Serial No.01
Daily List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.37/2024 with
MC (WA) No.19/2024

Date of CAV : 09.04.2024
Date of pronouncement : 07.05.2025

Meghalaya Power Distribution Corporation Limited (MePDCL), represented by the Director of Distribution, Meghalaya Energy Corporation Limited (MePDCL), Lumjingshai, Short Round Road, Shillong-793001, East Khasi Hills District, Meghalaya. ….. Appellant

Vs.

1. M/s Reliance Infratel Limited, having its registered office at H Block, 1st Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai, Maharashtra-400710.

2. Manish Nath, authroised signatory of RITL having its office at RITL, H Block, 1st Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai, Maharashtra-400710.

3. M/s Reliance Jio Infocomm Limited having its registered office at office 101, Saffron Nr. Centre Point, Panchwati 5 Rasta, Ambawati, Ahmedabad, Gujarat-380006.

4. M/s Summit Digital Infrastructure Limited having its registered office at Unit-2, 9th Floor, Tower-4, Equinow, Business Park, LBS Marg, Kurla (W) Mumbai City, Maharashtra-400070. ..... Respondents

Coram:

Hon'ble Mr. Justice I.P. Mukerji, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant	: Mr. A. Kumar, Advocate General with Mr. A.S. Pandey, GA Ms. R. Colney, GA
For the Respondents	: Mr. N. Venkataraman, Sr. Adv with Mr. A. Swarup, Adv Mr. V.V. Sastry, Adv Mr. V. Vappangi Sai Prasad, Adv Mr. Bhavuk Agarwala, Adv Mr. S. Jindal, Adv Mr. I. Kharmujai, Adv

i)	Whether approved for reporting in Law journals etc.:	Yes
ii)	Whether approved for publication in press:	Yes/No

Note: For proper public information and transparency, any media reporting this judgment is directed to mention the composition of the bench by name of judges, while reporting this judgment/order.

JUDGMENT

(*Delivered by the Hon'ble, the Chief Justice*)

Admittedly, the first respondent was the consumer of electricity. It received electricity supply from the appellant to operate mobile towers in the State of Meghalaya. There is no question that the electricity consumption dues of this respondent towards the appellant remains unpaid.

The Corporate Insolvency Resolution process which this respondent has undergone since 2018 is now used as a shield by this respondent to avoid its liability towards the appellant. A lot of business and legal acumen is involved in framing the cause of action in the instant writ petition, preferred by this respondent.

Nevertheless, a very substantial point has been raised, which is worthy of very active consideration.

The appellant, for whatever reason did not submit its claim before the Corporate Insolvency Resolution Professional under the Insolvency and Bankruptcy Code, 2016. The above debt of the first respondent was not reflected in the corporate insolvency resolution plan or in the statements of financial position of the corporate debtor i.e. the first respondent, which accompany this resolution plan. The plan was approved by the adjudicating authority, NCLT.

Now, the first respondent filed the instant writ petition claiming a declaration that the appellant could no longer claim from them the above outstanding due before the effective date of this resolution plan as they were not included in the debts of the said respondent mentioned in the plan. Therefore, all such claims or dues on account of electricity

consumption by the said respondent to the appellant stood "extinguished".

Two companies M/s Reliance Jio Infocom Limited and M/s Summit Digital Infrastructure Limited are made proforma respondents in the writ. They are the third and fourth respondents in the appeal. They are group companies or companies controlled by or having close connection with the first respondent.

The writ was against the State of Meghalaya and the Meghalaya Power Distribution Corporation Limited, the first and second respondents in the writ. Only the Meghalaya Power Distribution Corporation Limited is the appellant in this appeal. This is a procedural error. The cause title cannot be changed.

Now, it appears that the first respondent obtained power supply from the appellant to operate its mobile towers or for the operation of mobile towers by its said group companies in the State of Meghalaya.

On 12th June, 2023, the appellant issued a notice to the third respondent claiming electricity consumption charges as on 31st May, 2023. The notice said that there were 116 mobile towers with power supply and having outstanding electricity dues of more than ₹5000/- each.

