



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE B M SHYAM PRASAD

WRIT PETITION NO. 8827 OF 2023 (GM-KEB)

C/W

WRIT PETITION NO. 35340 OF 2019 (GM-KEB)

IN W.P.NO.8827/2023

BETWEEN:

M/S METALS AND STEELS PRIVATE LIMITED
A COMPANY REGISTERED UNDER PROVISIONS OF
THE COMPANIES ACT, 1956

HAVING ITS REGISTERED OFFICE AT NO 401,
NAVKAR COMMERCIAL COMPLEX
OPP ANDHERI COURT LANE
ANDHERI EAST MUMBAI
MUMBAI CIY 400069

REPRESENTED BY ITS AUTHORISED SIGNATORY

...PETITIONER

(BY SRI. SHRIDHAR PRABHU, ADVOCATE)

AND:

1. BANGALORE ELECTRICITY SUPPLY
COMPANY LIMITED
A COMPANY REGISTERED UNDER
PROVISIONS OF THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
CORPORATE OFFICE, K.R ROAD
BENGALURU 560001
REPRESENTED BY MANAGING DIRECTOR





2. ASSISTANT EXECUTIVE ENGINEER (E)
BANGALORE ELECTRICITY SUPPLY
COMPANY LIMITED (BESCOM)
KUNIGAL SUB DIVISION
KUNIGAL 577130

...RESPONDENTS

(BY SRI. S.SRIRANGA, SENIOR ADVOCATE FOR
SMT. SUMANA NAGANAND., ADVOCATE FOR R1 & R2)

THIS WP IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA PRAYING TO QUASH
THE IMPUGNED DEMAND NOTICE DEMAND NOTICE
BEARING AEE(E)/SLA/HISA/KU.2022-2023/1507-08-
1272 DTD. 15TH FEBRUARY 2023 PRODUCED AT ANN-
A ISSUED BY THE R2.

IN W.P.NO.35340/2019

BETWEEN:

VIJAYAA STEELS LIMITED
A COMPANY EXISTING UNDER THE COMPANIES
ACT, 2013
HAVING ITS REGISTERED OFFICE AT
NO.37, II PHASE PEENYA INDUSTRIAL AREA
BENGALURU-560 058
REPRESENTED BY ITS AUTHORISED SIGNATORY

...PETITIONER

(BY SRI. SHRIDHAR PRABHU, ADVOCATE)

AND:

1. BANGALORE ELECTRICITY SUPPLY
COMPANY LIMITED
A COMPANY REGISTERED UNDER
PROVISIONS OF THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT



K.R ROAD
BENGALURU 560001
REPRESENTED BY MANAGING DIRECTOR

2. ASSISTANT EXECUTIVE ENGINEER
KUNIGAL SUB DIVISION, BESCOM
KUNIGAL

...RESPONDENTS

(BY SRI. S.SRIRANGA, SENIOR ADVOCATE FOR
SMT. SUMANA NAGANAND., ADVOCATE FOR R1 & R2)

THIS WP IS FILED UNDER ARTICLES 226 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH
DISCONNECTION NOTICE BEARING
NO.SAKANIIM(U)SAIM/THAM/SALEA/HISA/KU:269-273
DATED 07TH AUGUST 2019 [ANNEXURE-K] ISSUED BY
THE RESPONDENT THEREBY SETTING ASIDE THE
DEMAND RAISED THEREIN.

THESE PETITIONS, COMING ON FOR ORDERS,
THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioners are aggrieved by the demand
raised by M/s Bangalore Electricity Supply Company
Limited [M/s BESCOM] for the dues payable as of
July 2019 by M/s. Vijayaa Steels Limited [*the
petitioner in W.P.No.35340/2019*] and the demand for
recovery of 50% of such demand that is payable



consequent to the interim orders granted by this Court in W.P.No.35340/2019.

2. M/s BESCO has raised the demand on 07.08.2019 [*Annexure-K*], which is impugned in W.P.No.35340/2019, in the circumstances that can be stated in concise terms thus:

2.1 M/s. Bhoruka Power Corporation Limited [for short, '*M/s. Bhoruka*'], which was permitted to generate electricity for captive consumption, has entered into transactions over a period with M/s. Vijayaa Steels Limited [for short, '*M/s Vijayaa Steels*'] to supply electricity. The State Government has interdicted such sale that has resulted in the proceedings before the Appellate Tribunal for Electricity [for short, '*the Appellate Tribunal*'] in the Appeal No.366/2019.

2.2 The Appellate Tribunal by its interim order dated 19.12.2019 has stayed the orders of



the Karnataka Electricity Regulatory Commission [for short, '*the KERC*'] in O.P.No.44/2019, which enabled M/s. Bhoruka to wheel its surplus energy to M/s. Vijayaa Steels. This interim order is called in question before the Hon'ble Supreme Court in Civil Appeal No.3521/2020, which stands disposed of by the order dated 02.05.2023 restoring the KERC's order and consequentially, there cannot be any wheeling of the surplus electricity to M/s. Vijayaa Steels.

