

COURT-I

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

**IA NO. 615 of 2019 in APPEAL NO. 58 OF 2017
&
APPEAL NO. 58 OF 2017 & IA NOs. 162 & 363 of 2017 &
IA NO. 299 of 2019**

Dated: 6th August, 2019

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. Ravindra Kumar Verma, Technical Member**

In the matter of :

**M/s. Monnet Ispat & Energy Limited
Having its registered office at
Monnet Marg, Mandir Hasaud,
Raipur**

.... Appellant(s)

Versus

**1. Chhattisgarh State Electricity Regulatory Commission
Irrigation Colony,
Now Shanti Nagar,
Raipur - 492001**

**2. Chhattisgarh State Power Distribution Company Ltd
Vidhyut Sewa Bhawan, 4th floor,
P.O. Sunder Nagar,
Daganiya, Raipur
Chhattisgarh - 492013**

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Pranjit Bhatarcharya
Mr. Raghav Pandey

Counsel for the Respondent(s) : Mr. C. K. Ray
Mr. Sachin Dubey for R-1

Ms. Suparna Srivastava
Ms. Sanjna Dua for R-2/Applicant in

ORDER

IA No. 615 of 2019 came to be filed by 2nd Respondent – Chattisgarh State Power Distribution Company Limited seeking following prayers:

(a) “Dismiss the present Appeal as infructuous; and

(b) Pass such further and other order (s) as this Hon’ble Court may deem fit in the facts and circumstances of the present case.”

2. The genesis for filing the present application is as under :

When the Appellant was asked to pay Parallel Operation Charges (**POC**) in terms of computation based on formula adopted by the Commission in its Order dated 13.10.2009, the Appellant challenged the said recovery of POC in Petition No. 51 of 2016. Respondent-Commission passed the order in the said petition on 08.02.2017.

3. Grievance of the Appellant is that the Respondent-Commission failed to adopt its subsequent order in Suo Motu Petition No. 56 of 2015, which came to be passed on 30.04.2016, and has wrongly adopted the formula provided by its order in Petition No. 20 of 2009.

4. According to 2nd Respondent-Applicant, in the impugned order the Commission opined that the Appellant had not installed necessary meters despite lapse of considerable time in terms of Order dated 30.04.2016 so as to enable recording of generation of auxiliary consumption for the purpose of computation of POC, and 2nd Respondent was carrying out the POC billing in line with the old prevailing formula till the time the meters in accordance with the Order dated 30.04.2016 were installed. Therefore, in the impugned order, according to the Applicant, the Commission opined that formula or methodology in billing POC was justified.

5. The Applicant-2nd Respondent also places on record that after understanding the difficulties being faced by the Appellant and other captive power plants with regard to computation of POC charges approached the Respondent-Commission seeking removal of difficulties in Petition No. 9 of 2018. Rather they sought a clarification in implementation of Order dated 30.04.2016 (Suo Motu Petition No. 56 of 2015).

6. Meanwhile, two appeals came up before this Tribunal being Appeal No. 203 of 2018 and Appeal 208 of 2018. In Appeal No. 203 of

2018, the impugned order is dated 08.06.2018 pertaining to Petition No. 47 of 2017 before the Respondent-Commission. In the said petition, by way of adjudication, the Respondent-Commission pertaining to POC billing opined that till Petition No. 9 of 2018 is pending, POC billing should be conducted as per old methodology and not as per Order dated 30.04.2016 (Suo Motu Petition). In Appeal No. 208 of 2018, the impugned order is dated 08.05.2018 and similar directions were issued by the Commission. Therefore, according to Applicant-2nd Respondent the issue pertaining to implementation of Order dated 30.04.2016 passed in Suo Motu Petition in respect of revised methodology for billing of POC has to be by adopting the formula, which was available prior to 30.04.2016.

7. This Tribunal passed an order disposing of the above two appeals by remanding the matters to Respondent-Commission for fresh consideration and adjudication in a time bound manner. The Appellants were granted liberty to approach Respondent No.1-Commission. Since Petition No. 9 of 2018 is pending before the Commission, the Applicant-2nd Respondent had filed IA No. 299 of 2019 before this Tribunal seeking remand of this Appeal also for fresh consideration and adjudication in terms of this Tribunal's order, referred to above, in two appeals. Notice was also directed to be issued on the said applications.

