
(2025) 03 NCLAT CK 0667

In the National Company Law Appellate Tribunal

Case No : Company Appeal (AT) (Ins) No. 1411 of 2024 & I.A. No. 5124, 5125, 5126, 7549 of 2024

**Shree Rajasthan Syntex Ltd. Vs Chief Engineer (Commercial), Ajmer,?
Ajmer Vidyut Vitran Nigam Ltd.**

Date of Decision : 11-03-2025

Acts Referred:

Insolvency and Bankruptcy Code 2016 — Section 61,31,54C,54F,56,238

Citation : (2025) 03 NCLAT CK 0667

Hon'ble Judges : Rakesh Kumar Jain, Member (T); Naresh Salecha, Member (T); Indevar Pandey, Member (T)

Bench : Full Bench

Advocate : Krishnendu Datta, Anjaneya Mishra, Sahil, Nidish Gupta, Prakul Khurana, Yash Tandon, Bipin Gupta, Gaurav Mitra, Neha Agarwal, Lavanya

Final Decision : Allowed

Judgement

INDEVAR PANDEY, MEMBER (T)

This appeal has been filed under Section 61(1) of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as 'Code'). The appeal arises from the impugned order dated 14.06.2024, passed by the National Company Law Tribunal, Jaipur Bench (hereinafter referred to as "Adjudicating Authority") in IA No. 283/JPR/2023 in CP No. (IBPP)-01/54C/JPR/2022. The Adjudicating Authority vide the impugned order permitted the Respondents, Chief Engineer (Commercial), Ajmer Vidyut Vitran Nigam Ltd. (Respondent No.1), to bill and recover Fuel Surcharge (FS) and Special Fuel Surcharge (SFS) from M/s Shree Rajasthan Syntex Ltd. (Appellant), for periods prior to the admission of the Company in Pre-Packaged Insolvency Resolution Process (PPIRP).

2. It is the contention of the appellant that this order was passed despite the approval of the Base Resolution Plan of the Appellant on 22.08.2023. The Appellant contends that the impugned order contravenes the principles of the Insolvency and Bankruptcy Code, 2016, particularly Section 31(1), which provides for a "clean slate" after the approval of a resolution plan. The Appellant

challenges the legal and financial implications of the said order, contending that the Respondents failed to file their claims within the prescribed period and are now attempting to recover dues contrary to the provisions of the Code.

Brief facts of the case

3. M/s Shree Rajasthan Syntex Ltd./Appellant, is a public listed company engaged in the manufacturing of synthetic spun yarns, cotton yarns, and polypropylene yarns. It is a registered MSME with Udyam Registration Certificate No. UDYAM-RJ-33-0000458, dated 21.07.2020. The company operates a textile yarn manufacturing plant in the tribal District of Dungarpur, Rajasthan.

4. In 2022, the Appellant filed CP No. (IBPP)-01/54C/JPR/2022 before the Adjudicating Authority under Section 54C of the Insolvency and Bankruptcy Code, 2016, seeking initiation of Pre-packaged Insolvency Resolution Process (PPIRP). On 19.04.2023, the Adjudicating Authority admitted the PPIRP application and appointed Dr. Lekh Raj Bajaj as the Resolution Professional (RP).

5. On 19.04.2023, the Appellant submitted a list of claims to the RP under Regulation 20 of the PPIRP Regulations, 2021. On 26.04.2023, the RP issued a public announcement (Form P9), published in Financial Express (English) and Rasthtadut, Udaipur (Hindi), inviting claims from creditors. The Respondents did not file any claim regarding FS and SFS during the claim submission period.

6. The Appellant received bills dated 05.04.2023 and 05.05.2023, wherein the Respondent No. 1 charged Rs. 18,13,013/- and Rs. 27,89,415/-, respectively, towards Fuel Surcharge (FS) for the period October 2021 – June 2022. Additional demands were raised for Rs. 2,23,97,641/- Special Fuel Surcharge (SFS) and Rs. 63,82,275/- as SFS for Permanently Disconnected Connection based on the Rajasthan Electricity Regulatory Commission's order dated 01.09.2022. It is the submissions of the appellant that both the aforesaid demands pertain to the period between years 2013 to 2018.

7. On 22.05.2023, the Appellant filed IA No. 283/JPR/2023 before the Adjudicating Authority under Section 60(5) of the IBC, 2016, challenging the demand for Fuel Surcharge and Special Fuel Surcharge and seeking interim relief. On 25.05.2023, the Adjudicating Authority passed an interim order restraining the Respondents from disconnecting the electricity supply to the Appellant's Dungarpur unit due to non-payment of the disputed charges.

8. The Committee of Creditors (CoC) meetings were held on 25.05.2023 and 16.06.2023, where the Base Resolution Plan submitted by the Appellant was discussed and approved with 73.91% voting in favor. On 22.08.2023, the Adjudicating Authority approved the Base Resolution Plan, making it binding on all stakeholders, including government authorities.

9. The Adjudicating Authority on 14.06.2024, passed the impugned order, allowing the Respondents to recover Fuel Surcharge and Special Fuel Surcharge for the period prior to insolvency admission. On 27.06.2024, the Respondent No.

1 sent a demand letter requiring payment of Rs. 1,79,66,332/- within 90 days, relying on the impugned order. The Appellant, aggrieved by the decision, filed the present appeal under Section 61(1) of the Insolvency and Bankruptcy Code, 2016.

Submissions of appellant

10. Learned Sr. Counsel for the Appellant states that the present appeal arises out of the impugned order dated 14.06.2024 passed by the National Company Law Tribunal, Jaipur Bench ("Ld. NCLT"), whereby the Ld. NCLT has erroneously permitted the Respondent No. 1 to raise demands towards Fuel Surcharge ("FS") and Special Fuel Surcharge ("SFS") pertaining to a period prior to the initiation of the Pre-Packaged Insolvency Resolution Process ("PPIRP"). The Fuel Surcharge and Special Fuel Surcharge were pre-insolvency claims and should have been filed as part of the resolution process.