2.3 The Hon'ble Supreme Court has also called upon the Appellate Tribunal to dispose of the appeal without being influenced by the observations contained in the interim order dated 19.12.2019. M/s BESCO has raised the impugned demand dated 07.08.2019 on M/s. Vijayaa Steels for the consumption charges



payable as of July 2019 for the wheeling of surplus electricity by M/s. Bhoruka.

3. M/s. Vijayaa Steels has transferred its assets to M/s. Vikat Alloys Pvt. Ltd., and M/s. Vikat Alloys has filed the petition in W.P.No.10435/2023 [GM-KEB] for directions to the respondents to refund a total sum of Rs.2,39,70,130/- with certain interest relying upon Clause 29.08 of the Conditions of Supply of Distribution Companies of Karnataka. In the afore proceedings in W.P.No.10435/2023, it is stated that M/s BESCO which admittedly holds certain surplus will adjust the same from the future bills until such surplus is exhausted with the current consumer [*M/s M S Metals and Steels - the petitioner in W.P.No.8827/2023*] being liable to pay the consumption charges in advance based on the previous months consumption only after the surplus is thus exhausted.



4. Sri. Shridhar Prabhu, the learned counsel for both the petitioners¹, submits that the petitioners cannot dispute the transfer of assets by M/s. Vijayaa Steels in favour of M/s. Vikat Alloys or the subsequent grant of lease in favour of M/s. M. S. Metals and Steels or the transfer of installation in favour of M/s. M. S. Metals and Steels consequent to a declaration filed to discharge all the dues. However, Sri. Shridhar Prabhu submits that the respondents will have to recover the demand in the proceedings under the Insolvency and Bankruptcy Code, 2016 [for short, '*the IBC*'] and in this regard, he submits that an application under IBC for recovery of dues is admitted and consequentially, an Interim Resolution Professional [IRP] is admitted with the moratorium in place.

5. In support of this contention, Sri. Shridhar Prabhu relies upon the decision of the

¹ *M/s. M. S. Metals and Steels Private Limited and M/s. Vijayaa Steels Limited in these respective petitions.*



Hon'ble Supreme Court in ***Paschimanchal Vidyut Vitran Nigam Ltd., Vs. Raman Ispat Private Limited and Ors.,²*** and he canvasses that this would be inevitable because the provisions of IBC would prevail over the provisions of the Electricity Act, 2003 [for short, '*the Electricity Act*] and every regulation relating thereto.

6. Sri. S. Sriranga, the learned Senior counsel for the respondents, without disputing the proposition that the provisions of IBC override the provisions of the Electricity Act, submits, without contravention, that given the provisions of Section 52 of the IBC it would be open to M/s BESCO to stand out as a secured creditor and enforce *security* and then comply with the other requirements as required under Section 52 of the IBC. The learned Senior counsel also submits as such, neither M/s. Vijayaa

² *Civil Appeal No.7976 of 2019 decided on 17.07.2023.*



Steels nor M/s. M. S. Metals and Steels can insist upon the respondents to file its claim before the IRP.

7. These submissions are considered and what remains salient is that neither M/s. Vijayaa Steels nor M/s. M. S. Metals and Steels dispute the demand impugned in the writ petition in W.P.No.35340/2019, and it is also not disputed that even if the provisions of the Electricity Act were to have precedence over the provisions of IBC, M/S. BESCO can have recourse under Section 52 of the IBC to bring the concerned assets to recover its dues. Significantly, this Court must observe that it is also indisputable that M/s BESCO hold certain surplus which is agreed to be adjusted from the bills by the present consumer *viz.*, M/s M. S. Metals and Steels.

8. In the light of the afore, this Court is of the opinion that M/s BESCO must, in tandem with the statement made before this Court in W.P.No.10435/2023 [GM-KEB], allow adjustment/set



off from the surplus against the impugned demand while allowing the deductions from the bills [future bills] providing for the corresponding liability to pay the interest *i.e.*, the interest payable by M/s BESCO on the surplus held and the interest payable by M/s. Vijayaa Steels/M/s. M. S. Metals and Steels on the amount let in due [*or the impugned demand*] with liberty to the concerned to avail statutory remedy in the event there is any dispute about the manner in which the adjustment is provided as it would be within the domain of a billing dispute. It is tentatively submitted that if the adjustments as aforesaid are made, the dues will be squared up as of the end of December 2023. Hence, the following:

ORDER

- a) The petitions stand disposed of calling upon the respondents to adjust/set off the surplus relatable to the concerned RR installation towards the impugned demand and the corresponding interest liability.



b) The respondents are called upon to provide for such adjustment/set off in the bills for the period up to 31.12.2023. The parties shall be at liberty as aforesaid.

Sd/-
JUDGE

RB