

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 383 of 2022

(Arising out of Order dated 21.01.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-Court II in I.A. 1661 of 2021 in CP(IB) 1765/MB/C-II/2018)

IN THE MATTER OF:

Shailesh Verma,
Resolution Professional of
Lavasa Corporation Limited,
Dasve Convention Center Limited,
Warasgaon Assets Maintenance Limited,
Dasve Retail Limited, and
Warasgaon Power Supply Limited

.... Appellant

Vs

Maharashtra State Electricity Distribution
Company Limited,
Room No.301, 2nd Floor, Administrative Building,
Rasta, Peth, Pune-411011.

... Respondent

Present:

For Appellant: **Mr. Sumesh Dhawan, Ms. Kriti Kalyani and Ms. Salonee Kulkarni, Advocates.**

For Respondent: **Mr. Satvik Varma, Sr. Advocate with Ms. Drishti Harpalani, Mr. Aakash Kothari and Ms. Ramni Taneja, Advocates for R-1.**

Mr. Akshay Sapre, Advocate for CoC.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed by the Resolution Professional of Lavasa Corporation Limited challenging the order dated 21.01.2022 passed by

National Company Law Tribunal, Mumbai Bench Court II partly allowing the IA No.1661 of 2021 filed by the Resolution Professional (the Appellant herein).

2. The Adjudicating Authority by the impugned order directed the Respondent not to take over the Distribution Franchisee Agreement (DFA) and to continue to supply uninterrupted electricity to the Corporate Debtor and the Resolution Professional was directed to pay the outstanding dues during the CIRP period within 90 days. Aggrieved by the order insofar as it directed the Resolution Professional to pay the outstanding dues during the CIRP period, the Resolution Professional has come up in this Appeal.

3. The brief facts of the case necessary for deciding this Appeal are:

- (i) The Corporate Debtor Lavasa Corporation Limited entered into Distribution Franchisee Agreement (“**DFA**”) with Maharashtra State electricity Distribution Company Limited (hereinafter referred to as “**MSEDCL**”) on 15.03.2011, under which, the MSEDCL was to supply electricity at certain injection points from where the electricity was to further supplied to consumers in the township through distribution infrastructure of the Corporate Debtor.
- (ii) The DFA expired on 24.10.2019. The MSEDCL informed by letter dated 09.07.2021 about its intention not to renew the DFA and that it intends to take over the Distribution Franchisee of M/s Lavasa Corporation Limited at the earliest.

- (iii) The Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor was commenced by an order dated 30.08.2018 passed by the Adjudicating Authority on an Application filed by an Operational Creditor – Raj Infrastructure Development (India) Pvt. Ltd. The Appellant was appointed as Resolution Professional. The Appellant requested to the MSEDCL to continue the DFA as an interim arrangement till the Resolution Applicant took over the Corporate Debtor. The notices dated 09.07.2021 and 19.07.2021 were issued by the Respondent declaring its intention not to renew the DFA of the Corporate Debtor and to take over the Distribution Franchisee.
- (iv) An IA No.1661 of 2021 was filed by the Resolution Professional before the Adjudicating Authority on 22.07.2021, by which IA, following prayers were made by the Respondent:
- “a to quash and set aside the Impugned Notices dated 9th July, 2021 and 19th July, 2021 issued by the Respondent;*
 - b. To pass an order restraining the Respondent and its officers from taking any coercive steps against the Corporate Debtor in furtherance of the Impugned Notices including but not limited to taking over the said Franchisee Infrastructure and/or interfering with the Applicant/ Corporate Debtor’s possession of the said Franchisee Infrastructure;*
 - c. To pass an order directing the Respondent to continue supplying electricity to the specified*

injection points on the basis of the terms and conditions of the DFA dated 25th October, 2016;

d. Pending the hearing and final disposal of the present Application, to grant ad-interim and interim reliefs in terms of prayer clause (b) hereinabove;”

(v) The IA filed by Resolution Professional was opposed by the Respondent. It was stated by the Respondent that during the moratorium, the electricity was supplied to the Corporate Debtor, however, the dues of the Respondent during the CIRP period remain unpaid. Therefore, the amount of outstanding dues of the Corporate Debtor as on July 2021 in LT connection is approximately Rs.6 crores and HT connection is Rs.3.09 crores.

