

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
(Appellate Jurisdiction)

**APPEAL No. 205 of 2017**

Dated : 27<sup>th</sup> January, 2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member  
Hon'ble Mr. Virender Bhat, Judicial Member

**In the matter of:**

**Jindal Power Limited**

Through its Regulatory Manager-Legal,  
Jindal Centre, Plot No-2,  
Sector-32, Gurgaon,  
Haryana – 122002

Email: [satish.kumar@jindalpower.com](mailto:satish.kumar@jindalpower.com)

... Appellant

*Versus*

**1. Central Electricity Regulatory Commission**

Through its Secretary,  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi – 110001  
Email: [secy@cercind.gov.in](mailto:secy@cercind.gov.in)

**2. Powergrid Corporation of India Limited**

Through its Commercial and Regulatory Cell,  
'Saudamini', Plot No.-2, Sector 29,  
Gurgaon, Haryana – 122001

Email: [commercialcc@powergrid.in](mailto:commercialcc@powergrid.in)

... Respondent (s)

Counsel on record for the Appellant(s)

: B.P. Patil Ld. Sr. Adv.

Hemant Singh  
Mridul Chakravarty  
Biju Mattam  
Supriya Rastogi Agarwal  
Chetan Kumar Garg  
Lakshyajit Singh Bagdwal  
Ankita Bafna  
Nehul Sharma  
Robin Kumar  
Harshit Singh  
Alchi Thapliyal  
Lavanya Panwar  
Sanjeev Singh Thakur for  
App. 1

Counsel on record for the Respondent(s) : for Res. 1  
Suparna Srivastava for Res.  
2

## **J U D G M E N T**

### **PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. This appeal is directed against the order dated 6<sup>th</sup> July, 2017 passed by 1<sup>st</sup> Respondent - Central Electricity Regulatory Commission (hereinafter referred to "Commission") passed in Petition No. 103/MP/2017 filed by erstwhile Simhapuri Energy Limited (in short "SEL") thereby adjudicating the liability of the petitioner i.e. Power Generator SEL to pay transmission charges under the Bulk Power Transmission Agreement ("BPTA") dated 24<sup>th</sup> February, 2010 and Transmission Sales

Agreement (TSA) dated 18<sup>th</sup> May, 2013 executed by it with unified Power Grid Corporation of India Limited (PGCIL) i.e. 2<sup>nd</sup> Respondent for Long-Term Access (LTA) granted under the applicable Regulations.

2. SEL had approached the Commission challenging the imposition of transmission charges upon it by the 2<sup>nd</sup> Respondent-PGCIL under these two agreements on the ground of its inability to tie up arrangements for power purchase with its identified beneficiaries on account of situations beyond its control i.e. Force Majeure events relieving it from its liability to pay transmission charges under the LTA. The Commission, vide the impugned order dated 6<sup>th</sup> July , 2017 dismissed the petition thereby declining to treat non-signing of power purchase agreements by SEL with its beneficiaries as a Force Majeure event under provision of BPTA/TSA and held SEL to be under a statutory and contractual obligation to pay transmission charges to unified PGCIL after the transmission system executed by it under the LTA had been commissioned, irrespective of the facts whether SEL had actually availed LTA or not.

3. Being aggrieved by the said impugned order dated 6<sup>th</sup> July, 2017 of the Commission, SEL approached this Tribunal by way of instant appeal.

4. It is very relevant to note here that during the pendency of the current appeal, SEL had undergone liquidation under the orders of National Company of Law Tribunal, Hyderabad as per provisions of Insolvency and Bankruptcy Code, 2016 (IBC) and ultimately was sold as a “going concern” to Jindal Power Limited (in short “JPL”). Accordingly, SEL got amalgamated with JPL under the scheme of amalgamation approved by NCLT, Hyderabad vide order dated 11<sup>th</sup> October, 2023.

5. In pursuance to these developments, JPL filed an application bearing IA No. 731 of 2024 seeking its substitution as Appellant in this appeal in place of erstwhile SEL. The application was allowed vide order dated 2<sup>nd</sup> May, 2024 substituting the name of JPL as Appellant in place of SEL.

6. We may also note that vide order dated 13<sup>th</sup> November, 2024, Central Transmission Utility of India Limited (in short “CTUIL”) was substituted as 2<sup>nd</sup> Respondent in place of PGCIL.

7. During the course of hearing on the appeal, an objection was raised on behalf of the 2<sup>nd</sup> Respondent, CTUIL with regards to the maintainability of the appeal stating that the appeal had since become infructuous for the reason that upon sale of SEL as a “going concern” to JPL in pursuance to liquidation order dated 21<sup>st</sup> June, 2022 passed by NCLT Hyderabad, all past claims/obligations/liabilities of SEL including the claims of CTUIL against SEL stand permanently extinguished and no longer survive.

