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JULY 2024

CASE SUMMARY: BRS VENTURES INVESTMENTS LIMITED V. SREI INFRASTRUCTURE FINANCE LIMITED & ANR.

Court: Supreme Court of India

Case Numbers: Civil Appeal No. 4565 of 2021

Bench: Hon'ble Justice Pankaj Mithal and Justice Abhay S. Oka

Date of Judgment: July 23, 2024

Citation: 2024 SCC OnLine SC 1767

BRIEF FACTS

Background

The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IBC**") governs insolvency proceedings in India. In January 2011, SREI Infrastructure Finance Ltd. (Respondent No. 1, financial creditor) extended a loan of Rs. 100 crores to Gujarat Hydrocarbon and Power SEZ Ltd. ("**GHPSL**", Respondent No. 2, principal borrower), secured by a corporate guarantee from Assam Company India Ltd. ("**ACIL**", corporate guarantor), GHPSL's holding company. Following GHPSL's default, SREI initiated insolvency proceedings against ACIL under Section 7 of the IBC. BRS Ventures Investments Ltd. (Appellant, resolution applicant) submitted a resolution plan for ACIL, approved by the Committee of Creditors (CoC) and the National Company Law Tribunal (NCLT). The plan included a payment of Rs. 38.87 crores to SREI as full and final settlement of SREI's claim of Rs. 241.27 crores against ACIL.

Subsequently, SREI filed a separate application under Section 7 of the IBC against GHPSL, claiming an outstanding amount of Rs. 1,428 crores. The National Company Law Appellate Tribunal (NCLAT) admitted this application, leading to the suspension of GHPSL's director. BRS Ventures and the suspended director appealed to NCLAT, arguing that SREI's claim was settled under ACIL's resolution plan, barring further action against GHPSL. NCLAT dismissed the appeals, holding that ACIL and GHPSL are distinct legal entities with co-extensive liabilities. BRS Ventures and the suspended director then appealed to the Supreme Court.

LEGAL ISSUES:

1. Does the approval of a resolution plan for a corporate guarantor (ACIL) extinguish the financial liability of the principal borrower (GHPSL)?

2. Is it permissible under Section 7 of the IBC to initiate insolvency proceedings against both the corporate guarantor and the principal borrower for the same loan default?

3. Can the assets of a wholly-owned subsidiary be included in the resolution plan of its parent company under the provisions of the IBC?

APPLICATION OF RULES:

1. Section 128, Indian Contract Act, 1872: The liability of a surety (ACIL) is co-extensive with that of the principal debtor (GHPSL), unless otherwise stipulated in the contract. The Supreme Court ruled that partial or full payment by the guarantor through a resolution plan does not absolve the principal borrower of its independent liability unless the debt is fully discharged or a contrary contract exists.

2. Section 7, IBC: This provision permits creditors to initiate insolvency proceedings against both the guarantor and the principal borrower, either jointly or separately. The Court affirmed that a resolution plan for one does not preclude action against the other for the remaining debt.

3. Doctrine of Separate Legal Entity: A holding company (ACIL) and its subsidiary (GHPSL) are distinct legal entities. The Supreme Court held that a subsidiary's assets cannot be included in the parent company's resolution plan unless legally consolidated under IBC provisions, as the holding company does not own the subsidiary's assets.

CONCLUSION:

In BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd., the Supreme Court clarified key aspects of insolvency law and corporate guarantees under the IBC. The Court ruled that approving a resolution plan for a corporate guarantor (ACIL) does not extinguish the principal borrower's (GHPSL) liability. A financial creditor (SREI) retains the right to pursue the principal borrower for outstanding dues despite partial recovery through a guarantor's resolution plan.

The Court further upheld that simultaneous or sequential insolvency proceedings under Section 7 of the IBC are permissible against both the guarantor and the principal borrower if the default persists. Additionally, the doctrine of separate legal entities was reinforced, confirming that a subsidiary's assets cannot be included in a parent company's resolution plan without explicit legal provision under the IBC.

This judgement strengthens creditors' rights under the IBC, ensuring their ability to pursue full recovery while maintaining the legal distinction between corporate guarantors and principal borrowers, even within the same corporate group.

CENTRAL ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS FOR TARIFF DETERMINATION FORM RENEWABLE ENERGY SOURCES) REGULATIONS, 2024

Introductions:

The CERC (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2024 ("**CERC Regulations, 2024**"), govern tariff determination for grid-connected RE generation stations commissioned during the control period (July 1, 2024, to March 31, 2027) under Sections 62 and 79 of the Electricity Act, 2003. These regulations apply to various RE technologies, including wind, small hydro, biomass, solar photovoltaic ("**PV**"), floating solar, solar thermal, renewable hybrid, and energy storage projects, subject to eligibility criteria outlined in Regulation 4. The framework ensures transparency, consistency, and investment-friendly mechanisms while balancing stakeholder interests.

Key Provisions:

1. Control Period

- **Duration:** July 1, 2024, to March 31, 2027.
- **Tariff Validity:** Tariffs determined for projects commissioned during this period remain valid for the entire tariff period, typically equivalent to the project's useful life.
- **Norm Continuity:** Tariff norms apply until revised through subsequent regulations, subject to conditions specified by the Commission.