11. The counsel submitted that the Ld. NCLT has committed a grave error by failing to recognize that such demands stand extinguished upon the approval of the Resolution Plan in light of the authoritative judgment of the Hon'ble Supreme Court in *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*, [(2021) 9 SCC 657]. The decision unequivocally establishes that all claims not forming part of an approved resolution plan shall stand extinguished and be deemed non-recoverable.

12. He further stated that the impugned order violates the principle of "clean slate" enshrined in Section 31(1) of IBC, 2016, as established in *Essar Steel India Ltd. v. Satish Kumar Gupta*, [(2020) 8 SCC 531] and *Ghanashyam Mishra* (supra).

13. The counsel submitted that the Respondents' claim was not submitted during the PPIRP process, and allowing recovery post-approval of the Resolution Plan is contrary to the Section 238 of the Code, which gives overriding effect of the Code over other laws including Electricity Act, 2003.

14. The Appellant submitted that the Respondents' demand violates Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2019, which mandate quarterly computation of fuel surcharges. The belated claim pertains to October 2021 – June 2022, showing a clear delay.

15. The Appellant submitted its claims list, proposing a sum of Rs.2,99,88,591/- towards the claim of Respondent No. 1 under the category of Operational Creditors, as required under Regulation 20(1) of the IBBI (Pre-Packaged Insolvency Resolution Process) Regulations, 2021, towards the claim of Respondent No. 1 under the category of Operational Creditors, as required under Regulation 20(1) of the IBBI (Pre-Packaged Insolvency Resolution Process) Regulations, 2021.

16. The Base Resolution Plan was approved on 22.08.2023, and the entire sum

of Rs.2,99,88,591/- was duly paid by the Appellant in accordance with the approved plan, thereby satisfying all liabilities.

17. The Respondents, despite their knowledge of the PPIRP, did not object or submit any additional claims within the statutory period as prescribed under Section 54G of the IBC.

18. Counsel for the Appellant submits that under Section 31(1) of the IBC, once a resolution plan is approved by the Adjudicating Authority, it shall be binding on all stakeholders, including creditors, whether or not they have participated in the resolution process. Therefore, any claims that were not submitted in compliance with the PPIRP framework stand extinguished.

19. The Hon'ble Supreme Court has consistently held that once a resolution plan is approved, no further claims can be entertained. The reliance of the Ld. NCLT on Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam [2021 SCC Online SC 870], is wholly misplaced as the said judgment does not override the explicit statutory mandate of Section 31 of the IBC.

20. While passing the Impugned Order, the Ld. NCLT has wrongly placed reliance on the above judgment as the said judgment was delivered in the context of Section 56(2) of the Electricity Act, 2003.

21. It is most humbly submitted that the proviso to section 56(2) of Electricity Act, 2003 is in complete contraventions to the provisions of Section 31 of IBC which unequivocally states that after approval of Plan, any claim which is not part of plan shall stand extinguished. Further, the Ld. NCLT has failed to consider that the IBC is a complete code in itself and has an overriding effect over the other laws which are inconsistent with the provisions of IBC by the virtue of Section 238 of IBC. He stated that in this regard, the Judgment of Hon'ble Supreme Court in the matter of Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt. Ltd. & Ors. [(2023) 10 SCC 60] may be relied wherein the apex court has held that section 238 of IBC overrides the provisions of Electricity Act, 2003. The counsel further submitted, that by placing reliance on Prem Cottex (Supra), the Ld. NCLT defeated the whole intent and objective of IBC and gave a leeway to the Respondent No.1 to agitate its statutory barred claims on account of SF and SFS.

22. The counsel further submitted that term 'claim' as defined u/s 3(6) of IBC in contrast to term "debt" includes any liability or obligation qua the Corporate Debtor irrespective of fact whether it has become due and payable. In the present matter, the right to payment accrued for the Respondent No.1 immediately upon the passing of the order dated 01.09.2022 by the RERC. Further, in the 23rd Annual Report (2022-2023), the Respondent No.1 in its Balance Sheet as on 31.03.2023 booked/recognised the total amount of SFS-Rs.145680 Lacs as an Income in the year 2021-2022 itself, showing that the amounts of SFS were crystalized and known to Respondent No 1 prior to initializing of Insolvency proceedings of the Applicant.

23. It is the submission of the Appellant that the claim u/s 3(6) of IBC means right to payment which may be matured or unmatured, disputed or undisputed, contingent, conditional, contingent and no mature at the time of commencement. etc. and it is not required the amount has become "due and payable" or not. In support of his arguments he has cited the following Judgments:

a) Judgment passed by the Hon'ble Supreme Court in the case of Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs UOI, (2019) 8 SCC 416.

b) Judgment passed by the Hon'ble Supreme Court in the case of China Development Bank Vs. Doha Bank Q.P.S.C. and Others, (2024) SCC OnLine SC 3829.

c) Judgment passed by the Hon'ble Supreme Court in the case of New Okhla Industrial Development Authority V. Anand Sonbhadra, (2023) 1 SCC 724.

d) Judgment passed by the Hon'ble Supreme Court in the case of Embassy Property Development Private Limited v. State of Karnataka &Ors., (2020) 13 SCC 308.

e) Judgment passed by this Hon'ble Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 304 of 2017 titled as Export Import Bank of India Vs Resolution Professional JEKPL Private Limited.

f) Judgment passed by this Hon'ble Appellate Tribunal (Chennai Bench) Edelweiss Asset Reconstruction Company Limited v. V Mahesh & Ors., Company Appeal (AT) (CH) (INS) No. 226 of 2021.