8. Accordingly, we heard the Learned Senior Counsel appearing on behalf of the Appellant as well as the Learned Counsel on behalf of the 2<sup>nd</sup> Respondent CTUIL in detail on this aspect.

9. During the rival submissions of the Learned Counsels and on the basis of the documents referred to by them, following facts have emerged undisputed which took place during the pendency of this appeal :-

*“i. During the pendency of the appeal before this Tribunal, the State Bank of India (“SBI”) on 25.09.2019, in its role as the financial creditor of M/s Simhapuri Energy Limited (“SEL”), filed an Application, being CP (IB) No. 13/7/HDB/2020, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) before the Hon’ble NCLT, initiating insolvency proceedings against the Company. Vide an order dated 26.06.2020, the NCLT initiated the Corporate Insolvency Resolution Process (“CIRP”) against the Appellant.*

*In lieu of the CIRP proceedings, PGCIL/ CTUIL had submitted a claim of Rs. 347.52 Crores against the Appellant for outstanding transmission charges and relinquishment fees;*

- ii. However, as no viable resolution plan could be approved, the Resolution Professional (“RP”) filed an Application, being IA (IBC) No. 427/2021, to initiate the liquidation process, which the NCLT approved vide an order dated 06.10.2021, appointing a Liquidator. During the liquidation process, the present Appellant JPL emerged as the successful bidder and acquired SEL “as a going concern”;*
- iii. The NCLT vide an order dated 21.06.2022 passed in IA (IBC) No. 540/2022 confirmed the sale of SEL as a going concern to the present Appellant, extinguishing all prior liabilities and claims pending against it, in line with the established legal principle of “clean slate” as devolved under IBC, 2016. The relevant extracts of the above order are set out below:*

*“11.3 The Successful Bidder shall not be responsible for any other claims, liabilities or obligations under any guarantees, etc. payable by the Corporate Debtor as on this date to the creditors or any stakeholders including the Government dues. All the liabilities of the Corporate Debtor as on date stands extinguished, qua the Successful Bidder.*

*...*

*11.5 The successful bidder shall get all the rights, title and interest over whole and every part of the Corporate Debtor, including but not limited to contracts free from security interest, encumbrance, claim, counter claim or any demur.*

*...*

*11.7 The Successful Bidder shall not be held responsible/ liable for any of the past liabilities of the Corporate Debtor. The Liquidator and Successful bidder shall take all steps required to*

*make accounting entries for the smooth transmission and clearing the balance sheet.”*

*Consequently, the Liquidator issued a Certificate of Sale dated 29.06.2022 to the Appellant, transferring ownership of SEL to the Appellant free from any encumbrances.*

- iv. *Thereafter, vide an order dated 11.10.2023 passed in CP (CAA) No. 6/CB/2023, the Scheme of Amalgamation of SEL with the Appellant was approved by the Hon’ble NCLT, with the scheme being made effective from 01.03.2023, wherein the following Order was made:*

*“27. In view thereof, we have perused the documents annexed to the Petition and have heard the submissions made by the Petitioners and pass the following order:-*

*...*

*(c) All proceedings and/ or suits and/or appeals now pending by or against the Transferee Company; however, if any suit, writ petition, investigation appeal, criminal or other proceedings of whatsoever nature is pending against the petitioner Companies or entities associated with petitioner Companies, their directors, shareholders, employees etc., the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer of business of the Transferor Company or because of anything contained in the scheme, but the proceeding shall continue, prosecuted and enforced by or against the Transferor Companies and their associated entities, directors, shareholders, employees etc. as if the Scheme had not been made.*

*...*

*(f) That all proceedings and/ or suits and/or appeals now pending by or against the Transferor Companies shall be continued by or against the Transferee Company;”*

10. While acknowledging that the claim of PGCIL/CTUIL regarding transmission charges and liquidation charges along with applicable surcharge against SEL stand permanently extinguished pursuant to sale of SEL to the Appellant as a “going concern” in pursuance to the liquidation order dated 21<sup>st</sup> June, 2022 passed by NCLT Hyderabad (“See para 14 of the Written Submission of the Appellant), it is submitted by Learned Senior Counsel appearing on behalf of the Appellant that the Appellant is fully entitled under law to continue these proceedings and pursue the claims previously held by SEL. Referring the paragraph 27(f) of the order dated 11<sup>th</sup> October, 2023, passed by NCLT, Hyderabad, Learned Senior Counsel argued that even though the Appellant, as a successful Resolution applicant, is exclusively insulated from any prior liability of SEL yet it is conferred with the right to carry forward all legitimate claims and entitlements associated with SEL.

