of property	*For Property No. 1: Rs. 77,63,000* *For Property No. 2 Reserve price: Rs 5,83,37,000 (Rupees five crores eighty-three lakhs thirty-seven thousand only)* *Total 28 nos. of machineries items reserve price: Rs. 3,25,28,000 (Rupees*

	three crores twenty-five lakhs twenty-eight thousand only)

Terms and conditions

21. The successful bidder shall bear the stamp duties, charges including those of sale certificate, registration charges, all statutory dues payable to the Central/State Government, taxes and rates and outgoing, both existing and future relating to the properties.

24. The property is sold in "AS IS WHERE IS, WHAT IS THERE IS AND WITHOUT ANY RECOURSE BASIS" in all respects and subject to statutory dues, if any. The intending bidders should make discrete enquiry as regards any claim, charges/encumbrances on the properties, of any authority, besides the bank's charges and should satisfy themselves about the title, extent, quality and quantity of the property before submitting their bid. For any discrepancy in the property, the participating bidder is solely responsible for all future recourses from the date of submission of bid.

25. No claim of whatsoever nature regarding the property put for sale, charges/encumbrances over the property or on any other matter, etc. will be entertained after submission of the bid/confirmation of sale.

26. The authorised officer will not be responsible for any charge, lien, encumbrance, property tax dues, electricity dues, etc. or any other dues to the Government, local authority or anybody, in respect of the property under sale."

31. *In the above context, after auction sale, question arose as to whether successful bidder is liable to pay electricity charges. It was in the facts of the above case that court held that there is no doubt that the liability to pay electricity dues exists on the respondent. In paragraphs 16.2, following was laid down:-*

"16.2. Where, as in cases of the e-auction notice in question, the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on "as is where is, whatever there is and without recourse basis", there

> *can be no doubt that the liability to pay electricity dues exists on the respondent (purchaser)."*
>
> ***32.*** *The above judgment has no application in the facts of the present case which arose out of the liquidation process as per Liquidation Regulations, 2016. Respondent No.2 has filed its claim which was admitted in the proceeding and has dealt with. The judgment of the Hon'ble Supreme Court in **"Telangana State Southern Power Distribution Company Limited"** does not help the Respondent No.2 in any manner in the present case."*

13. Another Judgment which has been relied by the Counsel for the Appellant is ***`K.C. Ninan' (Supra).*** Hon'ble Supreme Court in the above case has held that when Auction is held as is where is basis and has held that it becomes duty of the buyer to exercise due diligence. Supreme Court has also noted and relied on the several Judgments of the Hon'ble Supreme Court, including the Judgment of the Hon'ble Supreme Court in ***`Telangana State Southern Power Distribution Company Ltd. & Anr.' (Supra).*** There can be no dispute to the proposition laid down by the Hon'ble Supreme Court in ***`K.C. Ninan' (Supra).*** It is however relevant to notice that Judgment of the Hon'ble Supreme Court in ***`K.C. Ninan' (Supra)*** was not in reference to liquidation proceeding where electricity authority has filed any claim. The above Judgment thus is not attracted in the facts of the present case and does not help the Appellant in any manner. The Judgment of the Hon'ble Supreme Court in the matter of ***`Paschimanchal Vidyut Virtan Nigam Limited' Vs. `Raman Ispat Private Limited & Ors.',*** reported in ***(2023) SCC Online SC 842*** and in the matter of ***`Tata Power Western Odisha Distribution Ltd.' Vs. `Jagannath Sponge Private Limited'*** reported in ***Civil Appeal No. 5556/2023,*** as noted supra fully covers the issue.

14. Learned Counsel for the Respondent has also placed reliance on the recent Judgment of this Tribunal in ***`M/s. Yarn Sales Corporation through Sh. Rajesh Kumar, Partner' (Supra)*** where similar issue was considered and answered by this Tribunal. This Tribunal in the above case has relied on ***`Chinar Steel Segments Centre Pvt. Ltd.' (Supra).*** Judgment of this Tribunal in ***`M/s. Yarn Sales Corporation through Sh. Rajesh Kumar, Partner' (Supra)*** is also fully applicable in the facts of the present case.

15. In view of the above discussions and conclusions, we are of the view that no error has been committed by the Adjudicating Authority in allowing the I.A. No. 4516/2022 filed by the R-1.

There is no merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

06th January, 2025

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