24. Counsel for the Appellant states that the demand for Rs.2,23,97,641/- towards SFS and Rs.63,82,275/- towards FS pertains to the period prior to the approval of the Resolution Plan and, therefore, stands extinguished in accordance with the "clean slate" doctrine. In this regard he cited the Judgment of Hon'ble Supreme Court in Essar Steel India Ltd. (CoC) v. Satish Kumar Gupta (supra), which has reaffirmed that all prior claims against a corporate debtor, which are not accounted for in the approved resolution plan, cannot be enforced post-approval.

25. Counsel for the Appellant submitted that despite repeated opportunities, Respondent No. 1 failed to file any claims for FS and SFS during the PPIRP. Having failed to assert their claim at the appropriate stage, the Respondents are now estopped from raising any fresh demands. Furthermore, Regulation 88 of the RERC (Terms and Conditions for Determination of Tariff) Regulations, 2019, required the Respondent to levy FS on a quarterly basis, which they failed to do. The delayed imposition of FS and SFS after the conclusion of the PPIRP is arbitrary, impermissible, and violative of the principles of natural justice.

26. In view of the aforesaid facts and circumstances, the counsel for appellant prays that this Hon'ble Appellate Tribunal may be pleased to allow the present

appeal and set aside the Impugned Order dated 14.06.2024, and further declare that:

a) the outstanding SFS of Rs. 2,23,97,641/- pertaining to connection with K. No 130511029076 and SFS of Rs. 63,82,275/- pertaining to PDC Connection with K No.130511029079 including any late payment surcharge etc., stands extinguished and the same cannot be demanded/recovered from the Appellant.

b) the outstanding FS of Rs. 2,0140,611/- (updated Oct 2022- March 2023) being pertaining to the period prior to commencement of PPIRP i.e. 19.04.2023 including any late payment surcharge etc., also stands extinguished and the same cannot be demanded/recovered from the Appellant.

Submissions of Respondents No. 1 & 2

27. Ld. Counsel for the Respondent stated that the present appeal filed by the appellant, Shree Rajasthan Syntex Ltd., is devoid of merit and is based on incorrect assertions. The appellant has sought relief from the Hon'ble Tribunal based on misleading claims, particularly regarding the extinguishment of outstanding electricity dues. The respondents, Ajmer Vidyut Vitran Nigam Limited (AVVNL), categorically denies the appellant's assertions. He further submits that the appellant had previously filed IA 283/2023 in CP (IBPP) 01/2022. In the aforesaid I.A. appellant did not seek extinguishment of the electricity dues but merely requested that the electricity connection not be disconnected.

28. He submitted that the respondents, in their reply to the said application, demonstrated that the appellant has not approached the Tribunal with clean hands. Specifically, no demand of Rs.63,82,275/- has been raised after 19.04.2023, and no demand of Rs.2,23,97,641/- has been raised after the same date. The claim that such demands have been raised is demonstrably false.

29. Counsel for the Respondent states that the liability of the appellant is governed by the Electricity Act, 2003, and the orders of the Rajasthan Electricity Regulatory Commission (RERC). Relevant legal provisions and precedents include:

- i. Sections 61 and 62 of the Electricity Act, 2003, which outline tariff determination and recovery principles.
- ii. Section 142 of the Electricity Act, 2003, which provides penalties for non-compliance with orders and directions of regulatory authorities.
- iii. The RERC Order dated 01.09.2022, which directed the appellant to pay its dues in a structured manner.

30. The counsel for respondent invited attention to the Judgment of Hon'ble Supreme Court in Prem Cottex vs. Uttar Haryana Bijli Vitran Nigam Ltd. [(2021) 20 SCC 200] which has clarified that under Section 56 of the Electricity Act, 2003, the obligation to pay arises when the bill is raised, regardless of when the consumption occurred. The appellant's attempt to categorize the dues as past liabilities is thus legally unsustainable.

31. The Counsel for the Respondent further submitted that the appellant had been making instalment payments as per the directives of the Hon'ble RERC until April 2023. However, after securing a blanket stay order against disconnection dated 13.06.2023 from the Adjudicating Authority, the appellant ceased making further payments. Instead, the appellant now seeks extinguishment of the demand, which was structured in instalments by the RERC.

32. The respondent contended that the appellant's argument that these are past liabilities is entirely baseless. The electricity dues arise when the bill is generated, not when the consumption occurred.

33. Further, counsel stated that the appellant's contention that the Insolvency and Bankruptcy Code (IBC) would override the Electricity Act, 2003, is legally untenable. The appellant has failed to demonstrate any specific conflict between the two statutes. In the absence of such a conflict, the principle of harmonious construction must be applied, and the regulatory framework of the Electricity Act must prevail.

34. Counsel for the Respondent states that the appellant has made inconsistent and contradictory statements regarding its payments:

i. The affidavit filed by the Resolution Professional (RP) incorrectly asserts that fuel surcharge payments, as mentioned in Form-P10 have been made. However, per para 9 of the RP's affidavit, these payments exclude fuel surcharge and special fuel surcharge.

ii. Further, a comparison of the payment figures reveals discrepancies. The amounts referred to by the appellant do not match the figures presented in P10. This inconsistency is highlighted in the Counter Affidavit of the Respondent dated 11.11.2024, filed on 12.11.2024. The same is reproduced below:

"2. That the contents of para no. 9 as stated are not admitted and are denied. The amounts referred on the dates by the RP totals to Rs 79,31,227/- and furthermore none of these amounts as indicated have been adjusted against any fuel surcharge rather all the payments have been made by the CD against the bills excluding fuel surcharge, special fuel surcharge the details of payment made by the CD to the AVVNL along with the bill are hereby marked and annexed as Annexure-1 with this counter affidavit."

