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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8449 OF 2022

NRC Limited,
A company incorporated under the provisions of Companies Act, 1913 and having its registered office at 67, Surajmal Bldg, 75, Nakhoda Street, Mumbai – 400 003, Thane 421 102. **...Petitioner**

~ versus ~

1. **State of Maharashtra,**
   Through AGP, High Court Compound PWD Building, Mumbai - 400 023
2. **Maharashtra State Electricity Distribution Co Ltd (MSEDCL),**
   a Government of Maharashtra undertaking, through its Superintending Engineer of the Kalyan Circle having its office at Tejeshree, 2nd Floor, Jahangir Maidan, Karnik Road, Kalyan (West), Pin – 421 301 **...Respondents**

Appearances

for the petitioner **Mr C Keswani**, *with Akash Manwanai & Tanvi Rana, i/b Economic Laws Practice.*

FOR RESPONDENT NO. 1-STATE	**Mr AI Patel, Addl. Government Pleader**, *with KS Thorat, AGP.*
FOR RESPONDENT NO.2	**Ms Deepa Chavan**, *with Kiran Gandhi, Nirav Shah & Ravindra Chile, i/b Little & Co.*

CORAM : G.S.Patel & Gauri Godse, JJ

DATED : 30th September 2022

ORAL JUDGMENT (*Per GS Patel J*):-

1. We admitted the Petition on 22nd September 2022. On that date Mr Keswani needed time to take instruction on the question of interim reliefs.

2. We have since heard Mr Keswani for the Petitioners and Ms Chavan for the 2nd Respondent on the question of interim relief.

3. There is an interesting question of law that undoubtedly arises. The task before us is limited. It is to balance competing equities given judgments of the Supreme Court, one of them very recent.

4. The real dispute is between the Petitioner NRC Limited ("**NRC Ltd**") and the 2nd Respondent, the Maharashtra State Electricity Distribution Company Limited ("**MSEDCL**"). It is in regard to past dues of MSEDCL. The stand that MSEDCL takes is,

perhaps deceptively, simple: it says that unless its past dues are cleared, it cannot and will not provide a new connection to NRC Ltd at its units. This gets complicated by the fact that NRC Ltd has now emerged from a Corporate Insolvency Resolution Process ("**CIRP**") under a sanctioned and approved Resolution Plan at the instance of a Resolution Applicant. This process is governed and controlled by the provisions of the Insolvency and Bankruptcy Code 2016 ("**the IBC**"). The plan in question is approved by the National Company Law Tribunal ("**NCLT**"). We are told that there is some appeal before the National Company Law Appellate Tribunal ("**NCLAT**") but the sanctioned or approved plan has presently not been disturbed.

5. One of the questions that undoubtedly arises is of MSEDCL's role and standing within the framework of the Resolution Plan. Is it a statutory creditor? Have its claims for past dues been written off or reduced upon the sanction of the Resolution Plan? Can these past dues be said to have been extinguished upon approval of the Resolution Plan? Is it permissible for MSEDCL, whatever its description as a creditor to whom amounts are owed, to stand outside the Resolution Plan and raise its demands?

6. We would have to take a prima facie view on all these. There is no possibility of a final determination at this stage.

7. The facts themselves are not in dispute. We have a list of dates, and we intend to set out some of these in abbreviated form only to the extent necessary. Under the Electricity Act 2003, the

Maharashtra Electricity Regulatory Commission (Electricity Supply Code And Other Conditions of Supply) Regulations came into force on 20th January 2005. These Regulations are framed under Sections 181 and 182 of the Electricity Act and have to be read with some portions of Section 45, Section 46, Section 47 and Section 50. One of these Regulations (earlier Regulation 10.5 and now Regulation 12.5) immediately falls for consideration.

