

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

MA 06/2018 in CP 1283/I&BC/2017

Under section 19 of the IBC, 2016

In the matter of

Mr. Sundaresh Bhat
Resolution Professional

... Applicant

And

In the matter of
BSR Diagnostics Ltd.

... Corporate Debtor/Company

v/s.

Chattisgarh State Power Distribution
Company Ltd. (CSPDCL)

... Respondent 1

Central Electricity Supply Utility of
Odisha (CESUO) ... Respondent 2

The Southern Electricity Supply
Company of Odisha Ltd.
(SESCOL)

... Respondent 3

Order delivered on: 24.01.2018

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner: Mr. Prakash Shinde Adv.,
a/w Ms. Khushboo Shah Rajani
i/b MDP & Partners

For the Respondent: None present.

Per V. Nallasenapathy, Member (Technical)

ORDER

1. This is an application filed by the Resolution Professional seeking the following reliefs against the Respondents:

(a) To direct Respondent Nos.1 to 3 to refrain from disconnecting the electricity supply of the Corporate Debtor till the completion of Corporate Insolvency Resolution Process subject to the proviso under sub-section (4) of Section 14 of the Insolvency and Bankruptcy Code, 2016.

(b) To pass an ex-parte ad-interim order directing Respondent Nos. 1 to 3 to continue the electricity supply to the Applicant till the completion of corporate insolvency resolution process subject to the proviso under Section 14 of the Insolvency and Bankruptcy Code, 2016.

(c) To award costs of this application.

(d) To pass any other order(s) in favour of the Applicant as the Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the case.

2. The Corporate Debtor was put on insolvency resolution process on the order of this Adjudicating Authority dated 29.9.2017 under section 7 of the Code on a Petition filed by Axis Bank Ltd. The Respondents are Electricity Distribution Company providing electricity to the Corporate Debtor at their respective units. The Corporate Debtor owes a sum of ₹37,18,173/- to the Respondents as on November, 2017, due to the non-payment of the same, the Respondents issued Notice of disconnection of electricity to the Corporate Debtor. Subsequently, the Respondent 1 disconnected the electricity supply on 26.12.2017 availed by one of the Units of the Corporate Debtor located at Kawardha.

3. The Applicant on the assumption that moratorium imposed by this Tribunal under section 14 of the I&B Code, read with Regulation 32 of the Insolvency and Bankruptcy Board of India (Insolvency resolution process for Corporate person) Resolution 2016 is applicable in respect of electricity supplied by the Respondent, filed this Application with the above prayers.

4. The Counsel for the Applicants submits that electricity is an essential service under Regulation 32 of the Insolvency and Bankruptcy Board of India (Insolvency resolution process for Corporate person) Resolution 2016, and the supply of essential goods or services to the Corporate Debtor shall not be terminated

or interrupted during the moratorium period. Therefore, if at all supply is disconnected it will be a violation of admission order dated 29.9.2017.

5. Regulation 32 of the Insolvency and Bankruptcy Board of India (Insolvency resolution process for Corporate person) Resolution 2016, provides as below :

a) *"The essential goods and services referred to in section 14(2) shall mean -*

b) *Electricity;*

c) *Water;*

d) *Telecommunication services; and*

e) *Information technology services,*

to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

Illustration - Water supplied to a corporate debtor will be essential supplies for drinking and sanitation purposes, and not for generation of hydro-electricity."

6. The Applicant further submits that since where the electricity falls under the definition of "Essential Supplies" as per the above said Regulation, the supply of essential services to the Corporate Debtor shall not be terminated or suspended or interrupted during the moratorium period. It is further submitted that as per Section 238 of the I&B Code a provision of Insolvency & Bankruptcy Code can override other laws and hence issue of notice under section 56 of Electricity Act, 2003 shall have no effect on provisions of Insolvency & Bankruptcy Code which will have over-riding effect on other laws.

7. By reading the Regulation 32 of IBBI (CIRP) Regulations 2016, it is clear that electricity, water, Telecommunication services and Information Technology Services are to be considered as essential as long as the services are not a requirement to the output produced or supplied by the Corporate Debtor. Further, an illustration has also been given saying that water is to be

considered as essential as long as it is used for drinking and sanitation purpose but not for generation of hydroelectricity.

8. In the same parlance, if electricity is used for lighting and/other domestic purpose it can be termed as "essential service". However, in this case, Corporate Debtor consumed electricity to the extent of ₹37,18,173/- which has to be termed as a direct input to the output produced by the Corporate Debtor, which is engaged in medical diagnostic services. It is not the case of the Applicant that electricity is used only for lighting purpose by the Corporate Debtor. In this circumstance at no stretch of imagination this electricity supplied by the Respondents can be considered as an essential service in terms of section 14(2) of the Code read with Regulation 32 of the Insolvency and Bankruptcy Board of India (Insolvency resolution process for Corporate person) Resolution 2016.

9. In view of the above discussion, this Application is dismissed without cost.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B. S.V. PRAKASH KUMAR
Member (Judicial)