

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1332 of 2022

(Arising out of Order dated 14.07.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in IA(IBC)No.708/KB/2021 in C.P. (IB) No.596/KB/2017)

IN THE MATTER OF:

Cosmic Ferro Alloys Ltd. ...Appellant

Versus

Damodar Valley Corporation & Ors. ...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Ms. Heena Kochar and Adv. Sanwal Tibreval, Advocates.
For Respondents : Adv. Jyoti Kumar Choudhary, Mr. Siddhartha Pattnaik, Mr. Pranshu Singh and Ms. Arundhati Misra, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed challenging the order dated 14.07.2022 passed by National Company Law Tribunal, Kolkata Bench in IA(IBC)No.708/KB/2021. By the impugned order, the application IA(IBC)No.708/KB/2021 filed by the Appellant has been dismissed. Aggrieved by which order, this Appeal has been filed.

2. Brief background facts of the case necessary to be noticed for deciding the Appeal are:

- (i) Corporate Insolvency Resolution Process (“**CIRP**”) was initiated against the Corporate Debtor (“**CD**”) - Cosmic Ferro

Alloys Ltd. on an application filed by the City Bank NA vide order dated 16.01.2018. In the CIRP of the CD, the Respondent No.1 – Damodar Valley Corporation (“**DVC**”) filed its claim towards unpaid electricity dues to the extent of Rs.64.44456 crores, prior to insolvency commencement date.

- (ii) A Resolution Plan was submitted in the CIRP of the CD by the Consortium. The electricity dues during the pendency of the CIRP was also assessed to the tune of Rs.4.87 crores. The Resolution Plan proposed entire payment to the Respondent of Rs.24.67 crores, which was to be paid in five instalments upto 31.03.2023. The Resolution Plan came to be approved by the Adjudicating Authority vide order dated 11.10.2018.
- (iii) A dispute relating to determination of tariff by DVC was pending consideration before the Hon’ble Supreme Court in Civil Appeal No.4881 of 2010, which Appeal was filed by DVC against the order of Electricity Appellate Tribunal, which dismissed the Appeal of the DVC against the order of Central Electricity Regulatory Commission (“**CERC**”). The Appeal filed by DVC came to be dismissed by the Hon’ble Supreme Court by judgment and order dated 03.12.2018. Consequent to the order, the West Bengal Electricity Regulatory Commission issued an order dated 19.03.2020 with respect to tariff from 2009 to 2013 and order dated 19.06.2020 with respect to

tariff from 2006 to 2009. On account of Tariff Orders, the tariff charged by the DVC was to reduce to some extent.

- (iv) There was delay in payment of amount as per Resolution Plan by the Appellant. The electricity was disconnected. There was certain dispute between the Appellant and the Respondent regarding providing of 132 KV power connection. The issue pertaining to grant of fresh connection and the controversy with that regard, is not the subject matter of the Appeal. Hence, need not be noted in detail.
- (v) There was delay in payment of Resolution Plan amount to the Respondent, which however subsequently was paid and there is no dispute with regard to payment of resolution amount in the present Appeal.
- (vi) After order of the Hon'ble Supreme Court, the Respondent generated a bill dated 26.07.2020 and a bill dated 01.01.2021 giving effect to tariff revision by West Bengal Electricity Regulatory Commission ("**WBERC**") consequent to the order of the Hon'ble Supreme Court dated 03.12.2018. The said bill mentions about receivables against the Appellant.
- (vii) There was certain default by the Appellant regarding payment of electricity dues, subsequent to approval of the Resolution Plan with respect to which bills, demands were issued, which, however, are also not subject matter of this Appeal.

