

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 866 of 2020**

[Arising out of Order dated 08.09.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in I.A./2477/2020 in (IB)/563(PB)/2018]

**IN THE MATTER OF:**

**Kalptaru Steel Rolling Mills Ltd.**

Through its Director Mr. Lalit Kumar Purva,  
(Member of the Monitoring Committee  
& New director after Resolution, DIN 01261638)  
At: Shiv Sadan, Opp: NCC Apartments,  
Outer Ring Road, B. Narayanapura,  
Bangalore – 560016.

**...Appellant**

**Versus**

**Southern Power Distribution Company of A.P. Ltd.**

19-13-65/A, Srinivasapuram  
Tiruchanoor Road, TIRUPATI-517 503  
Chittor District A.P. INDIA  
Through its Chairman & Managing Director

**...Respondent**

**Present:**

**For Appellant: Mr. Anoop Prakash Awasthi, Ms. Prapti Singh,  
Mr. Parthivi Ahuja, Advocates.**

**For Respondents: Mr. Rakesh K. Sharma, Mr. Nishant Sharma,  
Advocates.**

**With**

**Company Appeal (AT) (Insolvency) No. 914 of 2020**

[Arising out of Order dated 08.09.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in I.A./2477/2020 in (IB)/563(PB)/2018]

*Cont'd.../*

**IN THE MATTER OF:**

**Southern Power Distribution Company of Andhra Pradesh Ltd.**

Rep. by its Chairman & Managing Director  
Besides SrinivasaKalyana Mandapam,  
Tiruchanoor Road, TIRUPATI-517 501  
Andhra Pradesh

**...Appellant**

**Versus**

**Kalptaru Steel Rolling Mills Ltd.**

Through Prabhakar Nandiraju,  
Resolution Professional  
Chairman of the Monitoring Committee  
Resident of 11-12-7, Road No.1,  
Sri Rama Krishna Puram,  
Hyderabad, Telangana - 500035.

**...Respondent**

**Present:**

**For Appellant: Mr. Rakesh K. Sharma, Mr. Nishant Sharma,  
Advocates.**

**For Respondents: Mr. Anoop Prakash Awasthi, Ms. Prapti Singh,  
Mr. Parthivi Ahuja, Advocates.**

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

**ASHOK BHUSHAN, J.**

These two Appeals have been filed against the same order dated 08.09.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in I.A./2477/2020 filed in (IB)/563(PB)/2018. Brief facts giving rise to these two Appeals are:

- (i) CIRP was initiated by order dated 14.08.2018 of the Adjudicating Authority against the Corporate Debtor - Kalptaru Steel Rolling Mills Ltd.
- (ii) By order dated 14.02.2020, Resolution Plan was approved by the Adjudicating Authority.
- (iii) In terms of the order dated 14.02.2020, Monitoring Committee was constituted. Company Application No. 2477/2020 was filed by the Chairman of the Monitoring Committee, where following prayers have been made:

**“PRAYER**

*In view of the facts and circumstances mentioned above, it is most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to:-*

- a. *Issue direction to M/s SOURHERN POWER DISTRIBUTION COMPANY OF A.P. LTD. through its Chairman & Managing Director to immediately restore both the electricity connections (i) HT Service No.328 and (ii) HT Service No.375 issued to M/s Kalptaru Steel Rolling Mills Ltd. without insisting for payment of any past dues and without insisting for any fresh security deposit from the Resolution Applicant as the supply of electricity is an essential and integral part of the resolution of the Corporate Debtor.*

*b. Pass such other or further orders as may be deemed just and fit under the circumstances of the case.*

*For which act of kindness your humble applicant as in dutybound shall ever remain obliged.”*

- (iv) The application came for consideration before the Adjudicating Authority, who after hearing the Applicant as well as the Respondent - Southern Power Distribution Company of A.P. Ltd. disposed of the application. With regard to first relief, the Adjudicating Authority held that once plan is approved, parties upon which the plan is binding cannot rake up past liabilities by invoking law that is inconsistent with the provisions of the Code. With regard to second relief, it was held that the Applicant is not entitled for restoration of connection without making payment for security deposit. Aggrieved against the order insofar as it has denied second relief to the Applicant, Company Appeal (AT) (Ins.) No. 866 of 2020 has been filed.
- (v) Southern Power Distribution Company of A.P. Ltd. has filed Company Appeal (AT) (Ins.) No. 914 of 2020 aggrieved by the order dated 08.09.2020 insofar as it has allowed first prayer of I.A. No. 2477/2020 filed by the Monitoring Committee. Southern Power Distribution Company of A.P. Ltd. against the direction of the Adjudicating Authority that Southern Power

Distribution Company of A.P. Ltd. cannot insist for payment of past dues has come up in this Appeal.

2. Coming to the Company Appeal (AT) (Ins.) No. 866 of 2020, where the Applicant has prayed that he should be provided the electricity connection without security deposit, the Adjudicating Authority has rightly come to the conclusion that security deposit is a pre-condition for sanction of High Tension Power Connection to industries. The Applicant being a heavy industry huge power supply is required. The security deposit is only to adjust the shortfall which come in payment of bills.