11. We may note that the erstwhile SEL (predecessor in interest of the Appellant) had approached the Commission by way of Petition No. 103/MP/2017, which has been dismissed by the Commission vide impugned order, seeking reprieve from payment of transmission charges by it to PGCIL under the BPTA dated 24<sup>th</sup> February, 2010 and TSA dated



18<sup>th</sup> July, 2013 in respect of LTA granted to it under applicable Regulations. Thus, essentially, the prayer of SEL before the Commission was to avoid claim of the PGCIL/CTUIL regarding transmission charges for LTA granted to it. Therefore, the Commission was actually adjudicating the claim of PGCIL/CTUIL against SEL in respect of the transmission charges under the LTA granted to the Debtor. SEL had sought respite from payment of transmission charges to PGCIL/CTUIL invoking Force Majeure situation and had further sought stay order against the 2<sup>nd</sup> Respondent from taking any coercive action against it with respect to non-payment of transmission charges.

12. Manifestly, SEL had not approached the Commission to enforce its own claim/right against the PGCIL/CTUIL. Therefore, the Commission was not adjudicating any claim/entitlement of the SEL against PGCIL/CTUIL.

13. We have already extracted the relevant portion of the order dated 21<sup>st</sup> June, 2022 passed by NCLT, Hyderabad vide which it confirmed the sale of SEL to the Appellant JPL as a “going concern”. It specifically states that the successful bidder i.e. the Appellant JPL shall not be responsible for any claims/liabilities/obligations etc. payable by the

Corporate Debtor i.e. SEL as on the date of the order to the creditors or any stake holders including the Government dues and the liabilities of the creditor i.e. SEL stand extinguished for the successful bidder i.e. Appellant- JPL. This is in line with the established legal principal of “Clean Slate” devolved under the Insolvency and bankruptcy Code (IBC).

14. The Principle of “Clean Slate” has been time and again re-affirmed by the Hon’ble Apex Court as well as the High Courts. Upon approval of the Resolution Plan or sale as “going concern” by the adjudicating authority, all previous liabilities and claims of any person qua the corporate Debtor cease to exist and stand extinguished. One of the implications of the sale of the corporate Debtor as “going concern” is that the corporate Debtor does not get dissolved. It is retained and is transferred along with its assets to the successful bidder. The successful bidder or the acquirer takes over the corporate debtor along with its assets, licenses, entitlements etc. but excluding the liabilities. When the sale consideration is received from the successful bidder/purchaser, the same is distributed amongst the creditors in accordance with Section 53 of the IBC. Since the amount is paid to the creditors in terms of IBC, the liabilities of the corporate debtor towards the creditors are treated as

settled and the purchaser takes the assets free of any encumbrances etc. In other words, in a sale as “going concern” in liquidation, only the assets of the corporate debtor are transferred and the liabilities of the corporate debtor are settled in accordance with Section 53 of the IBC. Hence, the purchaser of the assets takes over the assets without any encumbrance or charge and free from any action of the creditors.

15. Hence, in view of the aforesaid settled legal position, the claims of PGCIL/CTUIL against the SEL with regard to the payment of transmission charges which was the subject matter before the Commission in Petition No. 1093/MP/2013 as well as in the instant appeal no longer survive and stand extinguished. This is very candidly conceded by the 2<sup>nd</sup> Respondent itself. The Appellant also does not disputed this legal position. However, Appellant seeks to continue this appeal on the basis of paragraph 27(f) of the order dated 11<sup>th</sup> October, 2023 passed by NCLT, Hyderabad which provides that all proceedings and/or suits and/or appeals now pending by or against the Transferee Company i.e. SEL shall be continue by or against the Transferee Company i.e. JPL. We find the contentions of the Appellant in this regard baseless and unacceptable. The Appellant is conferred the right to

continue the proceedings including suits/appeal etc initiated by the erstwhile SEL only with regard to the legitimate claims/entitlements of SEL. However, as we have already noted that the present proceedings do not relate to any claim of SEL but are with regards to the claims of PGCIL/CTUIL for transmission charges to be levied against SEL, which stood extinguished upon sale of SEL to JPL as a going concern.

16. Hence, we feel in agreement with the contentions raised on behalf of the 2<sup>nd</sup> Respondent-CTUIL that the claim of erstwhile PGCIL which was the subject matter of the petition before the Commission and also form the subject matter of this appeal, stand extinguished and no longer survive. Therefore, the said appeal has become infructuous and is hereby dismissed.

Pronounced in the open court on this 27<sup>th</sup> day of January, 2025.

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

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*REPORTABLE / NON REPORTABLE*

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