(viii) The Appellant has also filed an application before the Adjudicating Authority being CA (IB)No.1271/KB/2019 praying for various reliefs. Subsequent to the approval of Resolution Plan on 11.10.2018, the application was disposed of by the Adjudicating Authority on 20.11.2019 holding that DVC cannot refuse to reconnect and provide continuous electricity supply to the Appellant. Appeals were filed by the DVC challenging the order dated 20.11.2019 being Company Appeal (AT) (Ins.) No.110 of 2020, where several orders were passed from time to time, the Appeal was decided by judgment of this Tribunal dated 01.10.2021 by setting aside the order of the Adjudicating Authority and directing the SRA (the Appellant herein) to make payment to DVC in accordance with the extant and relevant laws and Regulations. The Appellant filed a Civil Appeal No.6926 of 2021 challenging the order of this Tribunal dated 01.10.2021, which Appeal was dismissed by the Hon'ble Supreme Court on 26.11.2021.

(ix) which needs no consideration for the purpose of the present Appeal.

(x) The Appellant has filed an IA before the Adjudicating Authority being IA (IBC)No.708/KB/2021 praying for various reliefs. The Applicant's case in the application was that the Applicant came to know about the bills generated by Respondent, consequent to order of the Hon'ble Supreme

Court dated 03.12.2018 under which the Applicant was eligible for refund or arrears calculated in terms of the Tariff Order published by WBERC, based on the order of Hon'ble Supreme Court 03.12.2018, reference to the statement dated 26.07.2020 and 01.01.2021 was made in the application.

- (xi) The application filed by the Appellant was replied by the Respondent. In the reply filed by Respondent to the application, the Respondent took the plea that the Respondent is bound by the order dated 11.10.2018, which has provided only amount of Rs.24.67 crores against the total claim filed of Rs.64.44456 crores and CIRP amount of Rs.5.87 crores. The Respondent in the reply referred to the Tariff Order issued for the period 2009-13 and 2006-2009. The Respondent's case was that by virtue of revised Tariff Order, the claim of Respondent for the periods 2006-09 and 2009-13 stood reduced to Rs.56.67 crores approximately. The Respondent, however, came with the case that the bills and details of the refund and the arrears were generated in the system for the record of the Respondent. It was pleaded that the Appellant is not entitled for any claim of refund consequent to the revision of tariff for the period 2006-09 to 2009-13. The Respondent's claim of Rs.64.44456 crores only stood revised to Rs.56.67 crores due to tariff revision, due to which the Appellant cannot claim any refund.

(xii) The Adjudicating Authority after hearing the parties by the impugned order, has rejected the application. The Adjudicating Authority, however observed that DVC shall give connection to the Appellant as per the relevant rules of the DVC on completion of all formalities and deposit of requisite amount by the Applicant. The application was dismissed. In Paragraphs 47 and 48, the Adjudicating Authority made following observations:

“47. We have heard the Ld. Counsel for the parties at length and have seen the application, reply and other documents placed on record. We are of the view that once the Resolution Plan has been accepted and the claim of the OVC was pegged and allowed at Rs. 24.67 Crores, thereby excluding the total pre CIRP claim to the extent of Rs.64.44 Crores, the claim became final for all practical purposes. The Corporate Debtor cannot have benefit on both counts. On the one hand, the Corporate Debtor has saved itself by waiver of all pre CIRP dues and on the other hand, if there is any adjustment of accounts in the applicant office, the Corporate Debtor cannot claim the same as its own receivables, and claim the said amount from the applicant. The applicant has borne all the pre CIRP dues as its bad debts and if it has fortunately adjusted some amounts that came to it through some decision of the Hon'ble Supreme Court. It should have the benefit of setting off that amount against its bad debts.

48. There is no purpose to unjustly enrich the new investors who have entered the shoes of the Corporate Debtor by further exploiting and squeezing the DVC. We do not find any merit in the demand of the Corporate Debtor/ applicant, the relief sought by the applicant staying the demand of the

DVC beyond Rs. 24.67 Crores is thus rejected. The DVC shall however give connection to the applicant as per the relevant rules of the DVC on completion of all formalities and deposit of requisite amount by the applicant/ Corporate Debtor within one month.”

3. We have heard Shri Abhijeet Sinha, learned Senior Counsel appearing for the Appellant and Shri Jyoti Kumar Choudhary, learned Counsel appearing for the Respondent.

