

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

WPA 10983 of 2025

Pinax Paper Mills Private Limited

-Vs.-

The State of West Bengal & Anr.

For the appellant : Mr. Jishnu Saha, Senior Advocate
Mr. Ishaan Saha, Advocate,
Ms. Meenakshi Manot, Advocate
Mr. Ram Ratan Modi, Advocate
Mr. Dipankar Das, Advocate
Ms. Sanjana Nandi, Advocate
Ms. Shreya Bhatia, Advocate
Mr. M. Pal Bhattacharjee, Advocate

For the WBSEDCL : Mr. Jishnu Chowdhury, Senior Advocate
Mr. Chayan Gupta, Advocate
Mr. Aritra Basu, Advocate
Mr. Sandip Dasgupta, Advocate
Mr. Avirpoop Mitra, Advocate

Reserved on : 11.05.2026

Judgment on : 24.06.2026

RAVI KRISHAN KAPUR, J.:

1. The grievance of the petitioner is against the demand for Late Payment Surcharge (LPSC) raised by the respondent no. 2, West Bengal Electricity Distribution Company Limited (WBSEDCL).
2. Briefly, the petitioner is the successful resolution applicant of a Resolution Plan submitted before the National Company Law Tribunal (NCLT) relating to India Pulp & Paper Private Limited (the corporate debtor). The Corporate Insolvency Resolution Process (CIRP) was initiated in terms of an order passed by the NCLT dated 22 July 2022 as amended on 27 July 2022. Pursuant to

the Resolution Plan, the petitioner by letters dated 29 January, 2025 and 12 February, 2025 respectively had requested WBSEDCL to provide construction power to the premises of the petitioner. By a response dated 6 May, 2025, WBSEDCL demanded that outstanding electricity dues payable by the corporate debtor be paid by the petitioner as a pre-condition to any fresh electricity connection. By such communication, WBSEDCL required that the petitioner pay an amount of Rs. 1,29,73,806.48/- on account of outstanding electricity charges and a further sum of Rs. 1,27,00,838.30/- as on 18 December, 2024 on account of LPSC before effecting any new connection.

3. Being aggrieved by the impugned communication, the petitioner has filed this writ petition on the ground that in view of the Resolution Plan, WBSEDCL had no lawful authority to claim any amount on account of outstanding electricity charges or on account of LPSC. During the course of hearing and in the Written Notes of Submissions, WBSEDCL opted not to press the claim of outstanding electricity charges.
4. On behalf of the petitioner, it was contended that in view of the Insolvency and Bankruptcy Code 2016, no claim on account of outstanding electricity charges or Late Payment Surcharge could be demanded from the petitioner. Upon approval of the Resolution Plan, all claims not explicitly provided for in the Resolution Plan, including the respondent's residual operational and statutory dues, stood legally extinguished by operation of law on the ground of the "clean slate principle". In any event, the claim of an account of LPSC is contrary to the admitted records. The bill dated August 2, 2022 raised by the respondent no.2 and the Report filed by WBSEDCL would demonstrate that the pre-disconnection outstanding dues of WBSEDCL already included LPSC

indicating that the demand on account of LPSC arose prior to the CIRP timeline. In support of such contentions, the petitioner relies on *Essar Steel (India) Ltd. Committee of Creditors vs. Satish Kumar Gupta*, (2020) 8 SCC 531, *Ghanashyam Mishra & Sons (P) Ltd. vs. Edelweiss Asset Reconstruction Co. Ltd.*, (2021) 9 SCC 657, *Gagan Ferrotech Ltd. vs. W.B. Electricity Regulatory Commission*, (2022) SCC OnLine Cal 174, *West Bengal State Electricity. Co. Ltd. vs. Vasavi Industries. Ltd.*, 2022 SCC OnLine Cal 1918, *Kashvi Power and Steel (P) Ltd. and Another vs. West Bengal State Electricity Distribution Co. Ltd.*, 2022 SCC OnLine Cal 4617, *Tata Power Western Odisha Distribution Ltd. vs. Jagannath Sponge (P) Ltd.*, 2023 SCC OnLine SC 2442, *EMC Ltd. vs. State of Rajasthan*, 2023 SCC OnLine Raj 4707, *Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat (P) Ltd.*, (2023) 10 SCC 60 and *Damodar Valley Corporation. vs. Chinar Steel Segments Centre (P) Ltd.*, 2024 SCC OnLine SC 2780.

