CGHC010432202019 2026:CGHC:32765

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 47 of 2020

Chhattisgarh State Power Distribution Company Ltd. Through Its Managing Director, Urja Bhawan, Dangania, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

... Petitioner

versus

1 - State Of Chhattisgarh Through The Secretary, Department Of Energy, Mahanadi Bhawan, New Mantralaya, Naya Raipur Chhattisgarh., District : Raipur, Chhattisgarh

2 - National Company Law Tribunal (Nclt) Bench Mumbai Through Its Registrar, Fountain Telecom, 6th Floor, Building 1, Mahatma Gandhi Road, Fort, Mumbai, Maharashtra 400001., District : Mumbai, Maharashtra

3 - Appellate Tribunal For Electricity (Aptel), Through Its Registrar, 7th Floor, Core - 4, Scope Complex, Lodhi Road, New Delhi - 110003., District : New Delhi, Delhi

4 - M/s Monnet Ispat And Energy Limited Through Its Whole Time Director Interim Board, Registered Office Monnet Marg, Mandir Hasaud, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

5 - Aion Investments Private Ii Limited (Consortium), Owned And Controlled By Aion Capital Partners Limited (Aion) And Jsw Steel Limited (Jsw Steel) (A Company Registered Under The Indian Companies Act, 2013) Throuh Its

Director, Tej Gujadhur, Regd. Office Monnet Marg, Mandir, Hasaud, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

6 - Sumit Binani Resolution Professional, Commerce House, 4th Floor, Room No. 6, 2a, Ganesh Chandra Avenue, Kolkata 700013., District : Kolkata, West Bengal

7 - Chhattisgarh State Electricity Regulatory Commissioner (Cserc), Through Its Secretary, Irrigation Colony, Shanti Nagar, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

... Respondents

For Petitioner	:	Mr. Varun Sharma, Advocate
For Respondent no. 5	:	Mr. Ankit Singhal, Advocate
For State/Respondent no. 1	:	Mr. Atanu Gosh, Dy. Govt. Advocate

Hon'ble Shri Parth Prateem Sahu, Judge

ORDER ON BOARD

29.07.2026

1. Petitioner by way of this present petition has questioned the legality and sustainability of the order dated 06.08.2019 (Annexure P-1) passed by the learned Appellate Tribunal for Electricity, whereby the Tribunal has allowed an appeal preferred by respondent no. 4 in parts and observed that all outstandings so as the subject matter in this appeal against the petitioner get extinguished.
2. The facts relevant for disposal of this writ petition are that the petitioner's company is Distribution Licensee. Respondent no. 4 is private limited company incorporated under the Companies Act, 2013, in the name of Monnet Ispat Limited and certificate issued on 01.02.1990. Name of Monnet Ispat Limited was changed to Monnet Ispat and Energy Limited and, therefore, certificate of incorporation was issued by

