

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1401 of 2019

IN THE MATTER OF:

Maharashtra State Electricity ...Appellant
Transmission Company Limited (MSETCL)
Bearing CIN – U40109MH2005SGC153646
3rd Floor, A wing, “Prakashganga”
Plot No. C-19, E Block, BKC, Bandra East
Mumbai – 400051, Maharashtra

Versus

- 1. Sri City Private Limited**
85, Kutchery Road, Mylapore
Chennai – 600004, Tamilnadu
- 2. KCR Enterprises LLP**
G-101, Building No.3,
Ilabs Centre No.18
Software Units Layout, Madhapur
Hyderabad – 500081, Telangana
- 3. Sai Wardha Power Generation Ltd.**
Through Resolution Professional
Mr. V. Venkatachalam
CIN – U40109TG2005PLC047917
R/o 8-2-293/82/A/431/A, Road No.2
Jubilee Hills, Hyderabad, 500033
Telangana
- 4. Mr. V. Venkatachalam**
Resolution Professional of
Sai Wardha Power Generation Ltd.
CIN – U40109TG2005PLC047917
R/o 8-2-293/82/A/431/A, Road No.2
Jubilee Hills, Hyderabad, 500033
Telangana

...Respondents

Present:

For Appellant : Mr. Sudhanshu S. Choudhari, Mr. Yogesh S. Kolte
and Mr. Mahesh P. Swnde, Advocates
For Respondent : Mr. S. Ranganathan and Mr. Rohit Rajershi,
Advocates for R-1 & R-2
Mr. Manish Jha and Ms. Vishrutyi Sahni, Advocates
for R-3 & R-4

ORDER

03.02.2020 Heard Learned Counsel Mr. Yogesh S. Kolte for the Appellant – Maharashtra State Electricity Transmission Company Limited. This Appeal has been filed against Impugned Order dated 17th October, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad by which order the Adjudicating Authority accepted the 'Resolution Plan' submitted by the present Respondent No.1 & 2, who submitted the plan as a Consortium.

2. It is argued and it is claimed in the Appeal that the Appellant had entered into a Bulk Power Transmission Agreement (in short 'BPTA') with the Respondent Corporate Debtor – M/s Sai Wardha Power Generation Limited on 28th February 2012 for allocation of 135.15 MW of Transmission Capacity Rights through the transmission network of the Appellant for a period of 25 years as per Maharashtra State Electricity Regulatory Commission ('MERC') Transmission Open Access Regulation, 2005. It is stated that the Corporate Debtor had defaulted in making payment of dues of the Appellant. When the Corporate Insolvency Resolution Process (in short 'CIRP') proceeding was initiated against the Corporate Debtor at the instance of Indian Opportunities III Pte Limited the Appellant had filed claim with the Resolution Professional.

3. It is not disputed by the Learned Counsel for the Appellant and Learned Counsel for Respondents No.1 to 4 that the claim made by the Appellant was considered and provisions have been made in the Resolution Plan regarding the admitted claim. The dispute which is being raised in the present Appeal by the Appellant is that in the Resolution Plan, there was arbitrary provision in

Para 3(s) – (page 67 of Paper Book), amounting to ex-parte termination of the long term BPTA between the Appellant and Corporate Debtor. According to the Learned Counsel for the Appellant, in view of Section 81 of the Electricity Act, 2003 and Section 14 of the Electricity Regulatory Commission Act, 1998, the Maharashtra Electricity Regulatory Commission has been established for the purposes of Electricity Act, 2003. Learned Counsel claims that the Maharashtra Electricity Regulatory Commission is the only and appropriate forum to adjudicate matters pertaining Energy Agreements including termination of the BPTA. The argument is that as per Section 30(2)(e) of I.B.C. it is necessary that Adjudicating Authority should ensure that the Resolution Plan does not contravene any of the provisions of the law for time being in force. It is stated that the Agreement could have been terminated only by the parties between themselves or by moving Electricity Regulator.

4. Against this, the Learned Counsel for the Respondents submits that in view of the Section 238 of Insolvency and Bankruptcy Code, 2016 (in short 'IBC') provisions of the Code override other laws. It is stated that considering the provisions of IBC and judgment of the Hon'ble Supreme Court in the matter of **“Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta”** C.A. No.8766-67 of 2019 dated 15th November, 2019 and the observations in para 67 of the judgment of Hon'ble Supreme Court, the Successful Resolution Applicant is entitled to take over with a clean state and could not be forced to continue with such long term arrangement. It is slate the 'CoC' in its commercial wisdom accepted the plan so as not to saddle the Respondents No.1 & 2 with a liability of such long term Agreement.

5. We find ourselves in agreement with submission made by the Learned Counsel for the Respondents. Keeping in view the judgment in the matter of “Essar Steel India Limited” (supra) and provisions of Section 238 of IBC, we find that the Resolution Plan, which has been accepted cannot be found fault where COC in its wisdom accepted the Plan which terminated the long time agreement. The plan made provision that the Bulk Power Transmission Agreement with Maharashtra State Electricity Transmission Company Limited – Corporate Debtor shall be terminated without any obligation, liabilities or penalties, to or on the Corporate Debtor or the Resolution Applicant. We do not find any fault on this count. There is no substance in the Appeal.

6. The Appeal is dismissed. No costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Justice Anant Bijay Singh]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

pks/md