8. NRC was originally National Rayon Corporation Limited. It used to manufacture many different products, including yarn and basic chemicals. In July 2009 NRC Ltd was declared sick under the provisions of the erstwhile Sick Industrial Companies (Special Provision) Act 1985 ("**SICA**"). Following this, with effect from 15th November 2009, NRC Ltd's previous management declared a lockout. This resulted in a complete and immediate cessation of NRC's operations and consequently of its earnings. NRC could not clear many debts, including those it owed to MSEDCL.

9. On 3rd November 2015, MSEDCL issued an electricity disconnection notice. NRC Ltd's rayon plant, chemical plant and nylon plant and the NRC colony where workmen stayed, and a river pump all received electricity supply from a single point connection of 22Kv from MSEDCL. On 18th April 2016, MSEDCL disconnected power entirely. The NRC Mazdoor Sangh filed Writ Petition No. 5211 of 2016 seeking a restoration of electricity supply. On 4th May 2016, by an interim order of 4th May 2016, this Court directed the restoration of electricity supply to NRC but only for its water treatment plant so that water could be supplied to the

workmen living in the NRC colony. NRC Ltd has thus used electricity supply by MSEDCL for this limited purpose. The rest of the NRC Ltd premises are without power.

10. On 28th June 2018, Punjab National Bank ("**PNB**") filed an application under Section 7 of the IBC before the NCLT against NRC Ltd initiating the Corporate Insolvency Resolution Process or CIRP. NCLT admitted the Petition on 27th November 2018, triggering a moratorium under Section 14 of the IBC. The NCLT appointed an Interim Resolution Professional or IRP.

11. On 7th December 2018, the IRP issued a public notice or advertisement inviting claims from NRC Ltd's creditors. His correspondence address was set out in this notice. On that very day, MSEDCL issued a notice to NRC Ltd under Section 56(1) of the Electricity Act demanding payment of Rs.13,39,81,830/- towards uncleared and pending electricity dues as set out in its bill of 1st December 2018. MSEDCL agrees that it learnt of the initiation of the CIRP against NRC Ltd but says that it learnt of these in some legal proceedings in the High Court from submissions made in that regard by NRC Ltd itself. This is part of a litigation record.

12. Under the IRP's notice the last date for filing proof of claims by creditors was 17th December 2018. The relevant Regulations of 2016 of the Insolvency Board clearly say that proof of claims must be filed with the IRP before the last date mentioned in the public notice or announcement that the IRP issues. In this case that would be 17th December 2018. There is an additional time of 90 days from

the date of "commencement of insolvency". This additional time would extend the period to 5th March 2019.

13. There is factually no dispute that MSEDCL did not submit its claim by 17th December 2018 or even after the 90 day period, i.e., by 5th March 2019.

14. The usual steps in the CIRP followed. There was a Committee of Creditors ("**CoC**"). Adani Properties Private Limited ("**Adani Properties**") came forward as a Resolution Applicant. It propounded a Resolution Plan. The CoC examined the feasibility and viability. There were many creditors: statutory, secured and otherwise. The Resolution Plan was put to vote and finally approved as required by law.

15. It was not until 7th August 2019 that MSEDCL filed a Miscellaneous Application No. 2731 of 2019 before the NCLT. In this, MSEDCL sought a modification of the NCLT's order of admission of 27th November 2018 passed on PNB's application under Section 7 of the IBC. What MSEDCL now sought was that the NCLT should clarify that the uninterrupted supply of goods and services, i.e., electricity by MSEDCL would be subject to payment of charges consumed during the entire moratorium period. The second relief sought was that if the corporate debtor — in this case NRC Ltd — or the Petitioning Creditor, i.e., PNB, failed to pay the "regular current electricity bills" then MSEDCL be set at liberty to disconnect electricity supply as per the provisions of the Electricity Act 2003. In the body of this Miscellaneous Application (page 78 of

the Petition), MSEDCL averred that should the Resolution Plan be approved or should NRC Ltd held not to be capable of being revived through the CIRP, and, instead, be ordered to be liquidated, then MSEDCL would not be able to recover its dues.