3. A similar submission, as has been raised by the Appellant in Company Appeal (AT) (Ins.) No. 866 of 2020, has been rejected by this Tribunal in **“Company Appeal (AT) (Ins.) No. 110 of 2020, Damodar Valley Corporation vs. Cosmic Ferro Alloys Limited & Anr.”**. This Tribunal in Para 25 of the judgment issued following directions:

*“25. We, therefore, quash and set aside the impugned order and make it clear that any security deposit or other charges for requested increase in contract demand and enhanced supply line for electricity will have to be paid to the discom DVC in accordance with the relevant and extant laws and regulations. The payment of dues for electricity supplied to the corporate debtor during the moratorium period, to keep the corporate debtor as a going concern, should be paid out of CIRP costs, and the payment should be ensured by the Resolution Professional. Any dues relating to*

*electricity supplied after the moratorium has ceased will have to be paid by the corporate debtor to the discom DVC. The Adjudicating Authority could be approached in case of any difficulty. There is no order as to costs.”*

4. Following the decision of this Tribunal in the above judgment in “**Damodar Valley Corporation**” dated 01.10.2021, the Company Appeal (AT) (Ins.) No. 866 of 2020 is liable to be dismissed.

5. Now coming to the Company Appeal (AT) (Ins.) No. 914 of 2020, where Southern Power Distribution Company of A.P. Ltd. insist for payment of its past dues. Suffice it to say that when plan has been approved by the Adjudicating Authority on 14.02.2020, all claims of companies of the past dues stood extinguished. Subsequent to the approval of the plan claim was submitted by Southern Power Distribution Company of A.P. Ltd. on 23.06.2020 which was rejected.

6. This Tribunal in its judgment dated 23.05.2022 in Company Appeal (AT) (Ins.) No.62 of 2022 has considered the similar contention raised by Damodar Valley Corporation who was supplying power to the Corporate Debtor. In the aforesaid case, where the electricity supplier was directed to restore the electricity connection after receipt of the amount under the Resolution Plan, the contention was raised that fresh connection cannot be given to the Corporate Debtor unless entire dues against the previous electricity connection are not paid. In Paragraph 14 to 17 following has been held:

*“14. There is no question of the claim of Appellant still existing pertaining to pre-CIRP period, which claim was filed before the Resolution Professional, after the approval of the Resolution Plan.*

*15. The submission, which has been much pressed by learned Senior Counsel for the Appellant that there has been contravention of Statutory Regulations, as the Plan breaches the provision of Section 30, sub-section (2) (e). Section 30, sub-section (2) (e) provides:*

*“30. Submission of resolution plan.*

*(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –*

*(e) does not contravene any of the provisions of the law for the time being in force.”*

*16. We may at this stage also refer to the Statutory Regulations 4.6.1 and 4.6.4, which are to the following effect:*

*“4.6.1 If the power supply to any consumer remains disconnected continuously for a period of one hundred and eighty day’s where the disconnection has been effected in compliance with any of the provisions of the Act or Regulations, the agreement of the licensee with the consumer for supply of electricity shall be deemed to have been terminated with consequential effect on expiry of the said period of one hundred and eighty days. This will be without prejudice to such other action or the claim that may arise from the disconnection of supply or related issues therefor. On termination of the agreement, the licensee shall have the right to remove the service line and other installations through which electricity is supplied to the consumer.*

*4.6.4 Notwithstanding anything contained contrary elsewhere in these Regulations were deemed termination of agreement has taken place, then on the basis of application for any consumer new service connection can only be provided in the same premises if the outstanding dues against the deemed terminated consumer is cleared along with the late payment surcharge.”*

*17. There can be no quarrel with the Statutory Regulations of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2013. In Regulation 4.6.4, it is contemplated that new service connection can only be provided in the same premises if the outstanding dues against the deemed terminated consumer is cleared, but the said Regulations cannot be pressed in service, when the Resolution Plan has been approved in the CIRP under the Code. The Code has been given overriding effect, on any other inconsistent law under Section 238. When any statutory provision including the provisions of West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2013 are overridden, the question of contravention of such provision does not arise. In event, the submission of learned Senior Counsel is accepted that all laws in force, including the Regulations in question have to be followed in the Resolution Plan and any contravention shall violate Section 30, sub-section (2) (a) & (e), the provision of Section 238 shall become redundant. From the conjoint reading of the provisions of Code, it is clear that in event any provision is not overridden by Section*

*238, Resolution Plan cannot contravene any existing law.”*

7. We, thus, are satisfied that the Adjudicating Authority has rightly partly allowed the I.A. No. 2477 of 2020 insofar as past dues of Southern Power Distribution Company of A.P. Ltd. were concerned. There is no merit in the Company Appeal (AT) (Ins.) No. 914 of 2020.

8. In result, both the Appeals are dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**NEW DELHI**

**13<sup>th</sup> December, 2022**

*Archana*