Registrar of Companies on 21.03.2006. Respondent no. 4 entered into an agreement with the Chhattisgarh State Electricity Board for purchase of start up power to a maximum of 4000KVA on 132 Kv for its Unit III situated at Mandir Hasaud, Raipur. The respondent no. 4 filed an appeal before the Electricity Tribunal against the demand to pay Parallel Operation Charges (in short "POC") based on the computation formula adopted by the Commission in its order dated 13.10.2009. The case of petitioner/respondent no. 2 was that the respondent no. 4 (herein) had not installed necessary meters despite lapse of considerate time in terms of the order dated 30.04.2016 so as to enable regarding generation of electricity consumption for the purpose of computation of POC. POC billing was being carried out in the line of old prevailing formula till the time to the meters in accordance with the order dated 30.04.2016 where installed. The Chhattisgarh State Electricity Regulatory Commission (in short "CSERC") took suo motu cognizance in the matter of determination of methodology for computation of POC in Suo Motu Petition no. 56/2015 (M). Petitioner raised the bill on 19.08.2016 for a sum of Rs. 39,56,468/-(Thirty Nine Lakhs Fifty Five Thousand Four Hundred and Sixty Eight) towards the POC. This raising of bill was put to challenge by the respondent no. 4 before CSERC by filing of petition under Section 86(1)(f) of the Act of 2003 on the ground that the application of old formula is bad in law and therefore, that order dated 30.04.2016 itself is under challenge in an appeal. CSERC dismissed the petition vide order dated 08.02.2017 holding that billing on old formula is justified because respondent no. 4 had not taken any steps in installing compatible meters. Therefore, the petitioner herein raised the demand of POC vide letter of demand dated 09.02.2017 of a sum of Rs. 1,21,15,150/-(One Crore Twenty One Lakhs Fifteen Thousand One Hundred and Fifty). This demand of POC dated 09.02.2017 was put to challenge in an appeal before the APTEL challenging the order dated 08.02.2017 of CSERC. During pendency of the proceedings before Appellate Tribunal for Electricity (in short "APTEL") financial creditors of respondent no. 4 namely State Bank of India filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short "IBC") before National Company Law Tribunal (in short "NCLT") pleadings therein that the amount of Rs. 22,40,63,98,432.77/- became due from the respondent no. 4 and according to the current financial position, respondent no. 4 is unable to meet the requirement and proposed respondent no. 4 as resolution professional. NCLT had approved the resolution plan. Considering the facts and circumstances of the case and observing that where there is resolution application approved by the NCLT the appeal become infructous in normal course of business. In the light of application accepted by the Tribunal and Section 238 of the Insolvency and Bankruptcy Code, 2016 provides over riding effect to all other statutes including the income tax, held that all outstandings so far as the subject matter in this appeal against the petitioner gets extinguished. It is this order which is under challenge in this petition.

3. Learned counsel for the petitioner submits that the impugned order passed by the APTEL dated 06.08.2019 is perse illegal and bad in law. He submits that even if IBC has been held to be special law by Hon'ble Supreme Court in its decisions but when issue relates to the electricity dispute, then the Electricity Act, 2003 will take precedence over the IBC. The APTEL failed to take into consideration that POC was calculated as

per the order dated 05.04.2019, subsequent to the resolution processed and therefore, respondent no. 4 is liable to make payment. The APTEL has exceeded its jurisdiction while granting relief to the defaulter company/respondent no. 4.

4. Learned counsel for the State would oppose the submission made by learned counsel for the petitioner and would submit that no direct allegation is made against the answering respondent, nor any relief has been claimed and therefore, the respondent no. 1 is not required to file detail reply and hence he prefers not making any further arguments on merits of the case.

5. Learned counsel for the respondent no. 5 opposes the submission made by learned counsel for petitioner and would submit that the order passed by APTEL is strictly in accordance with law. He submits that the submission made by learned counsel for the petitioner that the recovery order of POC was issued on 05.04.2019 subsequent to the resolution processed is not correct. In the light of the pleadings made by petitioner in its petition in para no. 8.15 mentioning that the petitioner raised the bill dated 19.08.2016 for POC amounting to Rs. 39,56,468/- (Thirty Nine Lakhs Fifty Six Thousand Four Hundred and Sixty Eight). He submits that the petitioner thereafter has again made a demand on 09.02.2017 for a sum of Rs. 1,21,15,150/- (One Crore Twenty One Lakhs Fifteen Thousand One Hundred and Fifty). He submits that the IBC is a special act and under Section 238 it provides that the provision of the code shall have an over riding effect contained in any other law for the time being in force and therefore, learned APTEL has rightly extinguished all outstandings including the POC demand made by the petitioner.

6. I have heard learned counsel for the respective parties and also perused the record enclosed along with this writ petition.

7. Learned tribunal while considering the submission made by learned counsel for the respective parties in the proceedings of the appeal and after considering the issue involved, had considered the argument raised by the parties therein.

> "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:
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> > "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 un- implementable, 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."
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> 9. Since the Order dated 30.04.2016, which was impugned in t present appeal stand modified, the present appeal has beco infructuous, therefore the Applicant-2nd Respondent have sought dismissal of the appeal.
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> 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:
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> > 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)
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> 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."

