

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No. 1045 of 2019

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Ltd.Appellant

Vs.

Mr. Amit GuptaRespondent

Present :

For Appellant: Ms. Ranjitha Ramachandran, Advocate

For Respondents: Ms. Mahima Singh, Advocate for RP

Mr. Anurag, Advocate

O R D E R

15.10.2019 - 'Gujarat Urja Vikas Nigam Ltd.' is the only purchaser of electricity generated by 'Astonfield Solar (Gujrat) Pvt. Ltd.' (Corporate Debtor).

During the 'Corporate Insolvency Resolution Process' against the 'Astonfield Solar (Gujrat) Pvt. Ltd.', the 'Resolution Professional' is supposed to keep the 'Corporate Debtor' a going concern, therefore, if it generates electricity, the electricity line have been given only to the 'Gujarat Urja Vikas Nigam Ltd.' and in terms of an agreement, they are supposed to supply electricity to 'Gujarat Urja Vikas Nigam Ltd.'

However, in view of the initiation of 'Corporate Insolvency Resolution

....contd.

Process’, the ‘Gujarat Urja Vikas Nigam Ltd.’ (Appellant herein) intended to terminate the ‘Power Purchase Agreement’, which will result into making ‘Corporate Debtor’ ‘Astonfield Solar (Gujrat) Pvt. Ltd.’ defunct which only generates electricity and supplies only to ‘Gujarat Urja Vikas Nigam Ltd.’

In view of this, ‘Resolution Professional’ moved before the Adjudicating Authority ‘(National Company Law Tribunal)’, New Delhi Bench, against the two default Notices by which they intended to terminate the power purchase agreement on 30th April, 2010. The Adjudicating Authority by impugned order dated 29th August, 2019 prohibited the Appellant from terminating the ‘Power Purchase Agreement’, with liberty to terminate, if the ‘Corporate Debtor’ goes into liquidation and the present appeal has been preferred.

Taking into consideration the nature of the case, we are of the view that to keep the ‘Corporate Debtor’ a going concern, which is generating electricity and supplying only to ‘Gujarat Urja Vikas Nigam Ltd.’, the Adjudicating Authority rightly asked ‘Gujarat Urja Vikas Nigam Ltd.’ not to terminate the ‘Power Purchase Agreement’ dated 30th April, 2010.

We may make it clear that the ‘Gujarat Urja Vikas Nigam Limited’, being purchaser of the electricity cannot terminate the ‘Power Purchase Agreement’ solely on the ground that the ‘Corporate Insolvency Resolution Process’ has been initiated against ‘Astonfield Solar (Gujrat) Pvt. Ltd.’ (Corporate Debtor) which is generating electricity and supplying it and there is no default in supplying

electricity and during the 'Corporate Insolvency Resolution Process'. On the other hand, 'Gujarat Urja Vikas Nigam Limited', is not paying the dues, as alleged by Ms. Mahima Singh, learned counsel for the 'Resolution Professional' (M/s Astonfield Solar (Gujrat) Pvt. Ltd.).

For the reason aforesaid, while we dismissed the appeal, 'Gujarat Urja Vikas Nigam Limited' is liable to pay the dues of the 'Corporate Debtor' during the 'Corporate Insolvency Resolution Process' for the electricity supplied from 'Solar Power Plant' of the 'Corporate debtor'.

In view of such aforesaid finding, we rather delete the observation of the Adjudicating Authority at page-35 where it is observed that the Appellant may terminate the 'Power Purchase Agreement', if the 'Corporate Debtor' goes into liquidation, as during the liquidation process also, the liquidator is to ensure that the 'Corporate Debtor' remains a going concern.

The appeal stands disposed of with the aforesaid modification in the impugned order. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

ss/sk