4. Learned Counsel for the Appellant submitted that application, which was filed by the Appellant being IA (IBC)No.708/KB/2021 is only confined to arrears to which Appellant was entitled, consequent to the Tariff Revision Order issued by WBERC for the period 2006-09 and 2009-13 and consequent to the order of the Hon'ble Supreme Court dated 03.12.2018. It is submitted that for the period 2006-09 net principal arrear, to which the Appellant was entitled was Rs.37.50 crores and net principal arrear for 2009-13 was Rs.12.48 crores with interest @ 6%. It is submitted that even if the claim of Respondent of Rs.64.44456 crores for the period is set off, still the Appellant was entitled for refund of certain amount. It is submitted that details of refund, which became available to the Appellant consequent to Tariff Revision Order were duly reflected in bill dated 26.07.2020 and 01.01.2021, which was generated on the system of Respondent. It is submitted that the Adjudicating Authority had not adverted to the said issue in right perspective and has erred in observing that the Appellant cannot be allowed to unjustly enrich the new investors. The observations made in Paragraph-48 of the impugned order

are uncalled for. It is submitted that in the facts of the present case, this Tribunal may grant the liberty to the Appellant to approach the relevant electricity dispute Resolution Authority for determination of his amount of refund, without taking into consideration the observations made in Paragraphs 47 and 48.

5. Learned Counsel appearing for the Respondent refuted the submission of learned Counsel for Appellant. It is submitted that the Appellant's claim for enforcement of Resolution Plan is in fact a veiled attempt to seek modification of the approved Resolution Plan. The Resolution Plan has already been duly implemented by the Respondent in its entirety. The Adjudicating Authority has rightly dismissed the application filed by the Appellant. It is submitted that the application filed by the Appellant was not maintainable under Section 60 sub-section (5) sub-clause (c) of the IBC. The prayers in the application were not related to Plan approval order dated 11.10.2018, rather was based on claim of refund consequent to Tariff Revision Order. It is submitted that as a matter of fact, as per the applicable Tariff Order consequent to tariff revision by WBERC, the amount of Rs.56.65 crores become payable by the Appellant. However, no amount is claimed from the Appellant. It is submitted that the bills generated in the system were for internal purposes and were meant to finalise the bad and doubtful debts. The Respondent is well aware that Resolution Plan approved on 11.10.2018 is binding and the Respondent cannot claim any amount beyond Rs.24.67 crores, which was allowed in the Resolution Plan. The application filed by

the Appellant was wholly misconceived and has rightly been rejected by the Adjudicating Authority.

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

7. Before we proceed to consider the rival submissions of the parties, it is relevant to notice certain prayers and pleadings in IA (IBC)No.708/KB/2021 and the reply, which was filed by the Respondent to the said application.

8. In the application, the Appellant has extracted the provisions of Resolution Plan, where Rs.24.87 crores was proposed to Respondent towards its claim of Rs.64.44456 crores. The CIRP cost till date and NCLT order for Rs.4.87 crores were also noted as dues towards DVC. The total amount payable was Rs.24.87 crores towards pre-CIRP and during CIRP dues. The Plan also waived all the liabilities claimed by Operational Creditor and other creditors as on the date of approval. In the application, the Applicant has given the reasons for not initially been able to pay the second instalment under the Plan. Certain communication subsequent to the Plan approval order has also been referred to and filing of application IA 1271 of 2019 was also mentioned, which was disposed of on 20.11.2019. In Paragraph 21, the Applicant has referred to the claim of refund, consequent to Tariff Order of WBERC. Paragraph-21 of the application is as follows:

“21) On or about September 2020, the applicant came to know about a statement dated 26.7.2020 uploaded on the website of the respondent no.1 as per which, applicant was eligible for a refund of arrear amount of Rs.12,48,59,113/- pertaining to the period April 2009 to March' 2013 calculated in terms of the Tariff Order published by West Bengal Electricity Regulatory Commission (WBERC) based on the Order passed by Supreme Court dated 03.12.2018 in CA-4881/2010. In addition to the above amount, applicant was also eligible for interest on the above amount @ 6% per annum as per Supreme Court Order and Tariff order published by WBERC. A copy of the said statement issued by the Respondent is annexed hereto and marked with the letter "K". The above statement dated 26.7.2020 clearly indicates that the respondents were fully aware about the eligibility of applicant for refund of arrears (pertaining to the period 2009 2013) as on the date of disconnection of electricity at the Barjora Unit.”

