

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 1334 of 2019

[Arising out of Order dated 24.06.2019 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in C.P. (I.B) No.190/NCLT/AHM/2018]

IN THE MATTER OF:

**Central Transmission Utility,
Registered Office At B-9, Qutab Industrial Area,
Katwaria Sarai, New Delhi-110016**

....Appellant

Vs

**1.Korba West Power Company Limited
(Now Renamed as Raigarh Energy Generation Limited)
First Floor, E-122, Patel Nagar, City Centre, Site No.
2, Gwalior, Madhya Pradesh-474011**

**2. Mr. Abhijit Guhathakurta
IBBI/IPA-003/IP-N000103/2017-2018/11158
Deloitte Touche Tohmatsy India LLP
India Bulls Finance Centre, Tower-3,
27th - 32th Floor, Senapati, Bapat Marg,
Elphinstone Road (W), Mumbai-400013**

**3. Adani Power Ltd.
Corporate Office: Adani Corporate House, Shantigram,
SG Highway, Ahmedabad,
Gujrat-383421**

**4. Committee of Creditors
Through its Leading Finance Creditor
Corporate Office: Adani Corporate House,
Shantigram, SG Highway, Ahmedabad, Gujrat-382421Respondents**

For Appellant: Mr. Anshuman Sharma and Mr. Vishesh Dhundia, Advocates

**For Respondent: Mr. Manmeet Singh, Mr. A. Robin Frey and Ms. Anahita Gaiind, Advocates for Respondent No. 2
Mr. Arun Katpalia Sr, Advocate with Mr. Mahesh Agarwal, Mr. Arshit Anand, Mr. Arnav Behari, Mr. Kauser Hussain and Ms. Diksha Gupta, Advocates for R-3**

J U D G M E N T

[05th March, 2020]

Justice A.I.S. Cheema.

1. The Appellant is **Central Transmission Utility**, a State owned Company. It is stated that it is statutory Authority under Section 38 of the Electricity Act, designated as Nodal Agency for grant of Long Term Access as per Regulation 4 of the **Central Electricity Regulation Commission Regulations, 2009**. In view of Provisions of the Electricity Act, 2003 and the Regulations the Appellant had entered into “Bulk Power Transmission Agreement” (BPTA) for “Long Term Access” (LTA) DATED 24th February, 2010 with the Corporate Debtor, the Respondent No. 1 “**Korba West Power Company Limited**”. The Appellant claims that the Corporate Debtor was liable as per said Agreement and Regulations to pay transmission charges and consequential amounts. The due debt for payments as per “LTA” was 01.10.2017. However, the Corporate Debtor filed

Petition No. 269/MP/2017 on 27.11.2017 against the Appellant before “Central Electricity Regulatory Commission” (CERC) under Section 79 of the Electricity Act 2003 claiming deferment of the “LTA”, for grounds which were raised. The said Petition was pending when the Corporate Debtor filed Application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (IBC in short) . The said Petition [CP (IB) 119 OF 22018] came to be admitted by the Adjudicating Authority (NCLT Ahmedabad Bench), Ahmedabad on 26.07.2018.

2. The Interim Resolution Professional issued debt notices on 19.12.2018 and the Appellant submitted claim to the Resolution Professional in Requisite Form. Resolution Professional had published list of admitted claims on 08th April, 2019. The admitted claim of the Appellant as Corporate Debtor was to the extent of Rs. 2,78,81,825 out of Rs. 3,19,36,312.

3. The Resolution Plan submitted by Respondent No. 3 “**Adani Power Ltd.**” claimed to be accepted by the Adjudicating Authority on 24th June, 2019, which plan has been challenged in the Present Appeal.