35. Counsel for the Respondent further stated that the appellant, in its letter dated 08.11.2024, admits that while certain payments have been made, the fuel surcharge and special fuel surcharge billed after 19.04.2023 (but related to prior periods) remain unpaid. This admission directly contradicts the assertions made by the RP and the Corporate Debtor (CD).

36. Summing up, the counsel for the Respondent in light of the above facts and legal submissions prayed that the appeal filed by the appellant be dismissed with costs, as it is based on misleading claims and inconsistent assertions.

Analysis and findings:

37. We have heard the Ld. Counsels for Appellant and Respondents in detail. We have also gone through the voluminous documents submitted by both parties and also their written submissions.

38. This appeal has been filed consequent upon the order of Adjudicating Authority in I.A. No. 283/JPR/2023 in Company Petition bearing C.P. (IBPP) -01/54C/JPR/2022. The findings in the impugned order are extracted below:

"17. The bone of contention pertaining to SFS and FS between the parties is whether the complete liability towards the SFS and the FS pertains to pre-PPIRP period or not. In other words, the issue boils down to whether the complete liability towards SFS which is to be recovered in the coming five years and the FS was due and payable prior to the commencement of the PPIRP.

18. The Hon'ble Apex Court in the case of Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. 2021 SCC OnLine SC 870 wherein it was observed that:

"Though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the Licencee and that, therefore electricity charges would become 'first due' only after the Bill is issued, even though the liability would have arisen on past consumption."

19. The aforementioned Judgment clarifies that the obligation to pay under the Electricity Act arises when the bill is raised by the DISCOM. Since, the amount of the SFS is to be recovered in the coming five years and the FS liability arises at the time of raising of the bill by the electricity department, it cannot be said that the SFS and the FS were due prior to the initiation of the PPIRP. Thus, we find force in the argument of the Respondents that they could not have filed a claim pertaining to SFS and FS as the liability to pay arises at the time of raising of the bill.

20. It is relevant to mention here that the Resolution Plan approved by this Adjudicating Authority provides for payment of Rs. 39,09,678 (Rupees Thirty-Nine Lakh Nine Thousand Six Hundred and Seventy-Eight Only) to Ajmer Vidyut Vitran Nigam Ltd.

21. In light of the facts and Judgments referred to above, we are of the view that the disputed amount demanded by the Respondents concerning Fuel Surcharge and Special Fuel Surcharge which is not covered under the Resolution Plan shall be dealt with as per the ruling of the Hon'ble Supreme Court in the matter of Prem Cottex Vs. Uttaranchal Vidyut Nigam Limited, (Supra) and the liability of the consumer shall be computed at the time the bill is raised by the Respondent.

22. Accordingly, we order as follows:

22.1. The Corporate Debtor shall pay the amount demanded as Fuel Surcharge (FS) and Special Fuel Surcharge (SFS) as and when raised through Bills, as per the due dates specified in bills already raised/to be raised in future. For the bills

of FS and SFS already raised till the date of this order, the Applicant is directed to pay the same within 90 days from the date of this order.

22.2. Further, the Respondents are directed not to disconnect the connection of the Corporate Debtor on account of non-payment of such amount already due, until 90 days from the date of this order. No penalty or interest or late payment surcharge if any on such amount due, delayed in payments during pendency of matter before this tribunal shall be levied by the Respondent, if the billed dues are paid within 90 days from the date of this order.

23. In view of the aforementioned directions, the I.A. bearing No. 283/JPR/2023 stands is disposed off.”

39. The main issue in this appeal is whether the Respondents, Ajmer Vidyut Vitran Nigam Ltd. (AVVNL), can recover Fuel Surcharge (FS) and Special Fuel Surcharge (SFS) from the Appellant, Shree Rajasthan Syntex Ltd., even though these charges relate to a period before the insolvency process began.

The Appellant argues that these charges were approved, while the Respondents' charges must be paid. It was argued that once the resolution plan maintains that these are statutory

40. To decide this case, we have to address two issues:

i. Do FS and SFS count as pre-insolvency liabilities that were erased when the resolution plan was approved under Section 31 of the Insolvency and Bankruptcy Code, 2016 (IBC)?

ii. In this matter of recovery of FS and SFS, is there a conflict between Electricity Act, 2003 and IBC, 2016 or both can be harmoniously interpreted?

We would examine both these issues in detail in subsequent paras.

Can FS and SFS Claims be Extinguished Under IBC?

41. The first question is whether FS and SFS charges were erased under IBC when the resolution plan was approved. The Appellant argues that once a resolution plan is approved under Section 31 of IBC, all prior claims not included in the plan no longer exist. The Appellant relies on judgments like *Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*, [(2021) 9 SCC 657] and *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors.*, [(2020) 8 SCC 531], which confirm that creditors cannot claim pre CIRP period dues after the resolution.

42. The appellant also submitted that the Respondents No. 1 & 2 did not file their claim during the insolvency process and accordingly all claims not forming part of the approved resolution plan stand extinguished and cannot be enforced subsequently.

43. The Respondents on the other hand submitted that there was no requirement on their part to file the claim, as it is the duty of the appellant to collate all the

claims and submit the same to the RP for inclusion in claim form. In this regard, we have a look at the statutory provisions under IBC, 2016. Section 54 (G) deals with list of claims and preliminary information memorandum. The relevant extracts of Section 54 (G) are produced below:

"Section 54G: List of claims and preliminary information memorandum.