16. On 14th October 2019, MSEDCL sent its claim to the Resolution Professional of NRC Ltd, including in hard copy. It seems that this was to an address different from the one given by the IRP in his public announcement/notice of 7th December 2018. MSEDCL filed Form 'C' under Regulation 17 of the IPBI (Liquidation Process) Regulation 2016. This form provides for submission of proof of claims of "operational creditors" to a liquidator. This is distinct from a claim under Form 'B' under Regulation 7 of the IPBI (Insolvency Resolution Process for Corporate Process) Regulation 2016, which provides the submission of proof of claims by operational creditors to the Interim Resolution Professional.

17. On 13th March 2020, now that the CoC had voted in favour of the Resolution Plan, the NCLT approved that Resolution Plan under Section 31 of the IBC. As we shall presently see this has consequences in law and the relevant provisions of the IBC in this regard have been interpreted by the Supreme Court in unambiguous terms. MSEDCL did not assail the Resolution Plan before the NCLT. MSEDCL has also filed no appeal against the NCLT's approval of the Resolution Plan before the NCLAT. Notably, the Resolution Plan, as approved, makes provision for payment to operational creditors and of "admitted government statutory

authority claims". Ms Chavan for MSEDCL submits that the Resolution Applicant, now Adani Properties, knew from the information memorandum submitted by the Resolution Professional that there were indeed claims and demands by MSEDCL including from the Bombay High Court order in the NRC Mazdoor Sangh Petition, and which order was made on 4th May 2016. That order continued electricity supply for a limited section of the NRC Ltd premises. NRC Ltd was a party to the NRC Mazdoor Sangh Petition. Therefore, in her submission, the IRP, the RP and Adani Properties must, at the very least, be deemed to have been aware of knew of the entirety of MSEDCL's demand.

18. The NCLT disposed of MSEDCL's Miscellaneous Application No. 2731 of 2019 saying that since it had already considered and approved the Resolution Plan, there was no occasion or reason to consider any modification of the order admitting the initial application filed by PNB. It seems to us this is only logical because that order of admission would undoubtedly have merged into the final order made in that very matter. In any case, MSEDCL did not carry this order any further. Ms Chavan points out that no question arose of doing so, because Adani Properties had paid the electricity dues from the date of the moratorium. The substance of MSEDCL's Miscellaneous Application stood fully addressed by virtue of that payment.

19. But, as is now abundantly clear, MSEDCL had split its claim into two streams. One was the claim for payment of dues from the date of the moratorium. That was the subject of the Miscellaneous

Application, and it was actually paid, thus ending that controversy. What remained was MSEDCL's claim for past unpaid arrears. It was in these circumstances that on 21st January 2021, MSEDCL served a notice under Section 56(1) of the Electricity Act 2003 on Adani Properties. It said that on approval of the Resolution Plan, Adani Properties, the successful Resolution Applicant now had to pay an amount of Rs.29,94,09,779/- towards electricity arrears.

20. NRC Ltd, now under new management, denied liability by its response of 9th February 2021 on the simple ground that MSEDCL's claims did not form part of the approved and sanctioned Resolution Plan. Past liability stood extinguished, NRC Ltd maintained, and therefore MSEDCL had to issue fresh bills from the period commencing from 27th November 2018, i.e., the date of commencement of CIRP.

21. Very shortly after this, on 24th February 2021, the MERC (Electricity Supply Board and Standard of Performance of Distribution Licenses including Power Quality) Regulations 2021 came into force. It is there that Regulation 12.5 substitutes for Regulation 10.5 of the previous Regulations of 2005. Regulation 12.5 will need to be considered. The relevant portion reads thus:

> "**12.5 Any charge for electricity or any sum** other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased Consumer or the erstwhile owner/ occupier of any premises, as a case may be, **shall be a charge on the premises transmitted to the legal representatives / successors-in-law or transferred to the new owner / occupier of the premises, as the case may be and the same shall be recoverable by**

> **the distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises**, as the case may be."
>
> *(Emphasis added)*

22. On 12th March 2021, MSEDCL issued a revised bill for Rs.1,69,09,540/- for the period 27th November 2018 till February 2021. NRC Ltd paid these by two cheques of 26th March 2021. This is therefore also not in dispute.