There were 60 disconnected mobile towers whose total dues were ₹2,00,74,807/-. Additionally, there were 18 mobile towers with power supply having outstanding electricity dues of ₹5000/- or less. The particulars of those outstanding dues were meticulously incorporated in an annexure to the notice. The third respondent was asked to clear the dues in the notice failing which the appellant would cut off electricity supply to all the aforesaid mentioned towers including those towers for which there were no dues.

There is no dispute that the recipient of the notice, the third respondent was not the consumer of electricity but it does appear from the records that the first respondent was the consumer and that the third respondent, treated as a group or associate company of the first respondent was threatened with disconnection of electricity supply for the dues of the first respondent.

It is not the case of the first or the third respondent that the appellant was not entitled to disconnect electricity supply of the third respondent for the actual and legitimate outstanding electricity dues of the first respondent in respect of the above mobile towers.

The case that was sought to be run by the first respondent as would more elaborately appear in the facts of the case discussed in this judgment was that it had no dues towards the appellant. Such dues being prior to 22nd December, 2022 had been "extinguished" by sanction of the Corporate Insolvency Resolution Plan by the adjudicating authority, NCLT under the Insolvency and Bankruptcy Code, 2016, as this Corporate Insolvency Resolution Plan did not include the alleged debt of the first respondent to the appellant.

The contention of Mr. N. Venkataraman, learned Senior counsel appearing for the first respondent is that his client formerly known as Reliance Telecom Limited had undergone a Corporate Insolvency Resolution process duly complying with the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code"). On 25th November, 2019, Reliance Projects and Property Management Solutions Limited had submitted a Corporate Insolvency Resolution Plan for the acquisition of the first respondent which was approved with terms and conditions by the NCLT on 3rd December, 2020.

The appellant had not submitted any claim for the electricity dues of the first respondent towards it, with the resolution professional.

According to this approval, it was to be effective from 22nd December, 2022. All claims against the corporate debtor first respondent, not claimed or not included in the resolution plan, prior to 22nd December, 2022 stood extinguished, learned counsel asserted.

In the writ the first respondent sought a declaration to this effect. The argument which followed was that if the consumer or beneficiaries of power supply had no debts before the effective date towards the appellant, then any claim on it would also not lie.

Apart from declaration, in the writ the first respondent also wanted quashing of the demand notice dated 12th June, 2023.

The appellant took two preliminary points of objection.

The first was that the demand if any was against the third respondent which was an independent corporate body. They had not taken any proceedings to challenge the notice dated 12th June, 2023. The first respondent had no locus standi to challenge a notice which was addressed to the said other respondent.

The appellant also contended that the respondents had adequate alternative remedy under Section 60(5) of the Code. The writ jurisdiction of the Court ought not to have been invoked or exercised.

Law on the subject

The Companies Act, 1956 was replaced by the Companies Act, 2013. In 2016 the Insolvency and Bankruptcy Code was enacted by Parliament.

During the regime of the earlier Companies Act, separate rights were conferred with different types of reliefs in various parts of the statute. In one part, there were provisions for voluntary winding up of a company and winding up on the ground of inability to pay its debts. In another part there were provisions for introduction by the company or its creditors, contributors and schemes of amalgamation, restructuring, merger etc. of companies on such terms as the Court considered fit and proper.

When a company was ordered to be wound up by the court on its inability to pay its debts, the Official Liquidator took custody of its assets and liabilities on behalf of the court. Ultimately the assets were sold. The claims of the creditors of the company were invited by the Official Liquidator and settled by him and approved by the Court. The Act itself provided a claim payment procedure by stipulating priorities of claims and pro rata disbursement from the fund realised on sale of assets of the

company. Once the Official Liquidator took control of the Company (in liquidation), the creditors lost their right to realise the full amount of their claims.

More often than not, the court became interested in the revival of the company or in its running as a going concern at the instance of a creditor or contributory or the workers of the company. To facilitate this effort, it would stay the winding up order. It would proceed to consider and approve a scheme for revival or the running of the company as a going concern under the said other part of the Companies Act referred to above, on notice to all creditors, contributories and other stakeholders. The scheme proposed by an interested person which necessarily had to provide for payment to creditors to liquidate their dues would have to be approved by the Court and allowed to be implemented subject to such modification as the Court may make in it from time to time. The winding up application would be adjourned to await the result of the working of the scheme. If the scheme worked out successfully, the winding up application would no longer be proceeded with. Otherwise, the company would be wound up, its assets sold and proceeds distributed to its creditors.