4. The Appeal has been filed on 11.11.2019 after about 150 days of the Impugned Order.

5. In the Appeal, in Para 6 the Appellant claims that the Appellant did not have knowledge of the Impugned Order dated 24th June, 2019 and came to know about the same by way of pending proceeding which was the Petition No. 269/MP/2017 before “CERC” which was finally withdrawn on September 2005,19. The Appels states that in terms of Section 61 (2) of IBC the Appeal can be filed within 30 days of the Order however, as per Section 61 (2) this Tribunal

may allow an Appeal to be filed after the expiry of said period of 30 days, if it is satisfied that there was sufficient cause for not filing the Appeal but said period shall not exceed 15 days. The Appeal Para 6 states that the knowledge of the Impugned Order was received by the Appellant only by virtue of the pending Proceedings in Petition No. 269/MP/2017 before the CERC. It is claimed that during the Pendency of the Proceedings, the Appellant was not in a position to quantify the Operational Debt on account of the Corporate Debtor and therefore only on termination of the said proceedings on 25. 09. 2019 the Appellant was in a position to quantify the claim of the Operational Debt. And taking legal advice filed the Appeal within Limitation of 45 days from 25.09.2019.

6. The Appellant has also filed I.A No. 3811 of 2019 for condonation of delay making similar averments. The Application claims that the Appellant was under a legal and regulatory impediment due to pending proceedings before “CERC” and because of the same, the debt of reckoning the limitation period of 30 days under Section 61(2) of IBC should be taken as 25.9.2019. It is claimed that the Bill should be thus treated as limitation.

7. We have heard Learned Counsel for both the sides. On 18th February, 2020 when the Parties were heard regarding limitation of this Appeal, the proceeding which we had dictated is as under:

“We have heard learned Counsel for the Appellant with regard to condonation of delay Application IA No. 3811 of 2019. Learned Counsel for the Appellant has referred to the contents of the Application as well as he is referring to the proceedings which were pending before the Central Electricity Regulatory Commission (CERC) to submit that the Appellant was

obstructed due to pendency of those proceedings to calculate his claims and thus after the Resolution Plan was approved took time to file the Appeal as the said proceedings before CERC were disposed only on 25th September, 2019. The learned Counsel wants to make detailed submissions with regard to the claim made by the Appellant and how those claims when considered, the delay would require to be condoned.

The learned Counsel for the Respondent has referred to Annexure A-20 (Page 185) to submit that the Appellant had knowledge of the Resolution Plan passed at least on 04.07.2019 and thus according to him the Appeal is time barred keeping in view provisions of Section 61 of Insolvency and Bankruptcy Code, 2016.

The counsel is relying on the Judgments of this Tribunal in the matters of **“Amit Singhal Vs. Experion Developers Pvt. Ltd.”** in Company Appeal (AT) (Insolvency) No. 992 of 2019 and **“National Spot Exchange Vs. Mr. Anil Kohli”** in Company Appeal (AT) (Insolvency) No. 683 of 2019.

Counsel for the Appellant is relying on Judgment in the matter of **“Principal Director General of Income Tax Vs. Sartek Ceramics India Ltd.”** reported as MANU/NL/0147/2018 and Judgement in the matter of **“S.P. Coal Resources Pvt. Ltd. Vs. Indus FILA Ltd.”** in Company Appeal (AT) (Insolvency) No. 850 of 2019 of this Tribunal.

The parties may file brief written submissions on the question of limitation of the Appeal not more than three pages by **28th February, 2020.**

Reserved for Order with regard to question of limitation of the Appeal.”

8. As per the liberty given the Appellant was required to file the brief Written Submissions not more than three pages but the Appellant has gone on to file Diary No. 19917 with a Written Submission of more than 3 pages and added a list of documents running from Pages 18 to 162.

9. The Appellant has relied on Judgement in the matter of Principal Director General of Income Tax (Supra). Perusal of that judgment shows that in that

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Appeal under Provisions of the IBC, Demerger Scheme was noticed and discussed and it was observed in Paragraphs 66 to 68 as under:

“66. Thus, if the impugned approved scheme dated October 20, 2016 is treated to be an approved “Resolution Plan” under sub-section (1) of Section 31 of the “I and B Code”, it being against the provisions of the existing laws and being in violative of sub-section (2) of clause (e) of Section 30 of the “I and B Code” is fit to be set aside. The allegations, as made above, that the scheme is against the provisions of the existing law, have not been disputed by the Respondents.