23. On 6th April 2021, MSEDCL issued an electricity bill for Rs.16,39,16,619/-. This was for the month of March 2021. NRC wrote back saying that its actual electricity consumption was only Rs.5,31,281/- and the balance of Rs.11,69,091.40 was towards current interest. Rs.7,31,25,943.45 was alleged arrears of principal and Rs.8,90,90,366.84 seemed to be a demand for arrears of interest. NRC Ltd contended that these were past liabilities and stood extinguished upon the approval of the sanctioned resolution plan. NRC Ltd asked MSEDCL to restore electricity supply.

24. On 14th December 2021, NRC Ltd filed an application with MSEDCL for a new electricity connection at its properties at four villages. Between 5th and 9th February 2022, NRC Ltd filed four online applications to MSEDCL seeking high tension connections for its properties at these four villages. MSEDCL rejected the applications by a letter of 15th April 2022 at Exhibit "G" at page 254 — impugned in this Petition — on the ground of non-payment of electricity arrears of Rs. 28.54 crores. MSEDCL said that if NRC wanted a new HT connection at these premises, NRC Ltd would

need to "withdraw the Court cases" and make payment of arrears on the premises.

25. On 9th March 2022, NRC Ltd said that it had regularly paid all electricity bills from 27th November 2018. The non-supply of electricity to NRC Ltd was putting NRC Ltd into loss. MSEDCL was thus requested to provide a new connection.

26. This Petition was filed on 29th June 2022.

27. As Ms Chavan correctly and fairly points out, what this Court is asked to do is to balance the competing interests going forward. This is not an order on final disposal of the Petition. MSEDCL's claims and contentions will be assessed at some later date. In the meantime, she submits, the interests of MSEDCL, not merely because it is a State-run authority but even otherwise, should be sufficiently safeguarded by an appropriate order of this Court. Whether this should take the form of a deposit in Court or by some other means is a matter best left to the discretion of the Court.

28. Mr Keswani agrees that an interim order will need to be fashioned. However, he submits that the viability of the Resolution Plan is indeed a very delicate thing. That plan is taken to fruition not by some off-the-cuff proposal. It goes to an extremely arduous and exacting process. The statute itself and its companion regulations provide for this. Claims are invited and these are not invited by an applicant or a private party or a stake holder but by somebody authorised by the statute to carry the process forward. These claims,

once they are received, are not all accepted or rejected as a whole. The Resolution Applicant makes its case regarding viability of its proposal. Individual claims are discussed. There are secured creditors, unsecured creditors, statutory creditors and all these claims are considered. The Resolution Plan may in fact undergo modifications and changes through this process. The Committee of Creditors, as the very name suggests, is one filter. The Resolution Professional is the next, for under Section 30, he must be satisfied as to the workability of the proposed plan. The next level filter is the approval of the NCLT which is mandated by law under Section 31 of the IBC. This considers the views of the CoC and the RP, but the law does not suggest, Mr Keswani submits, and we think correctly, that the NCLT has simply to rubber stamp the views of the CoC or the RP.

29. We are not required to make any final pronouncement on this aspect of the matter at all at this stage. The point is different. If, despite being given notice, a particular creditor, whether it is supplying essential services or otherwise, does not respond within the time or within the extended time, then the statute itself provides for an extinguishment of that claim. Again, Mr Keswani is careful to submit, that a final determination of this is not necessary at this stage. His submission is only directed to two purposes or ends; first, that it is in these circumstances that there cannot be an order requiring NRC Ltd to make a deposit to cover MSEDCL's claim for past arrears. Second, if every creditor then chooses to stay outside the CIRP and later raise a demand, and if Court after Court is then going to compel the Resolution Applicant to deposit vast amounts in Court, the entire approved Resolution Plan is as good as shattered.