It is quite clear from the present enactment that the intention of the Legislature now in the Code is to make an endeavour for revival of the corporate debtor described in Section 2 (8) of the Code instead of proceeding straight away to liquidate it.

Amongst other persons, an operational creditor is defined as a person to whom operational debt is owed or assigned in Section 5 (20) of the Code. Under Section 6 he initiates Corporate Insolvency Resolution proceedings, which is also described as commercial insolvency proceedings in Section 16. If the corporate debt is found substantiated, the adjudicating authority which is the NCLT [Section 5(1)] admits the application under section 7 (5) of the Code. Under Section 12, it is required to complete these proceedings within 180 days. Sections 13 and 15 empower the NCLT, the adjudicating authority to make a public announcement to the effect that it had admitted the proceeding and concurrently invite claims against the corporate debtor. The last date for submission of claims is required to be mentioned in the announcement. At the same time in exercise of its powers under Sections 16, 17, 18, 20 and 21, the adjudicating authority may appoint an interim resolution professional to run the corporate debtor as a going concern and to

preserve and protect the value of its property and also to declare moratorium with regard to the claims against the corporate debtor. The interim resolution professional is required to collate all claims received against the corporate debtor and determine its financial position. Thereafter, it is required to constitute a committee of creditors under Section 21.

Under Section 22, the committee of creditors appoint the resolution professional by continuing with this interim resolution professional or by appointing another professional as the resolution professional.

Under section 25, the resolution professional has the duty to take custody of all records of the corporate debtor, to protect its assets, continue its existing business and most importantly prepare an information memorandum according to section 29 which obligation involves scrutinising and reviewing the financial position of the company as prepared by the resolution professional. Similar is the duty of the resolution professional under section 30 with regard to resolution plan submitted by a resolution applicant.

Then under section 31, the resolution plan goes for approval to the adjudicating authority. The adjudicating authority has a concurrent duty

of satisfying itself that inter alia the plan provides for payment of the debts of operational creditors. Thereafter, the adjudicating authority which is the NCLT approves the resolution plan.

Section 60 provides that during pendency of the resolution plan before the adjudicating authority or NCLT, any application is to be made before it. Such an application under section 60 (5) (c) includes one for determination to any question with regard to insolvency resolution.

Under Section 61 an appeal from a decision of the NCLT lies before the appellate authority (NCLAT). Such appeal under section 61(2) has to be filed within 30 (thirty) days of the decision of the NCLT, the Appellate Tribunal may extend such time by a maximum period of 15 days. A further appeal lies under section 62 of the Supreme Court within 45 days which may be further extended by 15 days and no more.

Now a look at the decisions in this field.

Two landmark decisions are ***Committee of Creditors of Essar Steel India Limited through authorised signatory v. Satish Kumar Gupta & Ors*** reported in ***(2020) 8 SCC 531*** and ***Ghanashyam Mishra & Sons Private Limited through the authorized signatory v. Edelweiss Asset Reconstruction Company Limited through the Director & ors*** decided

by the Supreme Court on 13th April, 2021 and reported in ***(2021) 9 SCC 657***.

All debts of the corporate debtor undergoing a corporate resolution process are required to be incorporated in a resolution plan which is to be prepared by the resolution professional, vetted by the committee and approved by the adjudicating authority, NCLT. On approval by the adjudicating authority, all debts not submitted to the resolution professional or before the effective date of the plan but not included in the resolution plan stand "extinguished". The debts before the effective date mentioned in the resolution plan would be operative against the corporate debtor in such manner as indicated in the resolution plan. Subsequent to approval of the resolution plan, fresh debts of the corporate debtor prior to the effective date could not be submitted or introduced or taken cognizance of.

In ***Essar Steel India Limited Committee of Creditors vs. Satish Kumar Gupta*** reported in ***(2020)8 SCC 531*** the Supreme Court observed as follows:

> "107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an

> appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count."