1[54G. (1) The corporate debtor shall, within two days of the pre-packaged insolvency commencement date, submit to the resolution professional the following information, updated as on that date, in such form and manner as may be specified, namely:-

(a) a list of claims, along with details of the respective creditors, their security interests and guarantees, if any; and"

44. The relevant regulations relating to Pre-Packaged Insolvency are IBBI (Pre-Packaged Insolvency Resolution Process) Regulations, 2021. The Regulation 20 relates to list of claims. The relevant portion of Regulation 20 is extracted below:

"Regulation 20: List of claims

20. (1) The corporate debtor shall submit a list of claims under sub-section (1) of section 54G in Form P10 to the resolution professional.

(2) Based on the records of the corporate debtor and other relevant material available on record, the resolution professional shall confirm the details received in Form P10."

45. It can be seen from Section 54G and Regulation 20 that it is the responsibility of Corporate Debtor to provide the complete claims from all the creditors to the Resolution Professional for inclusion in Form-P10. The respondents submit that the CD has a running account with the Respondents in which payments are made in tranches and reconciliation is done from time to time between CD and Respondents. He further cites letter dated 08.11.2024 from CD to Respondents in this regard. The Respondent submits that they did not file any claim subsequent to publication of Form P10 on account of FS and SFS as these charges become due only after the bill is raised by the Discom.

46. The question here is what is the stage at which electricity charges become due and payable as per the provisions of Electricity Act. Section 56 of the Electricity Act, 2003 has the relevant provision in this regard. This question has been answered by Hon'ble Supreme Court in Prem Cottex (supra). The relevant paras 9, 10, 11 of the Judgment are extracted below:

"9. Section 56 of the Electricity Act, 2003 reads as under:

"56. Disconnection of supply in default of payment.-(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee

or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest.-

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”

10. In *Rahamatullah Khan*³, three issues arose for the consideration of this Court. They were:

(i) what is the meaning to be ascribed to the term "first due" in Section 56(2) of the Act;

(ii) in the case of a wrong billing tariff having been applied on account of a mistake, when would the amount become first due; and

(iii) whether recourse to disconnection may be taken by the licensee after the lapse of two years in the case of a mistake.

11. On the first two issues, this Court held that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee and that, therefore, electricity charges would become "first due" only after the bill is issued, even though the liability would have arisen on consumption.”

47. The court has clearly held that under the Section 56 (2) of the Electricity Act, electricity charges would become “first due only after the bill is issued” even though the liability would have arisen on consumption. In the instant case the liability of FS/SFS relates to the prior period of 2013-2018 but the payment would become due, only after the bills are raised by the distribution company.

48. It is therefore clear that the stand of Respondents No. 1 & 2 that entire assessed amount of FS & SFS had not become due, as no invoice/bill for the same was raised by the distribution company is in accordance with the provisions of the Electricity Act.

49. It is important to understand the genesis of SFS. The SFS was imposed on Electricity Distribution Companies of Rajasthan, as a result of dispute with M/s Adani Power Rajasthan Ltd. (APRL), which was running a coal based thermal power plant with an installed capacity of 1320 MW at Kawai, Rajasthan. The power generated by the Kawai plant was to be purchased by 3 electricity distribution companies of Rajasthan viz. Jaipur Vidyut Vitran Nigam Ltd. (JVVNL), Ajmer Vidyut Vitran Nigam Ltd. (AVVNL) and Jodhpur Vidyut Vitran Nigam Ltd. (JdVVNL). These three electricity distribution companies are collectively referred to as Rajasthan Discoms. APRL had signed Power Purchase Agreement (PPA) with the Rajasthan Discoms for supply of 1200 MW from their plant.

50. Due to a change in coal allocation policy of Govt. of India, domestic coal supply was not available as envisaged in PPA. Entire tariff computation for supply of power from the ARPL was based on domestic coal availability. To run the plant and generate power for supplying to Rajasthan Discoms, APRL had to import coal. In view of increased cost of imported coal, APRL sought additional tariff over and above the quoted tariff as Special Fuel Surcharge (SFS). The Rajasthan Electricity Regulatory Commission (RERC) allowed SFS, but the same was not agreed by the Appellate Tribunal.

51. The matter was adjudicated by the Hon'ble Supreme Court in Jaipur Vidyut Vitran Nigam Ltd. & Ors. Vs. Adani Power Rajasthan Ltd. & Anr. [Civil Appeal No. 10188/2018], on 29.10.2018, wherein the Hon'ble Court ruled that Rajasthan Discoms were liable to compensate APRL for additional fuel costs. Initially, in their order, the Hon'ble Supreme Court allowed 70% compensation, later revised to 50%, leading to a Rs. 2,288.40 crore liability for Rajasthan Discoms. This ruling established the basis for SFS, ensuring that additional fuel costs would be recovered equitably from consumers. It should be mentioned here that this was only an interim order and was subject to final orders of Hon'ble Supreme Court.

52. Pursuant to the Judgment of Hon'ble Supreme Court's (supra), the Appellate Tribunal for Electricity (APTEL), in Appeal No. 202 of 2018, issued an order dated 14.09.2019, allowing the appeal filed by APRL and upholding the recovery of SFS from all consumers.

53. To comply with the directions of the Hon'ble Supreme Court, the Rajasthan Discoms had to resort to additional borrowing from the financial institutions, due to which there was a total additional burden of Rs 2709.36 crores (including interest component of 420.96 crores) on the Discoms. This cost pertained to variations in the variable cost of power procured from APRL in the period of May 2013 to January 2018 and any such variation in power purchase cost which is beyond the control of the petitioner (Discoms) and is treated as an uncontrollable

parameter in the RERC Tariff Regulations.