9. The Applicant claimed to have submitted various representations. The Applicant claimed amount as payable and the amount needs to be set off. In Paragraph 25 of the application, following was pleaded:

“25. The Applicant states that after taking into consideration of the payment of Rs.4.93 crores which was made to the Respondent no.1 in the beginning out of the total settled amount being the principal sum of Rs.24.67 crores, the Applicant is duty bound to pay the balance sum of Rs.19.74 crores to the Respondent no.1. However, inasmuch as in view of the recent order passed by the Hon'ble Supreme Court and the subsequent clarificatory Tariff Order issued by the WBERC, it is now evident that the Respondent no.1 is liable to refund the admitted amount of Rs.12.48 crores for the period 2009-2013 and Rs. 37.50 crores for the period 2006 2009 along with interest @ 6% per annum, which altogether adds upto Rs.89.75 crores as on the date of filing of this application (in view of the order passed by the Hon'ble Supreme Court based on which WBERC had revised and published a fresh Tariff Order). The

said sum is payable to the Applicant and therefore the Respondents should be directed to set off the amount which the Respondents are liable to refund to the Applicant before seeking to realize the balance principal sum of Rs.19.74 crores which has remained due and payable under the Resolution Plan to the Respondent no.1 which however the Applicant was unable to pay in view of the pandemic Covid-19 which has engulfed the entire Country since the last week of March, 2020 till date.”

10. The Applicant pleaded that he is entitled for receivable of Rs.89.75 crores, consequent to tariff revision. In the application, following reliefs were made by the Applicant:

- a) The Respondents either by themselves and/or by their men, agents or assigns be directed to act in terms of the Resolution Plan as approved and confirmed by the Hon'ble Adjudicating Authority by its order dated October 11, 2018 passed in CP (IB) No.596/KB/2017;
- b) The Respondents be directed to not to demand any amount beyond Rs.24.67 Crores less whatever has already been paid for the period before the date of approval of Resolution Plan i.e. before 11.10.2018;
- c) The Respondents be directed to give effect to the Resolution Plan in its books of accounts and in its systems and thereafter generate a fresh bill after adjusting the amount paid by the Applicant and also the Amount receivable by the Applicant in view of the Hon'ble Supreme Court's order dated 3.12.2018 in CA-4881/2010 read with WBERC Tariff order dated 19th 2020 and 19th June 2020 and send such revised bill to the Applicant;
- d) The Respondents be directed to give reconnection to the Applicant within such time as be directed by this Ld. Tribunal and also to provide for 132 KVA power to the Applicant and increase of power demand from 10 MVA to 45 MVA, both with a waiver of

security deposit for 5 years from the date of approval of the Resolution Plan i.e. from 11.10.2018;

e) Injunction restraining the Respondents and/or their men, agents and/or assigns from taking any steps or further steps which will be inconsistent and/or contrary to the Resolution Plan as approved by this Hon'ble Tribunal on October 11, 2018 and restraining the Respondents from raising any demand upon the Applicant for furnishing security deposit for a period of five years from the date of approval of the Resolution Plan;

f) Immediate reconnection of electricity to the Barjora Factory at Bankura;

g) Ad-interim orders in terms of prayers above;

h) Cost of and/or incidental to this application be paid by the Respondents;

l) Such further order or orders and/or direction or directions be passed as to this Hon'ble Tribunal may deem fit and proper.”