This judgment has very elaborately identified the powers of the Committee of Creditors and of the Adjudicating Authority, NCLT. It observed in paragraphs 65-73 that the Committee of Creditors was a professional body and was entrusted with the tasks of approving and preparing a resolution plan for the corporate debtor. It was to be treated as an expert and its proposals ordinarily not to be interfered with by NCLT. Once the resolution plan has been approved by the Committee of Creditors and not interfered with by the Adjudicating Authority, subsequently, claims could not be entertained as that would work against the purpose of the Act.

In ***Ghanashyam Mishra & Sons (P) Ltd. vs. Edelweiss Assets reconstruction Co. Ltd. (2021)9 SCC 657***, the Supreme Court in

paragraph 98 held that the term "operational Creditor" included Central and State Governments and any other local authority, following its earlier decision in the case of Committee of Creditors of Essar Steel India Limited and went on to conclude:

> "102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan."

These principles were again reiterated in ***RPS Infrastructure Ltd. v. Mukul Kumar reported in (2023) 10 SCC 718*** and ***Vaibhav Goel & anr v. Deputy Commissioner of Income-Tax & anr*** decided on 20th March, 2025.

In ***RPS Infrastructure Limited v. Mukul Kumar & anr*** *reported in* ***(2023) 10 SCC 718***, the Supreme Court reiterated its observations in *Essar Steel* on entertaining claims after the resolution plan had been accepted by the Committee of Creditors. It took a very strict view of the sanctity of the Corporate Insolvency Resolution Plan. Its finality after

undergoing the due process under the Code could not be easily interfered with by the adjudicating authority. The view of the Supreme Court was so strong that even before approval of the plan by the adjudicating authority, it would not allow what it conceived to be an unreasonably delayed claim of 287 days by a corporate creditor.

In the recent case of ***Vaibhav Goel & anr v. Deputy Commissioner of Income Tax & anr*** (***Civil Appeal No.49 of 2022***) decided by the Supreme Court on 20th March, 2025, the Supreme Court ruled the following:

> "all the dues including the statutory dues owed to the Central government, any State Government or any local authority, if not a part of the resolution plan, shall stand extinguished and no proceedings could be continued in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 of the IB Code."
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> While all these cases stand on one side, on the other side is the case of ***State Tax Officer v. Rainbow Papers Limited (2022) SCC online SC 1162.*** It is equally a landmark decision.

Amongst other things it enjoins the resolution professional, the adjudicating authority with an independent duty irrespective of whether a – corporate creditor has lodged its claim for debts or not of examining whether the resolution plan contains all the debts of the corporate debtor

before the effective date. If it is found that some debts are not included or that there is no justification for excluding some debts or that this duty of examination of the entire financial position of the corporate debtor has not been discharged properly, then the resolution plan is to be treated as invalid, void and non est.

Now, if such is the pronouncement and dictum of the Supreme Court, then on the facts similar to those in that case, such a resolution plan even if approved by the adjudicating authority would not extinguish the debts of the corporate debtor prior to the effective date in the resolution plan.

On a proper interpretation of this judgment till such time as a resolution plan is declared as invalid it would be presumed to be valid and all debts not included in the plan prior to the effective date would be deemed to be extinguished.

Preliminary points

The point raised by the appellant that the first respondent has no *locus standi* to maintain the writ, has to be dealt with first.

The impugned demand notice was raised on the said group company, the third respondent on the footing that it had close connection

with the first respondent which had the subject dues toward the appellant. This company individually had no debt towards the appellant. This group company had to clear those dues to save those towers from disconnection of electricity. The appellant cannot change its stand and now say that the said group companies are independent corporate entities. If that be so then the third respondent is deemed to have no connection with the first respondent and for the dues of the first respondent, the electricity connection of the third respondent cannot be cut off.

Now, the second point. The respondent-group companies have not initiated any proceedings against the demand notice. What is the locus of the first respondent to maintain the writ, it was argued by Mr. Kumar, learned Advocate General.

Now, any person is entitled to seek a declaration whether it has any liability towards any other person.

