NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 371 & 372 of 2021

IN THE MATTER OF:

Executive Engineer
Uttar Gujrat VIJ Company Ltd.,
Having its registered office at:
Visnagar Road, Mehsana-384001

And Having its Divisional Office at:
Executive Engineer,
Divisional Office – Talod,
Uttar Gujarat Vij Co. Ltd.
Talod, Ta.: Talod, Dist. Sabarkanth - 383215 **...Appellant.**

Versus

Mr. Devang P Samapat
RP of M/s. Kanoovi Foods Pvt. Ltd.
Having address at:
#615, Shivai Plaza, Plot 79/A,
Marol Coop. Industrial Estate,
Off Andheri Kurla Road,
Marol, Andheri (East), Mumbai-40059 **...Respondent.**

Present:

For Appellant: Mr. Anal S. Shah, Advocate.
For Respondent: Mr. Devang P Sampat (In person)

ORDER
(Virtual Mode)

27.05.2021 Heard Mr. Anal S. Shah, Advocate for the Appellant and the Liquidator-Mr. Devang P Sampat. Mr. Devang P Sampat has been arrayed as Resolution Professional of Kanoovi Foods Pvt. Ltd. It is stated that now Liquidation Orders have been passed and the Corporate Debtor-M/s. Kanoovi Foods Pvt. Ltd. is in Liquidation.

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2. This Appeal has been filed by the Appellant-Uttar Gujarat Vij Company Ltd. being aggrieved by two orders passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Court 1). The Adjudicating Authority was moved by the Appellant by way of I.A. No. 443 of 2020 in CP(IB) 377/2018 claiming recovery of electricity charges during CIRP Period. The Adjudicating Authority passed following orders on 21st October, 2020. The First Impugned Order reads as under:

> *"I.A. 443 OF 2020, Learned Counsel Ms. Devanshi Pandya appeared for the Applicant.*
> *Learned Counsel Mr. Raju Kothari appeared for the Respondent.*
> *This Application is filed for recovery of electricity charges during CIRP. It is CIRP Cost which shall be considered at time of considering the resolution plan, if any or at the time of process of liquidation of the Corporate Debtor. At this stage, this application is not maintainable. Hence, IA 443 of 2020 stands disposed-off."*

3. The Appellant filed another I.A. No. 819 of 2020 in same CP(IB) 377 of 2018 and the Adjudicating Authority passed the following order on 2nd December, 2020 (Second Impugned Order) which reads as under:

> *"Learned Counsel Mr. Anip Gandhi appeared Applicant in IA 818 of 2020.*
> *Learned Counsel Ms. Anal Shah appeared for Uttar Gujarat Vij Co. Ltd.*
> *I.A. 818 of 2020 is filed under Section 33 & 34 of IBC. Heard Learned Counsel for the Applicant.*
> *IA 819 of 2020 is filed for review of our order. This authority does not have jurisdiction to review its own order under Rule 11 of NCLT Rules. Applicant is at liberty to file appeal if they are aggrieved by such order. Hence, IA 819 OF 2020 stands disposed-off.*
> *Matter to appear for further consideration on 11.01.2021."*

4. Aggrieved by the above two Orders, the present Appeal has been filed.

5. The Learned Counsel for the Appellant submits that the Appellant was entitled to recover electricity charges being incurred by the Corporate Debtor

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on month to month basis after the CIRP was initiated against the Corporate Debtor. The same should have been paid but were not paid.

6. The Learned Counsel submits that it is erroneous on the part of the Adjudicating Authority to refer in the Order dated 21st October, 2020 that Application claiming recovery of electricity charges during CIRP is not maintainable.

7. The Learned Counsel submits that as per sub-section 2A of Section 14, the Appellant was entitled to recover the electricity charges which have been held to be essential services.

8. On being asked, the Learned Counsel for the Appellant states that considering the electric consumptions which have taken place during CIRP, it appears that the Resolution Professional who was managing the Corporate Debtor was using the electricity for running of the office and other expenses. The Learned Counsel for the Appellant is not in a position to say that the consumption was for manufacturing purposes. The Corporate Debtor is manufacturer of Biscuits it is stated. The Liquidator who is present in Virtual Mode submits that he was also the Resolution Professional and consumption of electricity which has been done was only with regard to the running of office during the CIRP period and was for the security and essential purposes only and that it was not for manufacturing purposes.

9. It would be appropriate to reproduce Section 14 of IBC which reads as under:

> ***"Section 14. Moratorium***
>
> *(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall*

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by order declare moratorium for prohibiting all of the following, namely: -

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate

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debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified;]

[(3) The provisions of sub-section (1) shall not apply to-

[(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.].

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

(Emphasis Supplied)

10. Sub-Section 2 is to be read with Regulation 32. It would be appropriate to refer to Regulations 31 and 32 as appearing in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) which read *as under:*

"31. Insolvency Resolution Process Costs

"Insolvency resolution process costs" under section 5(13(e) shall mean-

(a) Amounts due to suppliers of essential goods and services under Reulation32;

(aa) Fee payable to authorized representative under [sub-regulation (8)] of regulation 16A;

(ab) out of pocket expenses of authorised representative for discharge of his functions under [Section 25A];

(b) Amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);

(c) Expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;

(d) Expenses incurred on or by the Resolution Professional fixed under Regulation 34; and

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(e) Other costs directly relating to the corporate insolvency resolution process and approved by the committee.

32. Essential supplies

The essential goods and services referred to in Section 14(2) shall mean-

1. *Electricity;*
2. *Water;*
3. *Telecommunication services; and*
4. *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."

(Emphasis Supplied)

11. Illustration of Regulation 32 makes the distinction clear. If the electricity consumption was for manufacturing and output of the Biscuits which is the normal operation of the Corporate Debtor, in that case dues arising from such supply of electricity during moratorium would have to be paid during moratorium. Sub-section 2A of Section 14 read with Regulations referred above makes it clear that if the supply is for managing the operations of the Corporate Debtor the supply cannot be interrupted during moratorium except where Corporate Debtor has not paid dues arising from such supply during the moratorium period. In present matter the consumption is stated to have been for running of office and security of Corporate Debtor. In that case, the same will be part of the CIRP Costs which can be recovered when the Resolution Plan is approved or would form part of Section 53 if the Liquidation has been initiated.

12. As such, for these reasons, in the facts of the matter, we are unable to disagree with the Adjudicating Authority when in its order dated

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21st October, 2020 it was observed that the electricity charges during CIRP would form part of CIRP Costs.

13. For these reasons, we do not interfere in Impugned Orders as we do not find any substance in the Appeal. We decline to admit the Appeal. The Appeal is disposed accordingly.

[Justice A.I.S. Cheema]
The Officiating Chairperson

[Mr. V.P. Singh]
Member (Technical)

Basant B./gc.

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