54. Pursuant to the Hon'ble Supreme Court's Order dated 29.10.2018, the APTEL, on 14.09.2019, passed an order, allowing the appeal filed by APRL and rejected the appeal filed by Rajasthan Urja Vikas Nigam Limited (RUVNL) which conducts Power trading business of Rajasthan Discoms. On 14.10.2019, Rajasthan Discoms filed a review petition no. 7 of 2019 in Appeal No. 202 of 2018 for reviewing the order of Hon'ble APTEL dated 14.09.2019.

55. Subsequently, looking at the importance of the matter and time constraints the Discoms decided to file appeal in Hon'ble Supreme Court. RUVNL also filed Appeal no. 8625-8626 of 2019 on dated 08.11.2019 before the Hon'ble Supreme Court against the order dated 14.09.2019 of APTEL on the RUVNL. The Rajasthan Discoms were also a party to the aforesaid civil appeal.

56. The Hon'ble Supreme Court in the order dated 31.08.2020 rejected the appeal of the petitioner and held:

"(ii) Applicability of change in law

".....58. We find similarity in the present case as well as the Energy Watchdog. The factual matrix was similar with the present case. We find that the RERC and the APTEL have recorded the concurrent finding on facts. We find no ground to interfere. No substantial question of law is involved. It was held in Energy Watchdog, that change in law was brought about in the NCDP of 2007 by the decision of 26.7.2013. It is provided in Article 10.2.1 how the change in law is to be applied to compensate for the impact. It was also held that carrying cost is payable from the date the change in law has taken place, and carrying cost is passed on the restitution principle. Article 10.2.1 of the PPA in question is similar to Article 13.2 considered in Energy Watchdog.

66. Liability of the Late Payment Surcharge at the rate of 2% in excess of applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest) for each day of the delay. Therefore, there shall be huge liability of payment of Late Payment Surcharge upon the appellants Rajasthan Discoms.

67. In our opinion, it would be appropriate to direct the appellants Rajasthan Discoms to pay interest/late payment surcharge as per applicable SBAR for the relevant years, which should not exceed 9 per cent per annum. It is also provided that instead of monthly rest, the interest would be compounded per annum"

(emphasis supplied)

57. Hon'ble court upheld the contention of ARPL that changes to the Coal Allocation policy of 2007 brought about by the decision of Govt of India on 26.07.2013 amounted to change in law as per provisions of PPA, and the change in law is to be applied for compensating the impact of the same as per PPA.

Further the carrying cost was to be passed on to the discoms.

58. As there was a delay in final payment by the RUVNL the procuring agency on behalf of Discoms, M/s APRL filed contempt petition before Hon'ble Supreme Court against RUVNL for not complying with the directions of court in its Judgement dated 31.08.2020. The Hon'ble Supreme Court vide order dated 25.02.2022 held that Rajasthan Discoms are liable to contempt for not complying with Judgement of the court and directed Rajasthan Discoms/RVUNL to make payment to ARPL along with interested calculated at SBSR which should not exceed 9% per annum(with annual compounding). Relevant extract of the Judgement are reproduced below:

"We, thus, direct the respondents to pay to the petitioner, the principal amount (as per the terms/norms laid down in the Judgement of this Court dated 31.08.2020) minus Rs.2426.81 crores deposited by the respondents in terms of the interim order dated 29.10.2018 (which, as per the petitioner, the balance payable amount would be Rs.3048.63 crores) along with interest as per the applicable SBAR for the relevant years, which should not exceed 9% per annum (to be compounded annually), from the date the amount became due till the date of actual payment....."

59. Consequent upon the aforesaid order of Hon'ble Supreme Court the Rajasthan Discoms paid an amount of Rs. 5996.44 Crores to M/s APRL towards variations in variable cost of power procured from APRL in the period of May, 2013 onwards.

60. Subsequently, the Discoms in their petition to RERC for tariff revision stated that such variation in power purchase cost is beyond the control of Discoms and it is treated as an uncontrollable parameter in the RERC tariff regulations.

61. The RERC based on petition filed by Discoms under Section 62 (4) of the Electricity Act, 2003 read with Regulation 88 of RERC to recognize the - additional power purchase cost incurred in order to comply with the orders of Hon'ble Supreme Court in the matter of change in law and allow recovery of additional power purchase cost through Special Fuel Surcharge Adjustment (FSA) passed the tariff order on 01.09.2022. The operating part of the order vide para 14 and 15 is extracted below:

"14. Accordingly, the Commission, based on the material placed on record, orders as under:

i. Considering the financial hardship of the Discoms and at the same time to avoid tariff shock to the consumers, Commission deems it appropriate to consider 5 years repayment period to allow Discoms to recover the amount of Rs. 7438.58 Crores (5996.40 Cr principal amount & 1442.18 Cr interest component), on account of special FSA at the rate of Rs. 0.14/ unit from the consumers being billed on bimonthly basis in 30 equal installments and at the rate of Rs. 0.07/Unit from the consumers being billed on monthly basis in 60

equal installments. The FSA over this period will be recoverable on the consumption of Last Quarter of FY 2021-22 for all categories of consumers.

ii. The Discoms are directed to utilize the receipt on account of special FSA for repayment of loan taken by them for the purpose. Discoms are also directed to create a separate account head for this purpose and report the status of amount recovered as well as repayment of loan in each True up petition for consideration of the Commission. At the end of five years' period the Discoms shall file a detailed statement showing under recovery/over recovery from the special FSA, if any, which will be appropriately adjusted in true up of that year.

iii. In case recovery of special FSA including variation in variable cost on account of other power stations exceeds the ceiling prescribed in the relevant Regulations, the Petitioners are at liberty to approach Commission through separate petition at appropriate time.

