

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 562 of 2021

IN THE MATTER OF:

Harish Taneja,

The Resolution Professional of
Perfact Color Digital Prints Pvt. Ltd.
236-L, Model Tow, Sonipat – 131001.

...Appellant

Versus

Dakshin Haryana Bijli Vitran Nigam

Vidyut Sadan, Vidyut Nagar,
Hisar – 125005.

Also at:

Mehrauli Gurgaon Road
Near Bus Stand, Gurgaon.
Email: Seop.1gurugram@dhbvn.org.in

...Respondent

For Appellant: Mr. Ajay Kr. Jain and Mr. Sourit Arora, Advocates.

For Respondent:

ORDER
(Virtual Mode)

05.08.2021: Heard Advocate Shri Ajay Kumar Jain and Advocate Shri Sourit Arora for the Appellant – Resolution Professional. This Appeal is arising out of impugned order dated 04.03.2021 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-V in I.A. No. 3879/2020 in C.P. (IB)-1974/ND/2019. The impugned order reads as under:

“IA-3879/2020

We have heard the Ld. RP and the Ld. Counsel for the respondent. In course of hearing, Ld. Counsel for the respondent referred our order dated 22.01.2021 and submitted that he has received an

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information from the department that prior to the initiation of CIRP, there was no outstanding dues against the electricity supply. But after the initiation of CIRP, the total dues of electricity is of Rs.7,18,647 and this amount has not been paid by the applicant since the initiation of CIRP.

On the other hand, Ld. RP submitted that since there are no sufficient funds to pay the dues, therefore, the applicant is not in a position to pay the amount.

Hence without going into the merits of the fact, we direct the RP/Applicant to pay Rs.1,50,000 out of total outstanding dues of the electricity within one week from today. If the that amount is paid by the RP then respondent is directed to restore the electricity connection. List the matter on 30.04.2021.”

2. The Learned Counsel for the Appellant submits that the electricity supply of the Corporate Debtor has been disconnected by the Respondent and Corporate Insolvency Resolution Process (CIRP) is still pending. It is stated that considering the provisions of Section 14 of Insolvency and Bankruptcy Code, 2016 (for short 'IBC') and Regulation 32 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, electricity being essential service, the supply could not have been disconnected, in moratorium.

3. Learned Counsel submits that there is no money in the corpus of the Corporate Debtor and that there is only one Financial Creditor - 'Small Industries Development Bank of India (SIDBI)' and that the said Financial Creditor is not contributing during CIRP and thus, the Resolution Professional has problem as to how to conduct CIRP and raise interim finance.

4. Learned Counsel for the Appellant submits that the Appellant has already moved the Adjudicating Authority for passing orders of liquidation, which application is pending.

5. The Learned Counsel for the Appellant, Mr. Jain, accepts that before CIRP started there were no outstanding bills of electricity. The amount of Rs.7,18,647/- towards consumption of electricity has been incurred during CIRP process. The Learned Counsel for the Appellant on being asked stated that this cost was incurred as the Appellant – Resolution Professional was keeping the Corporate Debtor a going concern which is related to printing.

6. Section 14 of IBC relates to moratorium and sub-section (2) and (2-A) of Section 14 are relevant for the present matter. Sub-section (2) and (2-A) of Section 14 read as under:

“(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

[(2-A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]”

7. Thus, under Section 14(2) the supply of essential goods or services to the Corporate Debtor should not be terminated or suspended or interrupted during moratorium period. However, if supply was used to keep Corporate Debtor a going

concern, the service of electricity cannot be terminated provided the dues arising from such supply during Moratorium are paid. If they are not paid Section 14 (2-A) will not protect.

8. Supply of essential services, words used in Section 14(2) are to be read with Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which reads as under:

“32. Essential supplies. – The essential goods and services referred to in section 14(2) shall mean-

(1) electricity;

(2) water;

(3) telecommunication services; and

(4) information technology services,

to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

Illustration- Water supplied to a corporate debtor will be essential supplies for drinking and sanitation purposes, and not for generation of hydro-electricity.”

9. Reading the above Regulation 32, it is clear that the words ‘essential goods or services’ as used in Section 14(2) have been given a particular meaning to which moratorium applies. The illustration under Regulation 32 makes the position clear. Use of electricity by the Corporate Debtor in CIRP would be essential supply to the extent it is not a direct input to the output produced or supplied by the Corporate Debtor. Like using of water to generate hydro-electricity is not essential supply similarly, use of electricity in the present matter for running the printing business of the Corporate Debtor cannot get protection as essential supply.

10. This being so, we do not find fault with the impugned order. The Learned Counsel for the Appellant submits that even if the Corporate Debtor goes into liquidation, the machines to be sold would require to be demonstrated as functioning and this cannot be done without electricity. It is also stated that whatever are the bills of the Respondent with regard to electricity would be paid if the orders of liquidation gets passed and money is realised. Learned Counsel submits for Appellant that the electricity dues will be paid on priority.

11. For reasons mentioned above, we are not interfering with the impugned order as has been passed. However, considering the provisions as discussed above, we give liberty to the Appellant to specifically put on record particulars relating to the electricity supply required which would not be direct input to the output produced by the Corporate Debtor. With such particulars Appellant may move Adjudicating Authority for relief. The Adjudicating Authority would be at liberty to then modify the impugned order with regard to the amount Resolution Professional will pay for resumption of the electricity so as to use the same to the extent it would not be a direct input to the output produced by the Corporate Debtor.

12. With these observations we dispose of the present appeal. No costs.

**[Justice A.I.S. Cheema]
The Officiating Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

Archana/gc.