67. Though, we find that the impugned scheme dated October 20, 2016 is illegal but in absence of our jurisdiction to exercise of the powers under Section 61 of the “I and B Code”, being barred by limitation, it will not be desirable to set aside the impugned illegal scheme dated October 20, 2016. But we hold the same illegal.

68. Further, in the absence of any provision to get the scheme executed through any court of competent jurisdiction, the relevant provision(s) having been repealed, the appellant may raise the question, if the respondents move before any court of law for implementation the scheme. Both the appeals are disposed of with aforesaid observations as recorded above. However, in the facts and circumstances of the case, there shall be no order as to costs.”

10. It is apparent that although the Bench discussed the demerger scheme, the Hon’ble Bench of this Tribunal did not set aside the impugned illegal scheme for want of jurisdiction in view of bar by limitation. On the other Judgment relied by the Learned Counsel for the Appellant was in the matter of S.P. Coal Resources (Supra). That order of this Tribunal is not helpful to the Appellant as in that matter, there was delay of nine days which was condoned.

11. At the time of oral arguments and in the Written Submission, the Appellant is strenuously trying to refer to the facts due to which proceedings went before the “CERC” and the issues which were before “CERC”. The argument is that

giving the circumstances Appellant was bogged down by various regulatory proceedings against it and that it was responsibility of the Respondent No. 2/RP but diligently take up contingent liability of Corporate Debtor before the Committee of Creditors. The Appellant is trying to say that Respondents were acting in tendon and ulterior designs of the Respondent has led to the passing of the Resolution Plan.

12. As the Appeal itself shows in Para 6 of the Appeal Memo, the Appellant is aware of the period of limitation of 30 days under Section 61 of IBC and also the legal position that this Appellate Tribunal can at the most condone period of 15 days beyond the period of 30 days. The Appeal itself states that the Appellant received knowledge of the Impugned Order by virtue of the pending proceeding Petition No. 269/MP/2017. The Learned Counsel for the Respondent has pointed out Annexure A-20 which is record of proceedings before the "CERC" dated 04.07.2019 where Learned Counsel of the Appellant made certain statements which have been noted as under:

"2. Learned Counsel for PGCIL submitted that the Petitioner has filed the IA for amendment of Petition during the pendency of NCLT proceedings and vide order dated 24.06.2019, NCLT has approved the Resolution Plan for the Petitioner Company. Learned Counsel submitted that transmission system has been commissioned and NCLT process will not come in the way of operationalization of LTA. Learned Counsel submitted that the Petitioner is required to clarify as to whether it is relinquishing the LTA or is ready to pay the transmission charges.

3. On a specific query of the Commission regarding what survives in the Petition subsequent to the Resolution Plan approved by the NCLT, Learned Counsel for the Petitioner sought time to seek instructions in the matter."

13. Learned Counsel for the Respondent referred to the above paragraphs from the said proceeding to state that the Appellant admittedly had noted all the passing of the Resolution Plan, at last on 04.07.2019. It is stated that when admittedly Appeal has to be filed at the most within 45 days from the date of the knowledge, the Present Appeal is apparently time barred. The ground raised in the Appeal Para 6 that during the pendency of the said proceedings before “CERC” the Appellant was not in a position to quantify the Operational Debt and do so only when the proceeding was initiated on 25th September, 2019 can not be accepted. The Appellant had admittedly filed claim before the IRP/RP of which major part was admitted by the IRP/RP. Inability to quantify the Operational Debt, as claimed when again, be no reason or obstruction in filing of the Appeal against the Impugned Order. The other contentions raised by the Learned Counsel for the Appellant that because of the pendency of the proceedings before “CERC” the Appellant was unable to file the Appeal also deserves to be rejected as nothing is shown that under law there was any bar to the Appellant from filing Appeal against the Impugned Order merely because proceeding was pending before “CERC”.

14. Although the Appellant is making averments regarding the merits of the matter, and is relying on Judgment in the matter of Principal Director General of Income Tax (Supra), in our humble view, if we do not have jurisdiction to entertain the Appeal, we cannot and need not to go into the merits of the matter.

The Appeal is time barred for reasons stated above and thus, the same is dismissed as time barred.

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

[Justice A.B. Singh]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

New Delhi

Basant B.