15. The petition stands disposed of in above terms.”

62. The FSA referred to in the aforesaid order is commonly known as SFS by the consumers and the same terminology is used by Discoms in their electricity bills. It is clear from the sequence of events in preceding paragraphs that the SFS has arisen as a result of Judgment of Hon’ble Supreme Court based on change in law in terms of existing PPA between APRL and RUVNL/Rajasthan Discoms. Based on the Judgment of Hon’ble Supreme Court the RERC had laid down the manner and mode of recovery of the SFS. The same was to be recovered @ Rs. 0.07 per unit from the consumers being billed on monthly basis in 60 equal instalments.

63. We note that the electricity tariff is fixed by the Electricity Regulatory Commissions based on Section 61 and 62 of the Electricity Act, 2003. Any organizations or person involved in activities relating to generation, transmission or distribution of electricity has to abide by the orders/ directions of the Regulatory Commission. Failing which they are liable for punishment under Section 142 of the Act as extracted below:

“Section 142 – Punishment for non-compliance of directions by Appropriate Commission

In case any person, who is required under this Act to comply with any order or direction given under this Act by the Appropriate Commission, fails to do so, he shall be liable to:

(a) a penalty which may extend to one lakh rupees for each contravention;

(b) in case of continuing failure, with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after the first contravention.”

64. In view of Section 142, we further note that the respondents had no option, but to comply with the orders of RERC regarding payment of FS & SFS by the consumers. The installments of FS were decided by RERC at an earlier occasion.

Accordingly, The bills for SFS and FS are sent to the consumers along with monthly bills for consumption of electricity as per the instalments fixed by RERC. The amount of SFS or FS as decided can only be claimed in accordance with the manner laid down in the tariff order. In this case RERC has fixed that SFS be recovered from the consumers in 60 monthly instalments @ Rs. 0.07 per unit. Similar orders have been issued in regard to FS earlier.

65. As we have seen earlier, though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee, hence, electricity charges would become "due" only after the bill is issued, even though the liability would have arisen on consumption. FS and SFS are not normal business debts but statutory charges under the Electricity Act, 2003, which would arise only after the bill is raised by the Discom to the consumer. IBC does not allow prospective claims to be eradicated by approval of resolution plan. It is seen from the records that FS and SFS charges have been paid upto April, 2023. The appellant stopped paying the dues from May, 2023 onwards after obtaining the interim protection against disconnection from Adjudicating Authority on 25.05.2023. The claim of the appellant for eradication of entire liability on account of FS/SFS would not hold as the bills for subsequent period were not issued by the respondent. Any amount which is due in future cannot be eradicated by including the same in resolution plan. The FS/SFS charges which are statutory dues and become due only after the bill is submitted cannot be eradicated by such resolution plan. We have also seen that the amount which has been paid by the CD as per resolution plan has met the existing liabilities of the CD and not the statutory dues which arise from the orders of regulator under Electricity Act, 2003.

66. We have also noted that the appellant has taken inconsistent positions regarding the payment of Fuel Surcharge (FS) and Special Fuel Surcharge (SFS). In IA 283/2023, they did not claim that these dues were extinguished but only requested that their electricity connection not be disconnected. However, after obtaining a relief from Ld. AA on 25.05.2023 against the disconnection the appellant stopped making installment payments and are now arguing for the complete extinguishment of these dues. This is a clear contradiction, as they had previously complied with the installment payments directed by the RERC, but later changed their stance to avoid further liability.

67. We also note that in their letter dated 08.11.2024, the appellant acknowledged that FS and SFS charges billed after 19.04.2023, though related to an earlier period, remain unpaid. They stated that between 19.04.2023 and 30-06-2023, they made payments amounting to Rs.2,63,00,640/- and an additional payment of Rs.39,09,678/- on 21.09.2023. They also admitted that their account is a running account, and payments are made in tranches. The letter further claims that, as per reconciliations on 27.03.2024 and 22.10.2024, all dues except FS and SFS have been settled. A copy of the letter is extracted below:

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68. However, this statement directly contradicts the affidavit filed by the Resolution Professional (RP), who falsely claimed that FS had been paid. The respondent's counter affidavit, filed on 12.11.2024, confirms that the amount paid by the appellant totals to Rs. 79,31,227/- and excludes FS and SFS, as the amounts paid do not match those reflected in Form-P10. This clearly shows that the appellant is attempting to misrepresent facts to evade payment obligations under the Electricity Act, 2003. Their changing arguments and selective admissions indicate an effort to mislead the Tribunal by presenting differing claims in different contexts.

69. The appellant has cited several Judgments of Hon'ble SC and this Appellate Tribunal in support of their claim. The applicability of these Judgments to the present factual matrix has been examined. We now discuss the same:

i. In 'Ghanshyam Mishra and Sons Pvt. Ltd. Vs Edelweiss Asset Reconstruction Company Ltd., (2021) 9 SCC 657; decided by Hon'ble Supreme Court, the matter related to financial claims that existed before the approval of a resolution plan and were either included in the plan or canceled under IBC. In the instant matter, FS and SFS charges arise from the orders of the RERC and would become due only after the bills are issued by the Discom. These are statutory dues under the Electricity Act and SFS arises from the orders of Hon'ble Supreme Court and is payable in future after the bills for the same are issued by Discom such prospective claims cannot be eradicated under IBC.

ii. The decision of Hon'ble Supreme Court in 'Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs Union of India, (2019) 8 SCC 416' related to the rights of homebuyers under IBC and their classification as Financial Creditor. The Hon'ble Supreme Court also held that the RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over the RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code. The ratio of Judgment supra does not apply to the present case.

iii. Hon'ble Supreme Court in 'China Development Bank Vs. Doha Bank Q.P.S.C. and Others, (2024) SCC OnLine SC 3829'- This case involved financial claims under international loan agreements. The basic dispute in the instant case related to whether the appellant was a Financial Creditor or not u/s 5 (8) of the Code. The ratio of the aforesaid case is not applicable in the present case.