11. A reply to the application was filed by the Respondent. The reply pleaded with respect to payments made by the Appellant consequent to the Plan approval order, default was committed by the Appellant in making the payment. There were dues against the Appellant upto August 2020 of Rs.15,94,21,974/-. It was pleaded that controversy has arisen as DVC has issued a revised bill, which bill was issued for own record of the DVC. It was pleaded that claim of DVC about the aforesaid revised to Rs.56.67 crores approximately, whereas the said dues are not liable to be paid by the Appellant to DVC in terms of the said bill. Explaining the aforesaid in Paragraph 5 (l), (m) and (n) of the reply, following was pleaded:

“5(l) The controversy has arisen as DVC has issued a revised bill pursuant to the orders of the West Bengal Electricity Regulatory Commission dated 19th March 2020 and 19th June 2020 respectively. By its order dated 19th March 2020, the West Bengal Electricity Regulatory Commission has issued the Tariff Order for the period 2009 to 2013 and by the subsequent order dated 19th June 2020, the Commission has issued a Tariff Order for 2006 to 2009. Accordingly, DVC had issued a revised bill for the purpose of its record, whereby the claim of DVC for the aforesaid tariff periods, namely 2006 to 2009 and 2009 to 2013 stood reduced to Rs.56.67 crore approximately. According to the applicant, though they are not liable to pay the dues of DVC in terms of the said bill, they are seeking adjustment of the refund.

(m) A bare perusal of the bill would show that there was short payment by the Corporate Debtor up to April 2010 to the extent of Rs.15.88 crore and there was further shortfall in payment post May 2010 to the extent of Rs.78.78 crore which includes Dues of Rs. 15.94 Cr. for the period from consumption month of February 2020 to August 2020. During the period upto April 2010, DVC used to fix its own tariff and the consumer defaulted in payment of the power supply bills raised as per Provisional tariff order issued by Hon'ble Central Electricity Regulatory Commission on 23.06.2011. Hon'ble Calcutta High Court declared that (clause 4) of Regulation 5 of 2009 Tariff Regulation related to determination of provisional tariff order is ultra vires on 07.12.2012. The appellant paid energy bills in terms of tariff order dated 06.08.2009 in place of provisional tariff order dated 23.06.2011 for the period from May 10 to August 13. Hon'ble Supreme Court set aside the order dated 07.12.2012 of Hon'ble Calcutta High Court vide order dated 18.12.2017. DVC came under the regime of the West Bengal Electricity Regulatory Commission with effect from April 2006. By reason of pendency of determination of tariff by the West Bengal Electricity Regulatory Commission, for the year 2006-2009 and 2009-2013 the provisional tariff/ tariff of DVC was being charged. The West Bengal Electricity Regulatory Commission has now fixed

the tariff and in the process, there has been some deduction in the net rate for the periods 2006 to 2009 and 2009 to 2013. Since the Corporate Debtor did not make full payment for the aforesaid periods and in fact there was short payment, on adjustment, net amount of Rs.56.67 crore is receivable by DVC.

(n) However, by reason of the settled law, with the approval of the resolution plan under Section 31 of IBC, 2016, the claim as provided in the resolution plan stood frozen and became binding on the Corporate Debtor, the applicant as well as DVC. On the date of approval of the resolution plan by this Hon'ble Tribunal, all such claims which are not part of the resolution plan stood extinguished. As such, it is submitted that DVC is not insisting on any payment apart from the payment allowed under the resolution plan and the consumption bills outstanding post resolution plan. Similarly the applicant is not entitled to initiate or continue any proceedings in respect of a claim which is not part of the resolution plan.

(o) In any event, according to the applicant, they are trying to enforce their selective right while trying to contend that the claim insofar as DVC is concerned is frozen, but they are trying to enforce the right of adjustment which arise out of the same transaction. It is submitted with respect that the law is well settled. Once the resolution plan is approved, the respective claims and counter claims stand frozen. Any claim beyond the resolution plan stands extinguished and Section 31(1) of the IBC, 2016 does not permit initiation or continuance of proceedings in respect of a claim which is not part of the resolution plan.”