(vi) The Adjudicating Authority heard the parties and by the impugned order partly allowed the Application. Following direction has been issued by the Adjudicating Authority in paragraph 20:

“20. In view of the above, this Bench is of the considered view that the Applicant is directed to pay the outstanding dues to the Respondent during the CIRP period within 90 days from the date of pronouncement of the order and also the Respondent to supply uninterrupted connection of electricity to the Corporate Debtor to keep the Corporate Debtor as a going concern and not to takeover the Distribution Franchisee Agreement.”

- (vii) The Resolution Professional aggrieved by only part of direction by which Resolution Professional was directed to pay outstanding dues to the Respondent during the CIRP period within 90 days has come up in this Appeal.

4. The learned Counsel for the Appellant challenging the above direction of the Adjudicating Authority directing for payment of electricity dues during the CIRP period has submitted that the Corporate Debtor lacks necessary funds to make complete payment to the Respondent and it has been making payment on monthly basis to the extent possible. It is submitted that Resolution Plan has already been approved by the Committee of Creditors (“**CoC**”) and is pending consideration before the Adjudicating Authority and the Plan shall contemplates payment of residuary dues also. It is submitted that the Adjudicating Authority was not entitled to issue direction to pay electricity dues of during CIRP period because the said amount can only be paid as per Resolution Plan, after the Plan is approved. The Adjudicating Authority had no jurisdiction to direct for payment of electricity bills during CIRP period and the impugned order is unsustainable. It is submitted that Section 14, sub-section (2) of the Code provides that supply of essential goods and services to the Corporate Debtor shall not be terminated or suspended or interrupted during the moratorium period, which provides an unconditional protection to the Corporate Debtor. The provision of Section 14 (2) is distinguishable to provision of Section 14 (2-A).

5. The learned Counsel for the Respondent refuting the submissions of the learned Counsel for the Appellant contends that in the present case the Adjudicating Authority has compelled the Respondent to supply the electricity and continue with the DFA during moratorium period, hence the payment of electricity dues during CIRP period was required to be paid by the Corporate Debtor. The Respondent aggrieved by the direction of the Adjudicating Authority to continue the Distribution Franchisee Agreement has already approached the Bombay High Court by filing a Writ Petition No.5944 of 2022, which is pending consideration. However, Resolution Professional is not correct in his submission that Respondent is obliged to continue to supply the electricity even if electricity dues during CIRP is not paid. It is submitted that Resolution Professional himself has formed the opinion that supply of electricity is essential for continuing the Corporate Debtor as going concern and further supply of electricity is necessary to maximize the assets of the Corporate Debtor. Hence, Resolution Professional was liable to pay the electricity dues during the CIRP period. The Section 14, sub-section (2), which oblige for continuance of essential services cannot be allowed to continue without payment during the CIRP period. Section 14(2) and Section 14(2-A) has to be read together to find out the legislative intent which is clear that when an essential supply is critical for the Corporate Debtor, it can be continued subject to payment of dues.

6. We have considered the submission of the parties and have perused the record.

7. The only question is to be considered in this Appeal is as to whether the Adjudicating Authority was right in issuing direction to the Appellant to make payment of outstanding electricity dues during CIRP period within 90 days. The CIRP against Corporate Debtor has commenced on 30.08.2018 by order of the Adjudicating Authority and during the moratorium period the Respondent has continued to supply the electricity to the Corporate Debtor even though DFA came to an end on 24.10.2019, when Respondent issued notice to take over the Distribution Franchisee Agreement. Thereafter, the Resolution Professional filed the IA No.1661 of 2021 seeking the directions as noticed above. In the Application, which was filed by Resolution Professional, it was categorically pleaded that continuance of Franchisee Infrastructure is essential to maintain the value of the Corporate Debtor for the incoming Resolution Applicant. Consequently, the prayer was made by the Resolution Professional for direction to the Respondent to continue supplying electricity. The pleading in IA No.1661 of 2021 makes it clear that continuation of the electricity supply was necessary to maintain the value of the Corporate Debtor.

8. We need to notice the provisions of the Code to find out as to whether the Respondent, who was directed to supply the electricity was entitled to claim payment of electricity dues during CIRP period or the Respondent had to wait till the resolution of the CIRP of the Corporate Debtor to receive its dues. Section 14, sub-section (2) provides for supply of essential goods or services to the Corporate Debtor shall not be terminated or suspended or interrupted during the moratorium period. Section 14(2) is as follows:

“14(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.”