8. From the arguments raised as also from the contents of the order which APTEL has passed, it is apparent that the APTEL has considered that huge amount being due to various banks the Corporate Insolvency Resolution Process (in short "CIRP") commenced against the respondent no. 4 by virtue of order dated 18.07.2017 under Section 7 of the IBC and on 18.0.7.2017 moratorium was put into force in favor of the petitioner. APTEL had taken into note all the final order passed by NCLT on 24.07.2018 and have extracted para no. 7 to para no. 11 of the said order in the impugned order which is relevant in the facts of the case and therefore, I find it appropriate to extract below para no. 18 of the impugned order for ready reference.:-

"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 % of total	97,328,401,001 88.36	23,563,525,186 99.61	26,372,106,110 98.52	1,921,221,305 89.28
Dissenting Secured Financial Creditors % of total	394,796,473 0.36	91,239,814 0.39	91,239,814 0.34	nil
Assenting Unsecured	11,690,265,826	nil	305,892,940	230,760,883

Financial Creditors % of Total	10.61		1.14	10.72
Dissenting Unsecured Financial Creditors % of Total	735,688,388 0.67	nil	nil	nil
Total for Financial Creditors	**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.”

9. So far as the submission of counsel for petitioner that the Electricity Act, 2003 will have precedence over the IBC is concerned, the said submission of counsel for petitioner is misplaced. Hon'ble Supreme Court while considering the over riding effect of Section 238 of IBC in case of **Paschimanchal Vidyut Vitran Nigam Limited vs. Raman Ispat Private Limited and Others** reported in **(2023) 10 SCC 60** has observed as under:-

> 56. The views expressed by the present judgment finds support in the decision reported as ABG Shipyard Liquidator v. Central Board of Indirect Taxes & Customs. In that case, Section 142-A of the Customs Act, 1962 was in issue – authorities had submitted that dues payable to it wee to be treated as "first charge" on the property of the assessee concerned. In the resolution process, it was argued that the Customs Act, 1962 acquired primacy and had to be given effect to. This Court, after noticing the over riding effect of Section 238 IBC, held as follows (SCC p. 496, paras 56-57)
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> "56. For the sake of clarity following questions, may be answered as under:-
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> (a) Whether the provisions of IBC would prevail over the Customs Act, and if so, to what extent?
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> 56.1 IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.
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> xxxxxxxx
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> 57. Similarly, in Duncans Industries Ltd. V. AJ Agrochem, Section 16-G of the Tea Act, 1953 which required prior consent of the Central Government (for initiation of winding – up proceedings) was held to be overrides by IBC. In a similar manner, it is held that Section 238 IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non obstante clauses (i.e. Section 173 and 174). The position of law with respect to primacy of IBC, is identical with the position discussed in ABG Shipyard Liquidator and Duncans Industries [refer also : Innoventive Industries, CIT v. Monnet Ispat & Energy Ltd. Ghanashyam Mishra & Sons (P) Ltd.

v. Edelweiss Asset Reconstruction Co. Ltd., and Jagmohan Bajaj v. Shivam Fragrances (P) Ltd.]

10. From the aforementioned facts and circumstances of the case, it is apparent that Section 238 of IBC is having the overriding effect over the provisions of Electricity Act, 2003 despite the provision under Section 173 and 174 of the Act of 2003 opens with non-obstinate clauses. Therefore, in view of the above referred decisions of Hon'ble Supreme Court, submission of learned counsel for the petitioner that the provision under the Electricity Act, 2003 will have precedence over the provisions of IBC is not sustainable, accordingly it is **repelled.**

11. In view of the aforementioned discussions and decision of Hon'ble Supreme Court in the above mentioned cases, I am of the considered view that the APTEL has passed the impugned order upon proper appreciation of facts and law. As such it does not call for any interference. Hence, the writ petition being devoid of merits is liable to be and is hereby **dismissed.** No order as to cost(s).

Certified copy as per rules.

Sd/-

(Parth Prateem Sahu)

JUDGE

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