The Resolution Plan is, Mr Keswani submits, not some omnibus random figure that is presented on a take-it-or-leave-it basis. It is a negotiated amount that takes into account existing claims and considers how much of each claim is to be paid across all classes of creditors. From the perspective of the Resolution Applicant, in this case Adani Properties, it is necessary that the Resolution Applicant knows exactly what it is committing itself to in terms of financial obligations, monetary obligations and even fiscal obligations, i.e., claims from tax authorities. He puts like this: if on the approval on the Resolution Plan even a claim by a tax authority is held by the Supreme Court's decision to stand extinguished, then this much surely apply down the line to all other classes of creditors irrespective of the nature of the goods or services supplied.

30. The other aspect of the matter, to which Mr Keswani points, is to take a step back and look at the initiation of the CIRP process under Section 7. A Petitioning Creditor comes to the NCLT and says its debts have not been paid and that the mandated CIRP process may begin. At this stage, nobody knows the final outcome. There is no assurance that the CIRP process will ultimately succeed or that a Resolution Plan will in fact be approved. Two routes or eventualities are clearly possible. The end results are entirely different and have different implications and connotations. One possibility is that Resolution Applicant comes forward, propounds a Resolution Plan, this is taken up by the CoC, considered, debated, and goes through the tests of Sections 30 and 31, to final approval. As he earlier pointed out, the one thing this requires above all is certainty as to obligations that the Resolution Applicant has taken on or agreed to take on. The other possibility at the stage of

initiation of a CIRP process is that there is no Resolution Plan, or the proposed Resolution Plan fails to pass muster. In that eventuality, the company moves into liquidation and a completely different and distinct structure arises. This involves the husbanding of the assets of the company from different areas and sources by the liquidator and of then realising them, assessing the claims that are received by creditors, setting these in the priorities required by law and then making payment or pro-rated payment to creditors in that established order. The one thing that neither eventuality contemplates is what the Supreme Court described as "Hydra popping", a reference to the serpentine water monster from Greek and Roman mythology, a creature with many heads and a regeneration feature: for every head chopped off, Hydra would grow two more.

31. Mr Keswani says MSEDCL had every opportunity to present its claims before the IRP within the time or the extended time. It did not do so. In law, its claim for past dues is extinguished.

32. We believe Mr Keswani is right in this formulation. What Ms Chavan tells us is not that MSEDCL did not know or can be held to not have known of the IRP-set date by which claims were to be received or the extended date mandated by law. Instead, she canvasses the reverse, which is to say that *IRP* or *RP* 'ought to have known from litigation papers' that MSEDCL had a claim and ought to have included that claim in the Resolution Plan. Her submission is that since this was disclosed in a litigation the Resolution Applicant ought to have disclosed this. We do not see how this helps

Ms Chavan very much. because the mere disclosure by Resolution Applicant is not equivalent to a lodging of proof of claims by the creditor. The submission seems to imply that if a Resolution Applicant can be shown to have been aware of a claim by creditor, then the creditor has no obligation to file its proof of claims with the IRP or RP. Such a submission has only to be stated to be rejected precisely for the reasons that Mr Keswani outlines. It would play havoc with the entire structure of the CIRP process. Nobody would know with any certainty which claim existed in what form and to what extent. Nobody would know whether that claim had to be paid in full. This is because the next necessary implication of the submission on behalf of the MSEDCL is that once Adani Properties as the Resolution Applicant or the Resolution Professional disclosed what they must be deemed to have known, then the Resolution Plan should have provided for a full payment of that claim without any reduction. That is not the framework of the CIRP process at all. The process of inviting claims by the IRP or RP is not very different from the process that the Liquidator has traditionally taken in any corporate winding up or liquidation process. Claims are invited in both situations. The difference is that in the case of a resolution process the claims are invited at an earlier point in time i.e., not during liquidation. Those claims are invited precisely to avoid liquidation, this being the legislative mandate of the IBC itself. But the mere filing of a proof of the claim does not mean that the claims stand verified and proved on their own by the mere filing. The IRP/ RP is no mere post-office to merely take a claim and send it forward. The IRP is required to verify the claim. There may be questions of limitation. Some claims may require adjudication. There may be