The first respondent is entitled to establish that it has no due before the effective date of the resolution plan towards the appellant and that on such premises the appellant cannot maintain its demand against its respondent-group companies. In my view, the appellant is entitled to seek

such a declaration that it is not so liable, for the benefit of its group companies.

Final Conclusions:

In a perfect set of circumstances when there is unimpeachable collation consideration and adjudication of the debts of the corporate debtor its debts before the effective date of the approved resolution plan would be extinguished and the ratio in ***Committee of Creditors of Essar Steel India Limited through authorised signatory v. Satish Kumar Gupta & ors*** reported in ***(2020) 8 SCC 531*** and ***Ghanashyam Mishra & Sons Private Limited through the authorized signatory v. Edelweiss Asset Reconstruction Company Limited through the Director & ors*** with connected matters decided by the Supreme Court on 13th April, 2021 as reported in ***(2021) 9 SCC*** 657 and the subsequent decisions would be squarely applicable. But once the facts and circumstances change as in ***State Tax Officer v. Rainbow Papers Limited*** reported in ***2022 SCC OnLine SC 1162***, the ratio may not apply or be applicable in a modified form.

As Denning, LJ observed in ***Paisner & ors v. Goodrich: 1955 2 All E.R. 330*** "When the judges of this court give a decision on the

interpretation of an Act of Parliament, the decision itself is binding on them and their successors: see *Cull v. Inland Revenue Comrs. (4)*, *Morelle, Ltd. v. Wakeling (5)*. But the words which the judges use in giving the decision are not binding. This is often a very fine distinction, because the decision can only be expressed in words. Nevertheless, it is a real distinction which will best be appreciated by remembering that, when interpreting a statute, the sole function of the court is to apply the words of the statute to a given situation. Once a decision has been reached on that situation, the doctrine of precedent requires us to apply the statute in the same way in any similar situation; but not in a different situation. Whenever a new situation emerges, not covered by previous decisions, the courts must be governed by the statute and not by the words of the judges."

The effect of the decision in ***Rainbow Papers Limited*** as I see it is that if the resolution plan does not include all the debts, it is invalid. Furthermore, according to the decision in ***Rainbow Papers Limited***, the resolution professional, the committee of creditors and the adjudicating authority have concurrent duties and responsibilities to check up the plan and satisfy itself that inter alia all the debts of the corporate debtors have

been included irrespective of the fact whether a creditor has lodged a claim. It is true that the decision in ***Rainbow Papers Limited*** said that if the resolution plan does not comply with the procedural rules of the Code, it would be invalid or void ab initio. If it is so, it is non est.

In my opinion, unless any contrary order is brought from a competent jurisdiction declaring invalidity of the resolution plan, the plan as approved by NCLT is valid and binding on all stakeholders.

In the facts and circumstances of this case the said alleged debts of the first respondent to the appellant are not included in the resolution plan as approved by the adjudicating authority, NCLT on 3rd December, 2020. Therefore, those debts before the effective date of the plan i.e., 22nd December, 2022 are deemed to have been extinguished.

Therefore, I pass an order of injunction restraining the appellant from taking steps or from enforcing its demand notice dated 12th June, 2023.

Lastly, the question arises as to whether this Court can make a declaration with regard to extinguishment of the said debt.

Sections 60, 61 and 62 of the Code provide a judicial remedy however unlikely or remote to the appellant or anyone similarly situated to

attempt to establish the incomplete nature of the resolution plan and to seek a declaration that the plan as approved is invalid in terms of the ***Rainbow Papers Limited*** principle. On the other hand, those provisions provide the forum stipulated by the Code to the first respondent to seek the declaration it prays for in the writ. In such a situation, this Court would refrain from exercising its writ jurisdiction to make the declaration the first respondent wants.

This appeal is partly allowed by substantially affirming the judgment and order under appeal with the above modifications and observations. The impugned notice dated 12th June, 2023 is set aside without going into any subsisting right of the appellant if any to challenge the resolution plan.

MC (WA) No.19 of 2024 is disposed of.

(W. Diengdoh)
Judge

(I.P. Mukerji)
Chief Justice

Meghalaya
07.05.2025
"Lam DR-PS"