5. On behalf of WBSEDCL, it is contended that insofar as any amount on account of LPSC is concerned, the same was legitimately due and payable on the ground that the trigger for Late Payment Surcharge only became due and payable on 6 May, 2025 when a demand was raised by the respondent no. 2 on the petitioner. In terms of Regulation 4.1.4 of the WBERC Regulations, 2011, LPSC cannot be computed statically or in advance. It is a dynamic formulae which strictly requires a known outstanding amount, a specific percentage, and a finalized period of delay in order to be calculated. In support of such contentions, reliance was placed *Jaishree Steels (P) Ltd. v. W.B. State Electricity Distribution Co. Ltd.*, 2023 SCC OnLine Cal 2356 to contend that the liability to pay LPSC arose from the continuous non-

payment and default, running from the due date of payment rather than freezing on the date of the original principal bill. It was further contended that while the IBC moratorium under section 14 of the Code protects a corporate debtor during the CIRP period, it does not provide permanent immunity against statutory liabilities which crystallize or are explicitly demanded after the expiry of the moratorium period. It was also contended that the distribution licensee is legally obliged to enforce the Terms and Conditions of Tariff Regulations, 2011, and has no discretionary power to waive the dynamically accrued LPSC, since it is a statutory levy triggered automatically by a consumer's default. In this connection, reliance was also placed on *Shree Rajasthan Syntex Ltd vs Chief Engineer Commercial Ajmer & Anr*, 2025 SCC OnLine NCLAT, to contend that statutory claims under the Electricity Act, 2003, which arose after the Insolvency Resolution proceedings, remain fully viable and cannot be extinguished or modified by a prior Resolution Plan. In this connection, reliance was also placed on *Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd.* (2021) 20 SCC 200.

6. Admittedly, as on date of issuance of the disconnection notice, the entirety of the claim of WBSEDCL for Rs.3,38,57,351/- included a component on account of LPSC for Rs.2,15,859.01/-. This would be evident from the bill dated 2 August 2022 raised on the corporate debtor. This fact would also be reflected from the Report filed by WBSEDCL. The electricity connection to the premises of the corporate debtor was disconnected on the basis of a notice dated 16 August 2022 issued by WBSEDCL. By an order dated 22 July, 2022, passed by the NCLT (as subsequently amended on 27 July 2022), the corporate debtor was admitted to CIRP. The Resolution Plan was approved by

NCLT on 28 December 2024. In such circumstances, the contention of WBSEDCL that the claim for LPSC was triggered only on 6 May 2025 in response to the request of the petitioner to provide electricity in terms of the Resolution Plan is false, incorrect and contrary to the records.

7. In terms of clause 9.3 of the Resolution Plan, out of the total plan amount of Rs.30,92,72,166/- only a sum of Rs.10,00,272/- was allocated towards full and final satisfaction of the claim of the operational creditors and statutory dues. Clause 8.41 of the Resolution Plan records that WBSEDCL had submitted its claim before the Resolution Professional and a NIL component had been sanctioned in their favour.
8. It is well settled that upon approval of a Resolution Plan, the debts of the corporate debtor arising prior to the commencement of the CIRP stand obliterated. In *Essar Steel (India) Ltd. Committee of Creditors vs. Satish Kumar Gupta* (Supra) it has been held as follows:

“105. Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were. In *SBI v. V. Ramakrishnan* [*SBI v. V. Ramakrishnan*, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458], this Court relying upon Section 31 of the Code has held: (SCC p. 411, para 25)

“25. Section 31 of the Act was also strongly relied upon by the respondents. This section only states that once a resolution plan, as approved by the Committee of Creditors, takes effect, it shall be binding on the corporate debtor as well as the guarantor. This is for the reason that otherwise, under Section 133 of the Contract Act, 1872, any change made to the debt owed by the corporate debtor, without the surety's consent, would relieve the guarantor from payment. Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the resolution plan, which has been approved, may well include provisions as to payments to be made by such guarantor. This is perhaps the reason that Annexure VI(e) to Form 6 contained in the Rules and Regulation 36(2) referred to above, require information as to personal guarantees that have been given in relation to the debts of the corporate debtor. Far from supporting the stand of the respondents, it is clear that in point of fact, Section 31 is one more factor in favour of a personal guarantor having to pay for debts due without any moratorium applying to save him.”

107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum

*in terms of Section 60(6) of the Code. Also militates against the rationale of Section 31 of the Code. **A successful resolution applicant cannot suddenly be faced with "undecided claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor.** All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does **on a fresh slate**, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”(emphasis supplied)*

9. Similarly, in *Ghanashyam Mishra & Sons (P) Ltd. vs. Edelweiss Asset Reconstruction Co. Ltd.*, (Supra), it has been reiterated as follows:

“102. In the result, we answer the questions framed by us as under:

102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

102.2. The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.

*102.3. **Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.***

(emphasis added)

10. In view of the Resolution Plan duly approved by the NCLT, any relief or concession to the corporate debtor with regard to the outstanding electricity charges or LPSC connected thereto prior to the CIRP cannot be reopened in such an indirect and circuitous manner. This is the sweep of the Code. The petitioner who is the successful resolution applicant and has taken over the corporate debtor company on the basis of the ‘clean slate principle’ cannot be saddled with the hydra heads of pre CIRP dues of the corporate debtor popping up. (*Committee of Creditors of Essar Steel India Limited vs. Satish*