several other reasons why such claims may not be accepted at all or in the full form in which they are submitted to the IRP.

33. If MSEDCL did not submit its claims entirely or within the extended time, can its claim for past dues of Rs.28.54 crores be said to have been "extinguished"? For this, we need to turn first to the decision of a three Judge Bench of the Supreme Court in *Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Assets Reconstruction Company.*[1] This has an elaborate analysis of the IBC. Among other things, it also considers a previous three-Judge decision of the Supreme Court itself in *Essar Steel India Ltd Committee of Creditors v Satish Kumar Gupta*.[2] Among the findings by the Supreme Court in the *Ghanashyam Mishra* decision was that after the CoC approves the plan, the adjudicating authority, that is to say the NCLT, must arrive at a subjective satisfaction that the plan conforms to the requirements of the statute. Once this is done, the Supreme Court tells us, the plan "becomes binding on the corporate debtor, its employees, members, creditors, guarantors and other stake holders" (the words of the statute). The legislative intent is to freeze all claims "so that the Resolution Applicants starts on the clean slate and is not flung with any surprise claims". If that is permitted, the Supreme Court says, the very calculations on the basis of which the Resolution Applicant submits its plans, would go haywire and the plan would become unworkable.

34. Who are the "other stake holders"? The Supreme Court in *Ghanashyam Mishra* said that would squarely cover the Central

1 (2021) 9 SCC 657.

2 (2020) 8 SCC 531.

Government, any State Government, and any local authorities. Indeed, it was found that because there was an obvious lacuna, several State Tax Authorities did not abide by the mandate of the IBC but continued with the proceedings. This resulted in a legislative intervention in the form of a 2019 amendment to cure precisely this mischief. The Supreme Court in *Ghanashyam Mishra* held that 2019 amendment to be declaratory, clarificatory and therefore retrospective in operation. This aspect of the law on retrospectivity was considered in depth. In addition, the Supreme Court in *Ghanashyam Mishra* took into account the definition of 'creditor', which means any person to whom a debt is owned. The definition is inclusive. It includes a financial creditor, operational creditor, secured creditor an unsecured creditor and a decree holder. This is important because in the facts of our case MSEDCL says that it is an operational creditor. In *Ghanashyam Mishra*, the Supreme Court also looked at the definition of 'operational creditor'. This means a person to whom an operational debt is owned and includes a transferee or assignee. An operational debt is a claim in respect of the provision of goods or services including employment or a debt in respect of payment of dues arising under any law for the time being in force and payable to the Central Government any State Government or local authority.

35. At this stage and with this in mind we look at paragraph 84 of *Ghanashyam Mishra* which dealt with the mischief sought to be corrected. The Supreme Court now interpreted the retrospectively-operational 2019 amendment to mean that on the Resolution Plan being approved under Section 31 by the NCLT, all claims and dues owed to any State Government, Central Government or any local

authorities — including tax authorities — and which **were not part of the resolution** shall stand extinguished. We see no ambiguity whatsoever in the ratio of the decision of the Supreme Court in *Ghanashyam Mishra*.