2. Tariff Types

- **Generic Tariff:** Determined annually for small hydro, biomass (Rankine cycle), non-fossil fuel co-generation, biomass gasifier, biogas, and refuse-derived fuel ("**RDF**")-based municipal solid waste ("**MSW**") projects. Tariffs are set before each financial year, with the first year's tariff issued upon regulation notification.

- **Project-Specific Tariff:** Applies to solar PV, floating solar, solar thermal, wind (onshore/offshore), biomass, biogas, MSW, RDF, renewable hybrid, storage-integrated projects, and new RE technologies approved by the Central Government. Developers must file petitions with technical/financial details and justify non-competitive bidding, if applicable.

3. Tariff Structure

- Return on Equity ("**RoE**")
- Interest on Loan
- Depreciation
- Interest on Working Capital
- Operation and Maintenance ("**O&M**") Expenses

4. Tariff Design

- **Levelized Tariff:** Calculated based on the year of commissioning, using a discount factor equal to the post-tax weighted average cost of capital. Fixed costs are levelized, while fuel costs (for applicable projects) are determined annually.

- **Over-Generation:** Excess energy beyond specified capacity utilization factor ("**CUF**") or plant load factor ("**PLF**") can be sold via bilateral/collective transactions, with beneficiaries having the first right of refusal at the applicable tariff.

5. Financial Principles

- **Capital Cost**: Includes land, development, plant, machinery, civil works, financing, and evacuation up to the interconnection point. Determined project-specifically based on market trends.

- **Debt-Equity Ratio**: 70:30 standard; equity above 30% treated as debt; grants/subsidies excluded.

- **Loan Tenure & Interest**: 15 years, with interest at 200 basis points above SBI's 1-year MCLR.

- **Depreciation**: 90% of capital cost, at 4.67% annually for 15 years, with the remainder spread evenly.

- **RoE**: 14% for most projects, 15% for small hydro, grossed up by Minimum Alternate Tax ("**MAT**") for 20 years, then corporate tax.

- **Working Capital Interest**: 325 basis points above SBI MCLR, covering O&M, receivables, spares, and fuel costs.

- **O&M Expenses**: Normative for FY 2024-25, escalated at 5.25% annually.

- **Rebate:** 1.5% for payment within 5 days; 1% within 30 days.

- **Late Payment Surcharge**: As per Ministry of Power rules for payments delayed beyond 45 days.

- **Subsidies/Incentives**: Factored into tariffs; unaccounted incentives adjusted in bills.

6. Technology-Specific Parameters

Wind Power Projects

- **Capital Cost & O&M**: Project-specific, based on market trends.
- **CUF**: Ranges from 22% (wind density ≤220 W/m²) to 35% (>440 W/m²) at 100-meter hub height, validated by the National Institute of Wind Energy ("**NIWE**").

Solar PV, Floating Solar, and Solar Thermal Projects

- **Capital Cost & O&M**: Project-specific, based on market trends.
- **CUF**: Minimum 21% (solar PV), 19% (floating solar), 23% (solar thermal).
- **Auxiliary Consumption**: Maximum 0.75% (solar PV, floating solar), 10% (solar thermal).

Renewable Hybrid Energy Projects

- **Capital Cost & O&M**: Project-specific, based on market trends.
- **CUF**: Minimum 30% at interconnection point, varying by RE source proportion.
- **Tariff**: Composite levelized tariff based on the shortest useful life of combined technologies.

Renewable Energy with Storage Projects

- **Capital Cost & O&M**: Project-specific, based on market trends.
- **Storage Efficiency**: Minimum 85% for solid-state batteries, measured as output-to-input energy ratio annually.
- **Tariff**: Composite or time-of-day-based, covering generated and stored energy.

7. Eligibility Criteria (Regulation 4)

Projects must use new plant and machinery and be approved by state nodal agencies or the government. Specific requirements include:

- **Wind:** Onshore/offshore sites approved by authorities.
- **Small Hydro:** Approved sites with new equipment.
- **Biomass (Rankine Cycle):** Non-fossil fuel-based, topping cycle mode.
- **Non-Fossil Fuel Co-generation:** Combined electrical and thermal output meeting efficiency thresholds.
- **Biomass Gasifier/Biogas:** Grid-connected systems using 100% biogas engines.
- **MSW/RDF:** Incineration-based, using MSW as fuel.

8. Tariff Determination Process

- **Generic Tariff:** Set annually via public proceedings.
- **Project-Specific Tariff:** Requires a petition with technical/financial details, processed under Conduct of Business Regulations.
- **Templates:** Form-2.1 provides formats for tariff component determination, covering fixed and variable costs, levelized tariffs, and per-unit calculations.

Conclusion:

The CERC Regulations, 2024, establish a robust framework for tariff determination, supporting India's renewable energy transition. By defining clear financial and operational norms, the regulations foster investment while ensuring fair tariffs for consumers. The flexibility to accommodate diverse RE technologies, including hybrids and storage, aligns with global trends toward sustainable energy systems. Researchers and policymakers can leverage this framework to analyze tariff impacts, while developers benefit from transparent guidelines for project planning.

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Warm Regards,

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