8. During the pendency of the Application, Respondent No.1-Commission disposed of Petition No. 9 of 2018 by Order dated 05.04.2019, filed by 2nd Respondent seeking modification of impugned order dated 30.04.2016 in respect of methodology or formula for determination of POC. The relevant portion of the order passed by the Respondent-Commission in Petition No. 9 of 2018 is as under:

“In the light of the aforesaid and in view of Hon’ble Appellate Tribunal’s direction in appeal No. 208 of 2018 and 203 of 2018, we are of the considered view that the formula for determination of POC, as prescribed in this commission’s order, dated 30.04.2016, being unimplementable, has to be abandoned and, accordingly, the impugned order stands modified. We order that the POC shall be computed by multiplying the actual captive/non-captive consumption in kWh, as reported by the Chief Electrical Inspector on a monthly basis, in prescribed format (figure indicated at ‘Çolumn-G’), by 4 paise per kWh. We direct that the Chief Electrical Inspector shall furnish this data of CSPDCL on a monthly basis, by first week of every month, so as to enable the latter to raise the POC bill.”

9. Since the Order dated 30.04.2016, which was impugned in the present appeal stand modified, the present appeal has become infructuous, therefore the Applicant-2nd Respondent have sought for dismissal of the appeal.

10. The Appellant did not file any reply objecting IA No. 615 of 2019, though it had filed an affidavit in reply in response to IA No. 299 of 2019 filed by 2nd Respondent. In terms of this affidavit the stand of the Appellant seems to be that the Appellant Company has no obligation to any entity including 2nd Respondent herein by virtue of Orders dated 24.07.2018 by NCLT. What we observe from the said affidavit is as under :

The Appellant Company underwent Insolvency Resolution process under the Insolvency and Bankruptcy Code, 2016 (**IBC**). On account of huge amounts becoming due to various banks, the Corporate Insolvency Resolution Process (**CIRP**) commenced against the Appellant by virtue of Order dated 18.07.2017 under section 7 of Insolvency & Bankruptcy Code by NCLT in CP No. 1139/I&BP/NCLT/MAH/2017. On 18.07.2017, after admitting the CIRP against the Appellant a moratorium was put into force in favour of the Appellant, which reads as under:

“(IV) That the order of moratorium shall have effect from 18.7.2017 till the completion of the corporation insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under Section 33, as the case may be.”

11. A public announcement in terms of IBC came to be made on 26.07.2017 inviting claims against the Appellant both from Financial and Operational Creditors. During the pendency of CIRP, the Committee of Creditors was constituted in terms of Section 21 of IBC, which received a resolution plan by consortium of AION Investments Private Limited and JSW Steel Limited. The Committee of Creditors approved the said Resolution plan on 9/10.04.2018 by majority voting share i.e., 98.97%, which was in accordance with the Insolvency and Bankruptcy Board of India and in terms of CIRP Regulations of 2016. The said plan provided Resolution as under:

“e. Proposal for other stakeholders (including other creditors)

IV. Other than the proceedings set out in part B of Annexure 4, all inquiries investigations, notices, causes of action, suits, claims disputes, litigation arbitration or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Company or the affairs of the Company (other than against the Existing Promoters or any existing or former members of the management of the Company), pending or threatened, present or future (including without limitation, the proceedings specifically set out in Annexure 2 and part A of Annexure 4), in relation to any period prior to the Acquisition or arising on account of the Acquisition shall be deemed to be withdrawn or dismissed and all liabilities or obligations in relation thereto, whether or not set out in the A/L Statement, the balance sheets of the Company or the profit and loss account statements of the Company or the February 21 Creditor List, will be deemed to have been written off in full and permanently extinguished by virtue of the order of the NCLT approving the Resolution Plan, and

the Company and/or Consortium shall at no point of time be, directly or indirectly held responsible or liable in relation thereto. By virtue of the order of the NCLT approving this Resolution Plan, all new inquiries, investigations, notices, suits, claims disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Company in relation to any period prior and the members of the Board of Directors and management of the Company who are appointed on or after the Acquisition shall not be liable, in any manner whatsoever, for any criminal action or liability in relation to any inquiries, investigations, notices, causes of action, suits, claims, disputes, litigation or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Company or the affairs of the Company in relation to any period prior to the Acquisition or arising on account of the Acquisition.”