12. It was pleaded that Applicant is not entitled to initiate any proceedings, which is not part of the Resolution Plan. In Paragraph 8 of the reply, following was pleaded:

“8. With reference to paragraphs 12 to 19 of the said application, save what are matters of record and save what will appear therefrom, allegations to the contrary are denied and disputed. It is

denied that the demand of DVC can be said to be purported or exorbitant or that the same is not payable or that there is any mistake in the calculation of interest in the bill generated on 1 January, 2021 or that the same requires any rectification. DVC has issued a revised bill dated 1st January, 2021 pursuant to the Tariff orders of the West Bengal Electricity Regulatory Commission dated 19th March 2020 for the period 2009 to 2013 and 19th June 2020 for 2006 to 2009 respectively. Accordingly, DVC had issued a revised bill for the purpose of its record, whereby the claim of DVC for the aforesaid tariff periods, namely 2006 to 2009 and 2009 to 2013 stood reduced to Rs.56.67 crore approximately. According to the applicant, though they are not liable to pay the dues of DVC in terms of the said bill, they are seeking adjustment of the refund. However, by reason of the approval of the resolution plan under Section 31 of IBC, 2016, the claim as provided in the resolution plan stood frozen and became binding on the Corporate Debtor, the applicant as well as DVC. On the date of approval of the resolution plan by this Hon'ble Tribunal, all such claims which are not part of the resolution plan stood extinguished. As such, it is submitted that the applicant is not entitled to initiate or continue any proceedings in respect of the claim which is not part of the resolution plan. The applicant, is trying to enforce their selective right while trying to contend that the claim insofar as DVC is concerned is frozen, but they are trying to enforce the right of refund. It is submitted with respect that the law is well settled. Once the resolution plan is approved, the respective claims and counter claims stand frozen. Any claim beyond the resolution plan stands extinguished and Section 31(1) of the IBC, 2016 does not permit initiation or continuance of proceedings in respect of the claim which is not part of the resolution plan.

13. The Adjudicating Authority heard the parties on the above application and has rejected the application. The submissions of the parties have been noticed in the impugned order in detail. While noticing the submission of the Respondent, it was noted by the Adjudicating Authority that adjustment of amounts by DVC was meant to reduce the

balance amount of bad debt. In Paragraphs 40 and 41 of the impugned order, the Adjudicating Authority has noticed following:

“40, It is submitted that DVC's claim now stands at of 56,67 crores from the Applicant which under the resolution plan stands reduced to Rs,24,67 crores. Therefore, DVC is entitled to claim the difference as bad and doubtful debt for accounting purpose before the Commission under 2011 Regulation.

41. It is stated that as already stated above, the bill dated 1 " January, 2021 was not served and/or raised upon the Applicant and is meant for adjustment of internal accounts of DVC in view of the approved resolution plan and is meant to finalize the bad and doubtful debt only as such the question of demanding or claiming the same and/or consequent violation of the approved resolution plan does not and cannot arise.”

14. The submission of counsel for the Appellant of two bills dated 26.07.2020 and 01.01.2021, which are on the record of the paper book of the Appeal at Pages 180 to 322, were duly generated by Respondent for adjustment of its internal account and were meant to finalise the bad and doubtful debt, which was specific submission of the Respondent noticed in Paragraph-41 of the order. In Paragraph 42 of the impugned order, the Adjudicating Authority also noticed the Regulation 5.10 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011, where bad dues have been dealt with. Paragraph 42 of the impugned order is as follows:

“42. It is submitted that in exercise of raising the bill dated 01.01.2021 became necessary for adjustment of bad and doubtful debt relating to the corporate debtor. The resolution plan allowed Rs,24.67 crores only, leaving out the balance claim of DVC which had to be written off as bad debt. The adjustment of accounts was necessary to arrive at the actual figure of bad debt. Under West

Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011, Chapter 5 lays down the General principles for computing cost and return. Regulation 5.10 is to the extent as follows:-

"5. 10. 1 - The Commission may allow such amount of bad debts as actually had been written off in the latest available audited accounts of the generating companies/ licences subject to a ceiling of 05% of the annual gross sale value of power at the end of the current year. Provided that in case of restructuring or merger of entities, the Commission may relax the ceiling for once only as deemed fit and proper."