36. But Ms Chavan draws attention to a later decision of the Supreme Court itself in *State Tax Officer (1) v Rainbow Papers Limited*.[3] This is a decision of 6th September 2022. It is by a two-Judge Bench of the Supreme Court. Clearly it could not take a view different from that taken by the Supreme Court in *Ghanashyam Mishra*, a decision that was binding on it. It is for this reason that Ms Chavan is at some pains to point out that *Rainbow Papers* in fact cites and follows *Ghanashyam Mishra* but does not deviate from it. Her emphasis however is somewhat different. In paragraph 45, *Rainbow Papers* re-emphasises the very finding in the *Ghanashyam Mishra* decision that Resolution Plan must conform to the provisions of the statute. The Resolution Professional and the adjudicating authority must ensure this. The adjudicating authority must record its subjective satisfaction of such conformity. In paragraph 52, *Rainbow Papers* said that if the Resolution Plan ignores statutory demands payable to a State Government or a legal authority, the adjudicating authority is bound to reject the Resolution Plan. The Court went on to say that there must be a plan which contemplates a distribution of assets in a phased manner with uniform proportional reduction. Otherwise, the company would have to be liquidated and its assets sold and distributed. It went on to say that the CoC, which might include financial institutions and other financial creditors, cannot

3 2022 SCC OnLine SC 1162.

secure their own dues at the cost of statutory dues owed to a Government or Government authorities or for that a matter any other dues.

37. *Rainbow Papers* must be read, as Mr Keswani says, in context. What was before the Court was Section 48 although of the Gujarat Value Added Tax Act 2003 or the GVAT Act. That Section said that any amount due on account of tax interest or penalty would be a 'first charge' on the property of the dealer, etc. The company in question, Rainbow Papers, was drawn into the CIRP process by a petition filed by an operational creditor. An IRP was appointed. Claims were invited by newspaper advertisements. A CoC was constituted. Then a RP was appointed. The STO filed a claim before the RP claiming an amount of Rs. 46.37 crores that was due. That claim was filed beyond time. The Resolution Applicant submitted a Resolution Plan. Many creditors objected to it. There were further proceedings. On 22nd October 2018, the RP informed the STO that its entire claim was waived or extinguished. The STO challenged the Resolution Plan and made an application in the form of an IA contending that its dues could not be waived or extinguished. It sought payment of the entire amount. The NCLT rejected this application as not maintainable. The STO filed an appeal before the NCLAT. The NCLAT dismissed that appeal inter alia on the ground that the STO had not filed its claim within time. It was delayed not only before the Resolution Professional but also before the adjudicating authority. This was the factual matrix before the Court in *Rainbow Papers.* What is important, however, is the submission that there was statutory charge created by Section 48 of the GVAT Act and it was pointed out that the STO had made its

claim to the RP *well before the Resolution Plan was approved even by the CoC under Section 30(4) of the IBC*.

38. This puts MSEDCL's case in a class apart. The last date for filing proof of claims was 17th December 2018. The extended date was 5th March 2019. The CoC approved the Resolution Plan on 3rd July 2019. MSEDCL's application for payment of dues post the moratorium was filed only in August 2019. It was not until 14th October 2019 that MSEDCL first forwarded a claim to the RP, that is to say, about three months after the CoC had approved the Resolution Plan was on 3rd July 2019. Its demand under Section 56(1) did not come until 21st January 2021.

39. This takes us to a consideration of the submission that under the amended MERC Regulations of 2021 and Regulation 12.5, MSEDCL has a "charge" on the premises.

40. Prima facie, we do not believe that the submission is well founded. The word 'charge' is used in Regulation 12.5 as being the amount claimed or billed for electricity use. What Regulation 12.5 prima facie seems to say is that where there is a demand for electricity dues or any some other than such a demand due to distribution licensee was remained unpaid, then the amount is due in respect of those *premises* irrespective of the premises themselves changing hands. All that Regulation 12.5 says is that MSEDCL's claim is one that must be paid by whoever is occupying or using those premises. This is clear from the latter portion of Regulation 12.5: "… *and the same shall be recoverable by the distribution Licensee as*

due ***from such legal representatives or successors-in-law*** *or new owner / occupier of the premises* …" The recovery is not against the premises. It is against the person/entity. Therefore, this is not a "charge" in the nature of a security.