12. Therefore, the Appellant claims that by virtue of approval of the same, all pending proceedings in relation to or in connection with the Appellant Company will be deemed to have been withdrawn or dismissed, thereby all liabilities or obligations in relation thereto will be deemed to have been written off in full and permanently extinguished.

13. NCLT approved the above said Resolution on 24.07.2018 in terms of Section 31 of the Insolvency and Bankruptcy Code, 2016 (for short “**IBC**”). The relevant portion reads as under:

“In respect to treatment of other creditors, this approved resolution plan discloses that all other liabilities and obligations of the Corporate

Debtor are being extinguished in full and all litigations and proceedings in respect to debits pending against the Corporate Debtor prior to commencement of CIRP shall stand abated as on the liquidation value due to those creditors as per the waterfall mechanism in Section 53 of the Code is NIL, but whereas the Financial creditors and other creditors will continue to be entitled to enforce their rights against the existing promoters of the Corporate Debtor and the existing promoters will continue to be liable in relation to any pending litigation against them. Since the terms in respect to liabilities and obligations of the Corporate Debtor and the right of financial creditors against the promoters of the Corporate Debtor are hereby approved.”

14. According to the Appellant, since the approved Resolution Plan binds the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan and by virtue of Section 238 of the IBC, the provisions of IBC shall prevail and have effect over all other prevailing laws.

15. They place reliance on certain judgments of Delhi High Court as well as Chhattisgarh High Court apart from SLP before the Hon'ble Supreme Court pertaining to the Company's matters with reference to Section 238 of the IBC.

16. In the light of the above factual situation, the Appellant contends that whatever liabilities arise out of Order dated 30.04.2016 as well as

08.02.2019 shall abate, thereby liabilities and obligations in relation thereto will have to be deemed to have been written off in full, therefore, such liabilities, obligations of Appellant in terms of orders of 1st Respondent-Commission get permanently extinguished. Therefore, the Appellant seeks such abatement of proceedings in the light of the above stated facts and circumstances.

17. We have gone through the documents produced by the Appellant. Annexure No.1 is the order on the file of NCLT. Para No.11 of the Annexure refers to directions issued by NCLT, Mumbai Bench while admitting the petition, which reads as under:

“11. In view of the same, this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

- (a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (b) *transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- (c) *any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);*

- (d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
- II *That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.*
- III *That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- IV *That the order of moratorium shall have effect from 18.7.2017 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.*
- V *That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.*
- VI *That this Bench hereby appoints Mr.Sumit Binani, Room No. 6, 4th Floor 24, Commerce House, Ganesh Chandra Avenue, Kolkata 700013, Registration No. IBBI/IPA-001/IP-N00005/2016-2017/10025 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.”*

18. We have gone through the Resolution Plan for the Appellant brought out by AION Investments Private Limited. After placing this Resolution Plan, NCLT proceeded with passing of final Order on

24.07.2018. Para Nos. 7 to 11 of the said order are relevant, which read as under:

“7 The Distribution of amounts to the financial creditors in terms of the final resolution plan and the liquidation value due to them is as set out in the table below:

Financial Creditor	Admitted Claims (In crore)	Liquidation Value (In crore)	Upfront Cash payment (In crore)	Debt Converted to Equity (In crore)
Assenting Secured Financial Creditors	97,328,401,001	23,563,525,186	26,372,106,110	1,921,221,305
% of Total	88.36	99.61	98.52	89.28
Dissenting Secured Financial Creditors	394,796,473	91,239,814	91,239,814	NIL
% of Total	0.36	0.39	0.34	
Assenting Unsecured Financial Creditors	11,690,265,826	NIL	305,892,940	230,760,883
% of Total	10.61		1.14	10.72
Dissenting Unsecured Financial Creditors	735,688,388	NIL	NIL	NIL
% of Total	0.67			
Total for Financial Creditor	110,149,151,687	23,654,765,000	26,769,238,864	2,151,982,189

8. As per the letter of intent (LOI), the upfront payment to the financial creditors is required to be made within 30 days from the date this order has been delivered, i.e. the date of delivery of this order (24.07.2018), the same is hereby conceded by this Bench holding that this upfront payment shall be made as stated in the LOI mentioned in this Resolution Plan.