15. Learned Counsel for the Appellant referring to the bills dated 26.07.2020 and 01.01.2021 submitted that the aforesaid bills relate to the period for April 2009 to March 2013 and period 2006 to 2009 respectively. Learned Counsel further submits that under the aforesaid bills consequent to revision of tariff, there were receivables in favour of the consumer. The Appellant having taken over the consumer, the Appellant is entitled for refund of the amount, which became payable to the consumer consequent to reduction of tariff as above. To appreciate the submission of the Appellant, it is relevant to look into one of the bills dated 01.01.2021 relied by the Appellant. The copy of the bill is at Page 322 of the paper book. Letter dated 01.01.2021, issued by DVC is as follows:

"DAMODAR VALLEY CORPORATION

दामोदर घाटी निगम

Commercial Department.DVC.Towers. VIP Road. Kolkata-700054

Letter No: Com/Arrear/440176

Date: 01/01/2021

To,
Consumer ID :-440176
Cosmic Ferro AlloysPvt Ltd Vill
& P.O.-Ghutgoria, P.S.-Barjora,
Dist-Bankura, West Bengal 722168.

Sub: Final claim after adjustment of Old Dues, Delayed Payment Surcharge (DPS), Excess Payment(if any), Shortfall in SD(if any) and Carrying Cost since April 06.

Dear Sir/Madam,

This is to inform you that Hon'ble West Bengal Electricity Regulatory Commission has published tariff order for FY 2006 to 2009 on 19th June 2020. DVC has prepared the bill for the period of FY 2006 to 2009. The net payable amount after adjustment of Old Dues, Delayed Payment Surcharge (DPS), Excess Payment(if any), Shortfall in SD(if any) and Carrying Cost comes to Rs.566684128.

The detail break up of adjustment of Old Dues, Delayed Payment Surcharge (DPS), Excess Payment(if any), Shortfall in SD(if any) and Carrying Cost is given in annexure pages. Errors, if any, or any lawful change, if required, will be done and the same will be adjusted in subsequent bill(s).

Regards,

Sd/-
Amitra
Deputy Chief Engineer (Comml)

Copy to Engineer In Charge, BarJora Sub/Stn. GOMD-VI,DVC.”

16. Along with the letter, a summary of actual payable amount was annexed. The amount of Rs.27,50,06,287/-, which according to the Appellant is net principal arrear for 2006-09 consequent to reduction in tariff. In the same computation under Item-1, net unpaid bill amount since May 2010 as details in Annexure V(A) is mentioned as Rs.78,77,71,366/-. When there are arrears of electricity dues, any reduction in tariff at best shall reduce the arrears payable by consumer. When a sum was in arrears, the payment of electricity bills, which obviously included the tariff as was charged at the relevant time, any reduction in the tariff shall be adjusted from the arrears and the submission of the Appellant that the Appellant was entitled for refund of the amount consequent to tariff reduction has no legs to stand. The

aforesaid bill dated 01.01.2021 also clearly mentions that net outstanding is Rs. 56,66,84,128/-. The DVC, however, in its reply to the application before the Adjudicating Authority has clearly mentioned that DVC is not asking the Appellant to pay any of the arrears pertaining to the period prior to CIRP and the bill was only for the record for finding out the bad debt. We, thus, do not find any substance in the submission of the Appellant that the Appellant is entitled for refund of any amount towards revision of tariff for the years 2006-09 and 2009-13.