41. Two things are apparent. MSEDCL's demands are not person- or entity-specific. If one entity applies for a connection and then leaves the premises to which the connection provided, MSEDCL is not required to follow that entity to whatever location it chooses to migrate. It can recover from the successor. But it is equally clear, at least at this stage, that MSEDCL has no enforceable charge *in specie over the premises themselves*, and to which the connection is given. What the Regulation says is that whoever succeeds to the use of an enjoyment of the premises, to get the benefit of the electricity connection, is liable to pay MSEDCL dues. That is all that Regulation 12.5 says. It does not create a statutory charge and MSEDCL cannot under that Regulation, for example, recover dues by purporting to attach or sell the premises to which the connection is given. But this Regulation does not permit MSEDCL to stand outside an approved Resolution Plan for the simple reason that its claim is for past dues, and these have been dealt with by the Resolution Plan. It was for MSEDCL to put in its claim, and to do so within time. It cannot, prima facie, by this circuitous route of 'deemed knowledge' position itself outside, or distance itself from, the approved Resolution Plan. If tax authorities are within the net of the IBC and the CIRP process, so is MSEDCL.

42. On this perhaps somewhat unusually detailed consideration at an interim stage, we have now to fashion an appropriate interim order. We believe that this discussion was necessary even now to correctly position the rival submissions and the competing equities. Ms Chavan's submission is finally that if Adani Properties leaves, where is MSEDCL supposed to recover its current dues from. But this surely negates the submission in regard to Regulation 12.5. The answer is that the person who then follows and uses the premises will be liable. As to its *past* dues, prima facie, the Resolution Plan will prevail and govern.

43. We cannot say prima facie that we are satisfied that MSEDCL's case here stands on same footing as *Rainbow Papers*. There is a completely unexplained failure on MSEDCL's part to lodge its claim within the RP in time. It really had to do very little except lodge its claim. There is the Supreme Court finding in *Ghanashyam Mishra* regarding other claims including from tax authorities standing extinguished after the 2019 amendment. That simply cannot be ignored.

44. The only course that is available to us, in these circumstances, is to direct MSEDCL to process the NRC Ltd's application for the connection at the four villages without insisting on payment of the previous demand for past arrears, but on the clear understanding that this creates no equities in favour of NRC Ltd in regard to MSEDCL demand. Second, that if NRC Ltd pursues its application for a connection at the four villages, it does so on the footing that that application will be processed, and the connection provided by

MSEDCL subject to the outcome of this Petition. This must necessarily be so. The applications by NRC Ltd for the reconnection and the new connection will be processed by MSEDCL on this basis.

45. Despite the discussion above, this order will also be without prejudice to the rival rights and contentions of the parties at the final hearing of the Petition.

46. Finally given the narrow conspectus, it only remains to make Rule returnable at the earliest possible date. In the present circumstances that would be immediately after the ensuing Diwali Vacation and we, therefore, place the Petition peremptorily for hearing and final disposal on 30th November 2022.

47. Ms Chavan seeks time to file a further Affidavit in Reply. That is permitted by 14th November 2022. A Rejoinder is permitted by 23rd November 2022.

48. For its own internal records and even otherwise MSEDCL must be permitted to continue to show the amount of arrears and any claim for interest in the bills. This is needed for MSEDCL book-keeping purposes and to safeguard against a possible future argument that MSEDCL's claim is barred by limitation etc. But this means that NRC Ltd is required to pay MSEDCL's bills for the connection and continuing charges only after the restoration of the connection and the new connections are granted. MSEDCL cannot, therefore, either refuse the new connection/restoration, nor

disconnect until further orders only on the basis that its past dues have not been paid.

49. We conclude this order with a special acknowledgement of the extremely capable and admirably compact manner in which Mr Keswani presented his case.

(Gauri Godse, J) **(G. S. Patel, J)**