9. Although the liquidation value due to the operational creditors as per the Code is NIL, on the suggestion made by this Bench, the Resolution Applicant have come forward by filing an Affidavit agreeing to pay Rs.25 crores within a period of one year from the date the final resolution plan becomes effective, to the operational creditors (other than employees and workmen) in the manner directed by this Bench.

10. As to Rs.25 Crores, since the Resolution Applicant agreed to distribute among the operational creditors other than employees and workmen, debt valuing Rs.114,81,27,623 (Exhibit A to the Affidavit filed by the Resolution Applicant on 13.07.2018), the Resolution Applicant is hereby directed to pay to the operational creditors on pro rata basis in compliance with principle of pari passu within one year from the date of delivery of this order, i.e. 24.07.2018.

11. In respect to treatment of other creditors, this approved resolution plan discloses that all other liabilities and obligations of the Corporate Debtor are being extinguished in full and all litigations and proceedings in respect to debts pending against the corporate Debtor prior to commencement of CIRP shall stand abated as the liquidation value due to those creditors as per the waterfall mechanism in Section 53 of the Code is NIL, but where was the Financial Creditors and other creditors will continue to be entitled to enforce their rights against the existing promoters of the Corporate Debtor and the existing promoters will continue to be liable in relation to any pending litigation against them. Since the terms in respect to liabilities and obligations of the Corporate Debtor and the

right of financial creditors against the promoters of the Corporate Debtor are hereby approved.”

19. In terms of Para No.11 all other outstandings of other creditors are being extinguished.

20. Section 238 of IBC reads as under:

“238. 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.”

21. From a reading of this section, it is crystal clear that the Code will override anything inconsistent with any other enactment. In view of the said Section, the Hon’ble Supreme Court held that the claims of the department of the Income Tax were also held to be extinguished since they do not take precedence even over secured creditors who are private persons. This order was passed in a Special Leave Petition No. 6483 of 2018 dated 10.08.2018, which was preferred against the orders of Delhi High Court.

22. Though the Appellant approached this Court contending that the Respondent-Commission ought to have adopted formula which came to be evolved in the order dated 30.04.2016, but by subsequent

development of events it is seen that the relief sought by the Appellant does not exist anymore since Respondent/Commission in Petition No. 9 of 2018 opined that the formula evolved on 30.04.2016 is unimplementable.

23. Once it is held un-implementable, the directions given while disposing of Petition No. 9 of 2018 on 05.04.2019 which make it clear that a different formula is evolved as to how parallel operation charges have to be computed.

24. Factually but for NCLT proceedings where there is a Resolution Plan approved by NCLT, the appeal becomes infructuous in the normal course of business. The recourse open to the Appellant was to pay in terms of Order dated 05.04.2019 of the CERC or challenge the said order by filing another appeal. Definitely in the present appeal, we cannot ponder over the Order dated 05.04.2019 to opine whether it is justified or not.

25. In the light of NCLT proceedings reaching finality so far as present appellant is concerned, it is nothing but an empty formality to direct the Appellant to approach the Respondent-Commission to place on record

the proceedings of NCLT which accepted Resolution Plan in respect of the Appellant Company.

26. In the light of Resolution Plan being accepted by the Tribunal concerned and in terms of Section 238 of IBC providing overriding effect on all other statutes including Income Tax, we are of the opinion that all outstandings so far as the subject matter in this appeal against the Appellant get extinguished.

27. In the light of the above discussion and reasoning, the appeal is disposed of in the above terms. All the pending IAs shall stand disposed of. There shall be no order as to costs.

28. Pronounced in the open court on this the 6th day of August 2018.

(Ravindra Kumar Verma)
Technical Member

(Justice Manjula Chellur)
Chairperson

Dated: 6th August, 2019

REPORTABLE/~~NON-REPORTABLE~~