

CIVIL APPEAL NO. 3965/2020

GUJARAT URJA VIKAS NIGAM LIMITED..APPELLANT(S)

VERSUS

YES BANK LIMITED & ANR...RESPONDENT(S)

ORDER

Heard learned counsel for parties.

The appellant entered into a Power Purchase Agreement (PPA) with M/s Lanco Infratech Limited for the Bhadrada Solar Power Project(Power Plant) for tariff determined for two phases of period of time of 12 years and 13 years.

Respondent No. 1 issued the term loan facility to M/s. Lanco Infratech Limited. The endeavour for re-determination of tariff by the appellant was not successful. There were supervening circumstances of insolvency proceedings being admitted against M/s. Lanco Infratech Limited and liquidation proceedings commenced with the appointment of respondent No. 2 as the Liquidator and respondent No. 1 took possession of the assets.

It is only thereafter that the appellant sought to take advantage of the PPA more specifically Clause 9.2.1(e) to terminate the PPA

which resulted in a challenge being laid by respondent No. 1 to the same before the NCLT. The respondent No. 1 has succeeded both before the NCLT and NCLAT which orders are sought to be assailed in a Second Appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016, (for short, the Code") the appeal being maintainable on a question of law.

Learned counsel for parties have argued at length and have taken us to the judgments laying down the manner in which such proceedings and clauses have to be appreciated in the PPA, more specifically, in *Gujarat Urja Vikas Nigam Ltd. vs. Mr. Amit Gupta & Ors.* (2021) 7 SCC 209, further elucidated in *Tata Consultancy Services Ltd. Vs. Vishal Ghisulal Jain Resolution*, (2022) 2 SCC 583.

There is no cavil to the issue that the appellant seeks to wriggle out of the PPA albeit on a ground that they are entitled to do so in terms of the agreement.

On perusal of the impugned judgment of the NCLAT dated 20.10.2020, the impugned order succinctly sets out the ratio in paras 29 to 31 as under :

"29. Quite clearly the process of liquidation in the present case is going on and therefore, the liquidator should have full access to all assets of the corporate debtor to

take meaningful steps for revival of the corporate debtor as going concern. In the present case, since the power producer has not suspended the supply of solar power and is willing to do the same, it stands to reason that the solar power project should be allowed to function as a going concern, so that revival of the power project as suggested under Section 230 of the Companies Act becomes possible.

30. In view of the foregoing discussion and keeping in view the objective of the Insolvency and Bankruptcy Code, 2016 which relates to maximization of the value of assets for resolution of the corporate person, it stands to reason that the Solar Power Plant i.e. physical assets realizes its full economic value only if it functions in conjunction with the PPA. The steady and assured revenue stream resulting from the existence of the PPA is the sine' qua non for the long-term economic and financial viability of the solar power project since it provides comfort and security to the financial creditors who feel encouraged to provide credit for the project.

31. Therefore, the physical entity of the Solar Power Project working in conjunction with the PPA becomes necessary for maximization of the value of assets. This is especially true since the power producer is willing to generate and supply power and also in a position to do so to the GUVNL. Hence, the termination of PPA does not appear to be justified. The impugned order, therefore, suffers from no infirmity and we don't find cogent reasons for accepting the appeal. The appeal is dismissed. There is no order as to costs."

On having examined the aforesaid and having

given thought to the matter, we do believe that there is no question of law raised to be examined by this Court within the parameters of Section 62 of the Code and the examination of the facts of the case under the law enunciated cannot be doubted.

In view of the aforesaid, we dismiss the appeal, leaving parties to bear their own costs.

Learned counsel for respondent No. 1 states that the dues of the respondent No. 1 have not been paid despite there being no interim orders passed by this Court. Be that as it may, the arrears be cleared within a period of three months from today by the appellant.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[ABHAY S. OKA]

NEW DELHI,
NOVEMBER 15, 2022.

Civil Appeal No(s). 3965/2020

GUJARAT URJA VIKAS NIGAM LIMITED

Appellant(s)

VERSUS

YES BANK LIMITED & ANR.

Respondent(s)

IA No. 20507/2021 - APPLICATION FOR PERMISSION SEEKING RELEASE OF
THE WITHHELD AMOUNT

IA No. 85298/2021 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 127031/2020 - STAY APPLICATION)

Date : 15-11-2022 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE ABHAY S. OKA

For Appellant(s) Mr. M.G. Ramachandran, Sr. Adv.
Ms. Hemantika Wahi, AOR
Ms. Jesal Wahi, Adv.
Ms. Srishti Khindaria, Adv.

For Respondent(s) Mr. C.U. Singh, Sr. Adv.
Mr. Yogendra Aldak, Adv.
Ms. Vaishali Goyal, Adv.
Ms. Bhavya Shukla, Adv.
Mr. Punit Dutt Tyagi, AOR

Mr. C.U. Singh, Sr. adv.
Mr. Amjid Maqbool, Adv.
Mr. Z. M. John, Adv.
Mr. Yogendra Aldak, Adv.
Ms. Vaishali Goyal, Adv.
Ms. Bhavya Shukla, Adv.
Ms. Charanya Lakshmikumaran, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed, leaving parties
to bear their own costs.

Learned counsel for respondent No. 1 states
that the dues of the respondent No. 1 have not been

paid despite there being no interim orders passed by this Court. Be that as it may, the arrears be cleared within a period of three months from today by the appellant.

Pending applications stand disposed of.

[CHARANJEET KAUR]
ASTT. REGISTRAR-cum-PS

[POONAM VAID]
COURT MASTER (NSH)

(Signed order is placed on the file)



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