17. The DVC has come with a categorical case in its reply to the application as well as in submission before the Adjudicating Authority that DVC is bound by the Plan approval order dated 11.10.2018 and cannot demand any amount from the Appellant in excess of Rs.24.67 crores granted in the Plan. Any amount consequent to tariff revision and subsequent order of the Hon'ble Supreme Court dated 03.12.2018 was adjusted only for accounting purpose by the DVC and the claim during the aforesaid period was reduced to Rs.56.57 crores only, which is not being in any manner claimed from the Appellant. The Appellant submission is that since the tariff was revised due to which the Appellant being entitled to refund should be allowed, dehors any claim of the DVC with regard to pre-CIRP period. When claim pertaining to pre-CIRP period stood settled and liabilities stood waived any revision of tariff, which was to take place with respect to tariff from 2006-09 to 2009-13 was to be adjusted and revised in the claim of the Respondent against the Appellant and according to the accounting as done by the DVC, claim of the

Respondent against the CD was reduced to Rs.56.57 crores , after giving effect to the tariff revision, which amount is not being in any manner claimed by the DVC against the Appellant. It is not the case of the Appellant that any amount prior to Plan approval date is being fastened on the Appellant or any amount pertaining to pre-CIRP period apart from amount of Rs.24.67 crores is demanded from the Appellant. It is well settled that approved Plan is binding on all Operational Creditors, including the Respondent as well as the CD and the Successful Resolution Applicant. When we look into the prayers made by the Appellant in his application as noted above. Coming to prayers (a) and (b), there is no demand being made against the approval order dated 11.10.2018 by the Respondent. Coming to prayer (c), the Respondent has generated bills giving effect to the WBERC Tariff Order dated 19.03.2020 and 19.06.2020, but on the said basis, no demand is being made against the Appellant for any period prior to CIRP. As regards prayer (d) regarding reconnection, both the learned Counsel for the parties submitted that no issues need to be decided with regard to reconnection, which has already been directed. We, thus, are of the view that substantially, no relief as claimed by the Appellant in the application could have been allowed by the Adjudicating Authority. With regard to reconnection, the Adjudicating Authority in Paragraph 48 has directed that *“the DVC shall however give connection to the Applicant as per the relevant rules of the DVC on completion of all formalities and deposit of requisite amount by the Applicant/ Corporate Debtor within one month”*. Thus, prayer (d) stood virtually allowed.

18. Learned Counsel for the Appellant has relied on judgment of the Hon'ble Supreme Court in **Civil Appeal No.2609 of 2013 – Sharada Sanghi & Ors. vs. Asha Agarwal & Ors.**, where reliance has been placed in Paragraphs 44 and 45 of the judgment, which are as follows:

“44. This Court in **Satluj Jal Vidyut Nigam v. Raj Kumar Rajinder Singh** considered a somewhat similar situation in the light of principles of estoppel, acquiescence and waiver. It was observed that a party cannot be permitted to take inconsistent stands in successive proceedings after having abandoned an earlier plea and allowing it to attain finality.

45. While a dismissal for default may not constitute *res judicata* in the strict sense under Section 11, CPC, the conduct of the appellants in abandoning the earlier suits, after having raised a positive case therein, attracts the broader principles akin to *nemo debet bis vexari, si constet curiae quod sit pro una et eadem causa*. A litigant who set the ball rolling for decision on an issue later elects not to pursue it cannot be permitted to revive the same dispute at a later stage, particularly in collateral or execution proceedings, and that too by seeking to obtain an order behind the back of the contestants.”

19. What was held by the Hon'ble Supreme Court in the above case that it is abuse of process of the Court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. In the present case, we fail to see how the Appellant can place reliance on the said judgment. Hence, the present is not a case where issues are being sought to be reargued.

20. In view of the foregoing discussions, we are of the view that Adjudicating Authority did not commit any error in dismissing the

application. The Appellant was not entitled for grant of any reliefs as claimed in the application. We, thus, do not find any merit in this Appeal. The Appeal is dismissed. There shall be no order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

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

NEW DELHI

28th April, 2026

Ashwani