iv. Hon'ble Supreme Court in 'New Okhla Industrial Development Authority v. Anand Sonbhadra, (2023) 1 SCC 724'- dealt with classification of land lease entered by Noida Authority. It was held that these leases are neither financial lease or capital lease. It is clear that the ratio of aforesaid Judgment is not applicable in the present case.

v. 'Embassy Property Development Pvt. Ltd. v. State of Karnataka & Ors., (2020) 13 SCC 308' - This case focused on government land leases and jurisdictional issues under IBC, which is unrelated to the factual matrix of the present case. Therefore, this case does not support the appellant's argument.

vi. This Appellate Tribunal in 'Edelweiss Asset Reconstruction Company Limited v. V Mahesh & Ors., Company Appeal (AT) (CH) (INS) No. 226 of 2021' -This case dealt with Corporate Guarantee and its crystallization into debt. Since FS and SFS are statutory obligations, this case does not support the appellant's argument.

vii. Export Import Bank of India Vs. Resolution Professional JEKPL Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 304 of 2017 This case dealt with whether the 'Counter Corporate Guarantor', comes within the meaning of 'Financial Creditor' as defined under Section 5(7) & (8) financial claims under IBC or not. These are not relevant to the present factual matrix of the case.

70. Based on the discussion above, we note that FS/ SFS arise due to changes in power purchase cost beyond the control of Discoms and the same is treated as an uncontrollable parameter in tariff regulations. The Fuel Surcharge and Special Fuel Surcharge in the present case have arisen due to variation in fuel cost. Further, in case of SFS due to change in law as decided by Hon'ble Supreme Court. It is due to peculiarities in the instant matter that the final decision about amount payable to ARPL and subsequent manner of recovery of arrears from consumers had to be decided at the level of Hon'ble Supreme Court and manner of recovery from end consumer was finalized by the RERC. FS and SFS are in our view statutory charges as decided by RERC and are payable only after the bill is raised in monthly instalments as decided by RERC consequent to final decision of Hon'ble Supreme Court.

71. We also note that FS/SFS though related to earlier period could not have been claimed in one instalment under PPIRP, as in this case the obligation to pay arises only after the bill is raised. We agree with the contention of Respondent in this regard that he could not have filed the claim for FS/SFS as it would be violative of Hon'ble SC's order and Section 142 of the Electricity Act, 2003. The obligations for payment in this case would arise in future as per the direction of Hon'ble Supreme Court and tariff orders of arrears.

72. We have also seen that none of judicial precedents cited by the appellant is squarely applicable to the facts of this case. In view of discussion above we also hold that the FS and SFS charges for which bill has not been raised cannot be wiped out by the clean slate principle, as these are statutory dues which would arise in future and liability to pay would come after the bill is issued.

73. We now take up the second issue regarding the contention that the Insolvency and Bankruptcy Code, 2016 (IBC) overrides the Electricity Act. In this regard, Appellants have relied upon the judgement of Hon'ble SC in

Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Pvt. Ltd. & Ors. [(2023) 10 SCC 60]. The aforesaid Judgment holds that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions, which open with non-obstante clauses i.e. Section 173 and 174. The matter in aforesaid case related to liquidation proceedings under the Code, where the appellant Discom held security interest against a property of the respondent and which was attached on the application of the appellant.

74. The issue involved in aforesaid appeal was whether order/judgment in appeal, liable to be set aside i.e.:

i. Whether PVVNL was subject to proceedings under the Insolvency and Bankruptcy Code, 2016 i.e. whether Sections 173 and 174 of the Electricity Act, 2003 ("the 2003 Act") had an overriding effect?

ii. Whether arrears on account of supply of electricity by PVVNL could be considered as government dues?

iii. Whether PVVNL was a secured operational creditor? Dismissing the appeal, the Supreme Court held that the appellant was subject to proceedings under the Code; the Court also did not agree with the contention that the dues of PVVNL were government dues and lastly Court agreed that PVVNL was a secured Operational Creditor and was eligible to get their dues under water fall mechanism prescribed in Section 53 of the Code.

75. The issues in the present case are very different from the PVVNL (supra). In the present case FS arises from the tariff order of RERC and SFS arises from the Judgment of Hon'ble Supreme Court based on which the RERC issued the tariff order. The SF and SFS dues would arise in future only after the bill is raised by the Discoms. This is similar to any operational debt, where the obligation to pay by CD arises after the bill/invoice is submitted by the Operational Creditor. We find no conflict between the provisions of IBC in this regard vis-à-vis provisions of Electricity Act 2003 on the facts specific to present matter.

76. We have also seen from the findings of Hon'ble Supreme Court in Pioneer (supra), wherein a three Judge Bench of Hon'ble SC held that in the context of RERA it is to be read harmoniously with the Code. It is only in the event of conflict that the Code will prevail over the RERA. It is therefore, clear that, for an override to take effect, there must be a clear and direct conflict between the provisions of both statutes. Section 238 of the IBC provides an overriding effect, stating that the provisions of the IBC shall have effect notwithstanding anything inconsistent in any other law. However, this override applies only in cases where there is an actual inconsistency between the provisions of the IBC and another statute.

77. In the present case, the appellant has not identified any specific provision of the Electricity Act that is in direct conflict with the IBC. A mere assertion of overriding effect, without demonstrating any inconsistency, is

insufficient, as we have to follow the principle of harmonious construct between the two legislations. We therefore, find the appellant's argument to be devoid of merit.

78. In view of the above findings, the appeal is dismissed. The impugned order dated 14.06.2024 is upheld, the Appellant is directed to pay the outstanding FS and SFS within 60 days. Failure to comply will result in penalties as per the Electricity Act, 2003. There would be no order as to costs.