

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI****Company Appeal (AT) (Insolvency) No. 334 of 2017****IN THE MATTER OF:****Dakshin Gujarat VIJ Company Ltd. ...Appellant****Vs.****M/s. ABG Shipyard Ltd. & Anr. ...Respondents****Present: For Appellant: - Mr. Pradeep Misra, Advocate****For Respondents: - Ms. Ranjana Roy, Advocate.****O R D E R**

**08.02.2018** – The question arises for consideration in this appeal is whether the order of 'Moratorium' will cover the current charges payable by the 'Corporate Debtor' for supply of water, electricity etc. or not.

2. Learned counsel appearing on behalf of the Appellant submitted that the order of 'Moratorium' will be applicable only in respect of the amount as is payable by the 'Corporate Debtor' to the appellant towards supply of electricity as was due for the period prior to passing of order of 'Moratorium'. According to him, the order of 'Moratorium' will not be applicable to the current dues towards supply of electricity during the period of 'Moratorium'.

3. On the other hand, according to learned counsel for the 'Resolution Professional', in view of Regulations 31 & 32 of the 'Insolvency and Bankruptcy Board of India (Insolvency Resolution

Process for Corporate Persons) Regulations, 2016', the Appellant is duty bound to supply the essential goods and services, including the electricity, water etc.

4. Earlier, when the matter was taken up, this Appellate Tribunal by order dated 15<sup>th</sup> January, 2018 without deciding the issue, passed the following order:

*“15.01.2018- An application has been filed by ‘Resolution Professional’ requesting to extend the time granted by this Appellate Tribunal on 3<sup>rd</sup> January, 2018 to pay the current charges to the Appellant upto 31<sup>st</sup> December, 2017. Prayer has been made to allow further four weeks’ time to pay the amount, in view of the fact only sum of Rs. 7 lakhs is available in the account whereas Rs. 5 lakhs is payable for the month of December.*

*Learned counsel appearing on behalf of the Appellant submits that the period of moratorium will come to an end by the end of January, 2018 and if the amount is not paid, it is open to the Appellant to disconnect the electricity after the period of moratorium is over.*

*Taking into consideration the facts and circumstances of the case, while we reject the*

*prayer for extension of time of four weeks, we allow the 'Resolution Professional' to pay the current electricity charges for the month of December, 2017 by 7<sup>th</sup> February, 2018, failing which, it will be open to the Appellant to disconnect the electricity.*

*I.A. No.32 of 2018 stands disposed of.*

*Post the matter for admission on 8<sup>th</sup> February, 2018 in place of 17<sup>th</sup> January, 2018."*

5. Learned counsel appearing on behalf of the 'Resolution Professional' submitted that the current electricity charges for the month of December, 2017 have been paid to the Appellant pursuant to the order passed by this Appellate Tribunal, but for the present, the 'Corporate Debtor' has no fund to pay any further amount.

6. We have heard learned counsel for the parties and perused the relevant provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") and Regulations 31 and 32 as referred to above.

7. Section 14 of the 'I&B Code' deals with 'Moratorium'. Sub-section (2) of Section 14 relates to supply of essential goods or services to the 'Corporate Debtor', which reads as follows:

***"14. Moratorium.*** – (1) *Subject to provisions of sub-sections (2) and (3), on the insolvency commencement*

*date, the Adjudicating Authority shall 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;*

*(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.*

*(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.*

*(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

*(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.”*

8. From sub-section (2) of Section 14 of the 'I&B Code', it is clear that supply of essential goods or services to the 'Corporate Debtor', as may be specified by the 'Insolvency and Bankruptcy Board of India',

cannot be terminated or suspended or interrupted during the period of 'Moratorium'.

9. Regulation 31 relates to 'Insolvency Resolution Process Costs' whereas Regulation 32 relates to 'Essential Supplies'. As per Regulation 31, the amounts due to suppliers of essential goods and services under Regulation 32 are to be included in the 'Insolvency Resolution Process Costs', as quoted below:

***"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 Regulation 32;*
- (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*
- (e) other costs directly relating to the corporate insolvency resolution process and approved by the committee."*

10. Essential goods and services referred to in sub-section (2) of Section 14, includes electricity, water supplies etc., as referred to in Regulation 32 and quoted below:

*“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 there are not a direct input to the output produced for supplied by the corporate debtor.”*

11. From the aforesaid provisions, it is clear that the amount as is due towards supply of essential goods and services, including electricity, water, telecommunication services and information technology services, if they are not a direct input to the output produced or supplied by the ‘Corporate Debtor’, require to be included towards ‘Insolvency Resolution Process Costs’ as per sub-section 13(e) of Section 5.

12. From sub-section (2) of Section 14 of the ‘I&B Code’, it is also clear that essential goods or services, including electricity, water, telecommunication services and information technology services, if they are not a direct input to the output produced or supplied by the

‘Corporate Debtor’, cannot be terminated or suspended or interrupted during the ‘Moratorium’ period.

13. However, from the provisions of ‘I&B Code’ and Regulations, we find that no prohibition has been made or bar imposed towards payment of current charges of essential services. Such payment is not covered by the order of ‘Moratorium’. Regulation 31 cannot override the substantive provisions of Section 14; therefore, if any cost is incurred towards supply of the essential services during the period of ‘Moratorium’, it may be accounted towards ‘Insolvency Resolution Process Costs’, but law does not stipulate that the suppliers of essential goods including, the electricity or water to be supplied free of cost, till completion of the period of ‘Moratorium’. Payment if made towards essential goods to ensure that the Company remains on-going as made in the present case for the month of December, 2017, such amount can be accounted towards ‘Insolvency Resolution Process Costs’, but it does not mean that supply of essential goods such as electricity to be supplied free of cost and the ‘Corporate Debtor’ is not liable to pay the amount till the completion of the period of ‘Moratorium’. If the ‘Corporate Debtor’ has no fund even to pay for supply of essential goods and services, in such case, the ‘Resolution Professional’ cannot keep the Company on-going just to put additional cost towards supply of electricity, water etc. In case the ‘Corporate Debtor’ (Company) is non-functional due to paucity of fund, and has become sick the question of keeping it on going does not arise.



14. In absence of specific prohibition for payment of current charges and in view of the fact that the 'Corporate Debtor' has already paid the current electricity charges for the month of December, 2017, we pass the following orders: -

(i) The 'Resolution Professional' will pay the outstanding current charges for supply of electricity for the month of September, 2017 and January, 2017 to the Appellant by 28<sup>th</sup> February, 2018. The current electricity charges for the month of October, 2017 and February, 2017 be paid by 16<sup>th</sup> March, 2018. The current charges towards the electricity for the month of November, 2017 and March, 2018 be paid by 15<sup>th</sup> April, 2018.

(ii) The Appellant will not levy any late payment surcharges for delayed payment of current charges, nor disconnect the supply of electricity in view of sub-section (2) of Section 14 of the 'I&B Code'.

15. The appeal stands disposed of with the aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

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