

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

Company Appeal (AT) (Insolvency) No. 847 of 2022

IN THE MATTER OF:

Swastik Aqua Ltd. & Anr.

...Appellant

Versus

Jharkhand Bijli Vitran Nigam Ltd. & Anr.

...Respondents

Present:

For Appellant: Mr. Milan Singh Negi, Mr. Nikhil Kumar, Advocates

**For Respondent: Mr. Kumar Anurag Singh, Mr. Zain A Khan,
Advocates for R1**

**Mr. Abhishek Anand, Mr. Karan Kohli, Mr. A.P.Singh
Gaur, Advocates for R-2**

ORDER

28.03.2023: Heard Learned Counsel for the Appellant as well as Learned Counsel appearing for the Respondent.

2. This appeal has been filed against the order dated 02.06.2022 passed by the Adjudicating Authority by which Adjudicating Authority has dismissed the application IA No. 1520/2021 filed by the 'Resolution Professional' (RP). The CIRP against the Corporate Debtor commenced on 09.12.2019. 'Committee of Creditors' (CoC) has approved the plan on 07.08.2020 which also stood approved by the Adjudicating Authority on 24.11.2020.

3. The Appellant before us is the 'Successful Resolution Applicant' (SRA) whose plan was approved. The application was filed by the 'Monitoring Professional' being IA No. 1520/2021 where following prayers have been made:-

“(a) Allow the present application; and

(b) Direct the Respondent to reconcile/submit the fresh bill/invoice of pending amounts due during the CIRP period i.e. from 09.12.2019 to 24.11.2020 amounting to approximately Rs. 14,39,025/- (after reducing the same on account of order passed by the JSERC dated 21.09.2020 giving reductions and relaxations on account of Covid-19), so that the same can be paid as CIRP Costs;

(c) Direct the Respondent to reconcile/submit the fresh bill/invoice of pending amounts due after the conclusion of the CIRP Period i.e. for the Monitoring period (for the Monitoring Period), so that the same can be paid on actual basis, by the Resolution Applicants;

(d) Direct the Respondent not to disconnect the electricity connection of the Corporate Debtor and restrain the Respondent from taking any coercive actions in terms of the Electricity Act, 2003;

(e) Pass such other or further order/ order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.”

3. Learned Counsel for the Appellant submits that the Appellant has paid the electricity dues during the CIRP period and the issue between the parties was with regard to dues of pre-CIRP period. It is submitted that however, the payment was made to the post approval of the Plan on 29.06.2021.

4. Learned Counsel for the Appellant submits that the application does not deserves to be rejected since the electricity Department cannot use the non-payment of pre-CIRP dues for disconnecting the electricity and further in the CIRP no claim was filed by the Department with regard to pre-CIRP dispute.

5. Learned Counsel for R-1 submits that payment of bills was made and in fact electricity has never been disconnected. He, however, submits that Promoters who submitted the plan ought to have mentioned about the dues in the *'Information Memorandum'*.

We have considered the submissions of the Learned Counsel for the parties and perused the records.

6. There can't be any dispute that the Appellant/Monitoring Professional/Resolution Professional were liable to make the payment of the dues during the CIRP period, which according to Appellant stood paid.

7. We only observed that in the event any amount is still due with regard to the electricity dues during the CIRP, it shall be open for the Department to issue bill and realise the same. We further make it clear that R-1 having not filed any claim in the CIRP regarding pre-CIRP dues, it is not entitled to recover the pre-CIRP dues and on non-payment of the said amount, to disconnect

the electricity. The prayers made in the (a) and (b) made in the application does not require any consideration.

With the aforesaid, ***we dispose of the appeal.***

**[Justice Ashok Bhushan]
Chairperson**

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

ss/nn