

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2023
(arising out of Diary No. 9229 of 2023)

SOUTHERN POWER DISTRIBUTION COMPANY
OF ANDHRA PRADESH LIMITED

.....

APPELLANT

VERSUS

GAVI SIDDESWARA STEELS (INDIA) PVT.
LTD. AND ANOTHER

.....

RESPONDENT

O R D E R

Delay condoned.

In our opinion, the legal issue is covered by the judgment of this Court in *"Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Limited and Others"*¹. The appellant - Southern Power Distribution Company Of Andhra Pradesh Limited cannot insist on payment of arrears, which have to be paid in terms of the waterfall mechanism, for grant of an electricity connection. However, the successful resolution applicant will have to comply with the other requirements for grant of electricity connection. The clean slate principle would stand negated if the successful resolution applicant is asked to pay the arrears payable for the corporate debtor for the grant of an electricity connection in her/his name.

Reliance placed by the appellant - Southern Power Distribution Company of Andhra Pradesh Limited on the judgment of this Court in *"K.C. Ninan vs. Kerala State Electricity Board and Others"*² is inappropriate, as the said judgment does not deal with

¹ 2023 SCC Online SC 842.

² 2023 SCC Online SC 663.

the provisions of the Insolvency and Bankruptcy Code, 2016³. In terms of Section 238 of the Code, the provision(s) of the Code will have an overriding effect. The debt due has to be paid in terms of Section 53 of the Code. Accordingly, the decision in *K.C. Ninan* (supra) was distinguished in *Paschimanchal Vidyut Vitran Nigam Ltd.* (supra).

Similarly, reliance placed on the judgment of this Court in *"Embassy Property Developments Private Limited vs. State of Karnataka and Others"*⁴ is misconceived, as the case deals with renewal of a mining lease, which is an asset or property. The decision taken by the government or statutory authority in relation to the renewal of the mining lease, this Court observed, is a matter related to the realm of public law and, therefore, cannot be brought within the fold of the phrase '*arising out of or in relation to insolvency resolution*' under section 60(5)(c) of the Code. However, in *Embassy Property Developments Private Limited* (supra), it is clarified that a decision by public authority etc. may fall within the jurisdiction of the tribunals constituted under the Code, where the issue relates to or arises out of the dues payable to an operational or financial creditor, by observing:

"37...It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression "*operational debt*" under Section 5(21), making the Government an "*operational creditor*" in terms of Section 5(2). The moment the dues to the Government are crystallised and what remains is only payment, the claim of the Government will have to be

³ For short, "the Code".

⁴ 2020 13 SCC 308.

adjudicated and paid only in a manner prescribed in the resolution plan as approved by the adjudicating authority, namely, the NCLT."

The electricity connection, applied for or revival sought by the successful resolution applicant is not an asset or property. The above-quoted observations from *Embassy Property Developments Private Limited* (supra) would confer jurisdiction on the tribunal constituted under the Code insofar as the appellant - Southern Power Distribution Company of Andhra Pradesh Limited is insisting on payment of the dues of the corporate debtor for restoration/grant of the electricity connection. The dues of the corporate debtor have to be paid in the manner prescribed in the resolution plan, as approved by the adjudicating authority. The resolution plan is approved when it is in accord with the provision of the Code. Thus, the issue of corporate debtor dues falls within the fold of the phrase '*arising out of or in relation to insolvency resolution*' under section 60(5)(c) of the Code.

Therefore, we do not find any good ground and reason to interfere with the impugned judgment(s)/order(s) and hence, the present appeals are dismissed.

Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(S.V.N. BHATTI)

NEW DELHI;
SEPTEMBER 06, 2023.

ITEM NO.8

COURT NO.3

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No(s). 9229/2023

(Arising out of impugned final judgment and order dated 05-01-2023 in CAAT (CH) (I) No. 258/2021 05-01-2023 in CAAT (CH) (I) No. 263/2021 passed by the National Company Law Appellate Tribunal, Chennai)

**SOUTHERN POWER DISTRIBUTION
 COMPANY OF ANDHRA PRADESH LIMITED**

APPELLANT(S)

VERSUS

GAVI SIDDESWARA STEELS (INDIA) PVT. LTD. & ANR. RESPONDENT(S)

**(IA No.171033/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED
 JUDGMENT and IA No.171032/2023-CONDONATION OF DELAY IN REFILING /
 CURING THE DEFECTS)**

Date : 06-09-2023 This petition was called on for hearing today.

CORAM :

**HON'BLE MR. JUSTICE SANJIV KHANNA
 HON'BLE MR. JUSTICE S.V.N. BHATTI**

**For Petitioner(s) Mr. Balbir Singh, A.S.G.
 Mr. Nishant Sharma, Adv.
 Mr. Rakesh K. Sharma, AOR
 Mr. Naman Tandon, Adv.**

For Respondent(s)

**UPON hearing the counsel, the Court made the following
 O R D E R**

The appeals are dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

**(BABITA PANDEY)
 COURT MASTER (SH)**

**(R.S. NARAYANAN)
 ASSISTANT REGISTRAR**

(Signed order is placed on the file)