Kumar Gupta and Ors. (Supra) @ Para 107 and West Bengal State Electricity Distribution Co. Ltd. vs. Sri Vasavi Industries Ltd. and Anr. (Supra). In such circumstances, there is no merit in the contention of WBSEDCL that though the earlier dues are not recoverable on account of outstanding electricity charges, the claim for LPSC (for the pre CIRP stage) can still be demanded from the petitioner. The finalization of the Resolution Plan and the approval thereof by the NCLT extinguishes all dues of any kind whatsoever raised for the period prior to the pre CIRP stage and which have not been provided for in the Resolution Plan. The relief and concession to the corporate debtor with regard to electricity and waiver in respect of minimum demand charges has been expressly recorded in the Resolution Plan. (clauses 11.9 and 11.9.6) In such circumstances, the demand on the petitioner for LPSC as a pre-condition for reconnection of electricity is arbitrary and without authority of law. (*Gagan Ferrotech Limited and Anr. Vs. West Bengal Electricity Regulatory Commission and Ors. (Supra) @ Para 72*).

11. LPSC by its very nature is statutorily payable on the failure of a consumer to pay an outstanding amount on account of electricity charges on the due date. Admittedly, this occurred in 2022 prior to the CIRP proceedings and has been running since then. If the amount on account of outstanding electricity dues is extinguished, it would be illogical to suggest that any amount could be recoverable on account of LPSC arising in respect of the same period. This would also negate the clean slate principle. (*Tata Power Western Odisha Distribution Ltd. (TPWODL) and Anr. vs. Jagannath Sponge Pvt. Ltd. (Supra)* and *EMC Ltd. vs. State of Rajasthan and Ors. (Supra)*). In such circumstances, the entire contention of WBSEDCL that LPSC can only be levied after

payment is made is without any legal basis and contrary to the records of WBSEDCL.

12. In this connection, reliance on the decisions in *Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd.* (Supra) as followed in *Shree Rajasthan Syntex Ltd vs Chief Engineer Commercial Ajmer & Anr.* (Supra) to contend that LPSC does not fall until the bill for LPSC is raised by WBSEDCL is misplaced and inapposite. For convenience, section 56 of the Electricity Act, 2003 is as follows:

Section 56. (Disconnection of supply in default of payment): -- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

- a. an amount equal to the sum claimed from him, or*
- b. the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.*

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

13. Section 56(2) deals with a case of escaped assessment where the distribution company having initially failed to bill an amount is permitted in terms of the above section to issue a subsequent demand. This is an exception to the normal laws of limitation and allows an electricity company to raise a claim in respect of escaped assessment. It is in this context that, both the above decisions came to be passed where the Hon'ble Supreme Court was interpreting when electricity charges would fall *first due* within the meaning of section 56(2) and the period of limitation for recovery of the same. This is distinguishable in the facts of the present case. There is no mistake by WBSEDCL nor was the demand for LPSC not raised prior to initiation of the CIRP stage. On the contrary, the bills raised by WBSEDCL (at the pre CIRP stage) included the component of LPSC and were categorically demanded by WBSEDCL. This is not a case where there has been an error or mistake of WBSEDCL in raising a bill. On the contrary, the bill dated 2 August, 2022 raised by WBSEDCL on the corporate debtor was inclusive of LPSC. In such circumstances, the decisions relied on by the respondent are inapplicable. In *Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd*, the distribution company had initially made a short billing by applying an incorrect multiplying factor which it later sought to rectify by issuing a subsequent demand. Similarly, in *Rahmatullah Khan*, the distribution company had mistakenly applied the incorrect billing tariff. These were all cases under section 56(2) of the Act. For similar reasons, the decision in *Jayashree Steel & Others vs. WBSEDCL* (Supra) is distinguishable and of no assistance to the respondents. The entire argument of the chargeable event in levying LPSC being the receipt of part payment and that only once the respondent

recovered part payment of outstanding electricity charges claimed through invocation of the bank guarantee is misconceived and untenable. Any recovery or part payment through invocation of bank guarantee furnished by the corporate debtor has no connection with the recovery of dues on account of LPSC and does not constitute a fresh cause of action or extend the period of limitation. Such logic is also in consonance with settled accounting principles. The due date for charging LPSC cannot be interpreted in such a distorted manner.

14. In view of the above, the respondent WBSEDCL cannot deny the petitioner electricity on the ground that the petitioner must extinguish the claim for LPSC. Electricity supply is fundamental to the revival of the business operations of the petitioner. In such circumstances, WBSEDCL is prohibited from raising any demand either on account of outstanding electricity charges prior to the CIRP or the connected Late Payment Surcharge which had been triggered prior to the CIRP proceedings against the petitioner. To this extent, WPA 10983 of 2025 stands allowed.

(Ravi Krishan Kapur, J.)