9. Section 14(1) has been amended by Act 1 of 2020 and explanation of Section 14(1) and sub-section 14(2A) as inserted by Act 1 of 2020 is as follows:

“14(1) Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the 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”

10. We need to notice the purpose of object of amended Section 14 by Act 1 of 2020. For finding out the purpose of object of the provision, we need to notice the Statement of Objects and Reasons. The Statement of Objects and Reasons as contained in the Insolvency and Bankruptcy Code, Second Edition 2021, are as follow:

“Statement of Objects and Reasons

The Insolvency and Bankruptcy Code, 2016 (the Code) was enacted with a view to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order or priority of payment of Government dues and to establish and Insolvency and Bankruptcy Board of India.

2. A need was felt to give the highest priority in repayment to last mile funding to corporate debtors to prevent insolvency, in case the company goes into corporate insolvency resolution process or liquidation, to prevent potential abuse of the Code by certain classes of financial creditors, to provide immunity against prosecution of the corporate debtor and action against the property of the corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions, and in order to fill the critical gaps in the corporate insolvency framework, it has become

necessary to amend certain provisions of the Insolvency and Bankruptcy Code, 2016.”

11. When we look into the Statement of Objects and Reasons as extracted above, one of the object as expressly recorded was “*in order to fill the critical gaps in the corporate insolvency framework*”. Explanation to sub-Section (1) of Section 14 and insertion of sub-section (2-A) of Section 14 was with the object to fill the critical gap in the corporate insolvency framework. Section 14, sub-section (2) as contained in the Code only provided for supply of essential goods or services to the Corporate Debtor contained an indication that supply of essential goods or services to the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period, brought a substantive provision that when Interim Resolution Professional or Resolution Professional consider the supply of goods or services critical to protect and preserve the value of the Corporate Debtor, the same shall not be terminated or suspended or interrupted during the period of moratorium except where Corporate Debtor has not paid such dues arising from such supply during the moratorium period. The insertion of sub-section (2-A) in the Section 14 has been brought with a purpose and object. Section 14, sub-section (1) explanation also clarifies that a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of

current dues arising for the use or continuation of the same. The scheme delineated by Section 14(1) explanation as well as Section 14(2-A) is same, that is, all benefits, which were enjoyed by the Corporate Debtor given by Government or authority should be continued, but subject to condition that there is no default of payment of current dues. Sub-section (2-A) also envisage continuation of the essential supply and provides for such termination, suspension or extension when payment has not been made for the such supply during the moratorium.

12. Sub-section (2) of Section 14 has to be read with the legislative intent, which is now reflected by Explanation to Section 14(1) and 14(2-A). In the facts of the present case, when Corporate Debtor took a decision that supply of electricity is necessary to make the value of Corporate Debtor as has been specifically pleaded in IA No.1661 of 2021 as noticed above, the Corporate Debtor is obliged to make payment

13. The submission of learned Counsel for the Appellant is that payment of electricity dues cannot be demanded by Respondent, since they are part of the CIRP cost and can be paid only at the conclusion of CIRP process, that is, after approval of the Resolution Plan. The above submission is clearly in conflict with the legislative scheme as delineated by Section 14(1) Explanation and Section 14(2-A). When the Corporate Debtor has opined that supply of electricity is essential and is to be continued by the Respondent, it is also under obligation to make payment of electricity dues of the CIRP period and direction issued by the Adjudicating Authority to make the payment of outstanding dues, cannot be faulted. The direction

of Adjudicating Authority to continue the DFA, that is, to continue to supply the electricity was subject to payment of outstanding dues within 90 days as directed by the Adjudicating Authority. The Appellant cannot enjoy the benefit of direction of one part, that is, to continue the DFA and deny the payment of electricity dues of the CIRP period.

14. We thus are of the considered opinion that no exception can be taken to direction of the Adjudicating Authority to make the payment of outstanding dues to the Respondent during the CIRP period within 90 days. We make it clear that in the event on non-payment of the dues, as per Section 14(2-A), it shall always be open to Respondent to terminate/suspend the supply of such services. We do not find any merit in the Appeal. The Appeal is dismissed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Justice M. Satyanarayana Murthy]
Member (Judicial)**

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

NEW DELHI

2nd September, 2022

Ashwani