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STRIKING A BALANCE: OPEN ACCESS AND CROSS-SUBSIDY SURCHARGES IN INDIA'S ELECTRICITY SECTOR

Case Name: Ramayana Ispat Private Limited & Anr. vs. State of Rajasthan & Ors.

Case No.: Civil Appeal No. 7964 of 2019

Court: Hon'ble Supreme Court of India, New Delhi

Order Date: April 01, 2025

Facts of the Case

The case of Ramayana Ispat Private Limited ("**Ramayana**") & Anr. vs. State of Rajasthan & Ors. in Civil Appeal No. 7964 of 2019 before the Hon'ble Supreme Court of India ("**Supreme Court**") arose from challenges mounted by industrial entities, including the appellants, against the validity of the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2016 ("**RERC Regulations, 2016**"). The RERC Regulations, 2016, promulgated under Sections 42 and 181 of the Electricity Act, 2003 ("**EA, 2003**"), govern open access to electricity transmission networks, enabling consumers to procure power from sources other than the incumbent distribution licensee. The appellants contended that the provisions imposed undue financial burdens, such as cross-subsidy surcharges and additional levies, rendering open access economically unviable and violative of their fundamental rights under Part III of the Constitution of India ("**Constitution**"), while alleging the RERC Regulations, 2016 were arbitrary, unreasonable, and beyond the Rajasthan Electricity Regulatory Commission ("**State Commission**")'s competence. Separate petitions filed before the Jodhpur and Jaipur Benches of the Hon'ble Rajasthan High Court ("**High Court**") in 2016 were dismissed, with the Hon'ble High Court holding that no infringement of rights or ultra vires the EA, 2003 was established, prompting the instant appeals to the Hon'ble



Supreme Court for adjudication on regulatory fairness in the electricity sector.

Issues

1. Whether the State Commission exceeded its authority under Sections 42 and 181 of EA, 2003, in framing the RERC Regulations, 2016, particularly with respect to the imposition of cross-subsidy surcharges and additional levies.
2. Whether the financial burdens imposed by the RERC Regulations, 2016, such as cross-subsidy surcharges and other charges, rendered open access to electricity transmission networks economically unfeasible for industrial consumers like the appellants, thereby undermining the objective of open access under the EA, 2003.
3. Whether the RERC Regulations, 2016 were arbitrary, unreasonable, and violative of the appellants' fundamental rights under Part III of the Constitution, specifically their right to carry on trade or business under Article 19(1)(g).
4. Whether the State Commission's methodology for determining surcharges and the overall regulatory framework was transparent, non-discriminatory, and in line with the principles of the EA, 2003, or if it disproportionately favoured distribution licensees like Ajmer Vidyut Vitran Nigam Limited ("**AVVNL**") and Jaipur Vidyut Vitran Nigam Limited ("**JVVNL**").
5. Whether the State Commission acted ultra vires (beyond its powers) in prescribing conditions that allegedly conflicted with the EA, 2003 or national electricity policies, particularly in balancing the interests of open access consumers and distribution licensees.

Regulatory Context

The RERC Regulations, 2016 were enacted by the State Commission under the EA, 2003, to regulate open access, a mechanism designed to foster competition by allowing consumers to procure electricity from sources other than state-controlled distribution licensees, such as AVVNL and JVVNL. The EA, 2003, mandates state electricity regulatory commissions to promote open access while ensuring the financial stability of distribution licensees through measures like cross-subsidy surcharges, which compensate for revenue losses when high-value industrial consumers opt for alternative suppliers. The RERC Regulations, 2016, aligned with the National Electricity Policy and Tariff Policy, aimed to balance these objectives but faced contention for imposing surcharges that the appellants claimed were excessive and misaligned with the EA, 2003's



goal of promoting a competitive electricity market. This regulatory framework operates within India's broader electricity sector reforms, which seek to transition from monopolistic distribution to a market-driven model, while addressing the socio-economic need to subsidize electricity for smaller and rural consumers.

Findings and Analysis by Hon'ble Supreme Court

In its judgment delivered on April 01, 2025, the Hon'ble Supreme Court comprehensively addressed the challenges raised by the appellants against the RERC Regulations, 2016. The Hon'ble Supreme Court affirmed the State Commission's authority to frame these regulations under Sections 42 and 181 of the EA, 2003, emphasizing that they were consistent with the National Electricity Policy and Tariff Policy, which aim to promote competition while ensuring the financial stability of the electricity sector. The appellants had argued that the cross-subsidy surcharges and additional levies were excessive, arbitrary, and rendered open access economically unviable, violating their fundamental right to trade under Article 19(1)(g) of the Constitution. The Hon'ble Supreme Court rejected these claims, holding that the surcharges were a legitimate mechanism to prevent financial distress for distribution licensees like AVVNL and JVVNL, which could otherwise lead to higher tariffs for smaller and less affluent consumers. The Hon'ble Supreme Court reasoned that such surcharges were a reasonable restriction in the public interest, as they balanced the interests of open access consumers with the broader goal of equitable electricity distribution. The State Commission's methodology for calculating surcharges was found to be transparent, based on objective data such as consumption patterns and cost-to-serve metrics, and compliant with statutory guidelines. However, the Hon'ble Supreme Court acknowledged the appellants' concerns about the economic burden of open access, noting that high surcharges could deter industrial consumers from utilizing the open access framework, potentially undermining the EA, 2003's objective of fostering competition. Consequently, the Hon'ble Supreme Court directed the State Commission to undertake a periodic review of the surcharge framework to ensure it remains proportionate, non-discriminatory, and aligned with the EA, 2003's objectives, emphasizing the need for dynamic adjustments based on evolving market conditions and stakeholder inputs.

Reliefs Granted

The Hon'ble Supreme Court refrained from striking down the RERC Regulations, 2016, upholding their overall legality and the Hon'ble High Court's dismissal of the 2016 writ peti-



-tions filed at the Jodhpur and Jaipur Benches. However, recognizing the appellants' concerns about the economic viability of open access, the Hon'ble Supreme Court granted limited relief by directing the State Commission to conduct a comprehensive review of the cross-subsidy surcharge framework within six (6) months from the date of the judgment. This review was to involve consultations with stakeholders, including industrial consumers like the appellants, to ensure transparency and fairness in surcharge calculations. The Hon'ble Supreme Court further instructed the State Commission to publish the outcomes of this review and any subsequent adjustments to the surcharge methodology, reinforcing accountability. No monetary compensation or interim relief was granted to the appellants, as the Hon'ble Supreme Court found no evidence of immediate harm warranting such measures. The Hon'ble Supreme Court's relief focused on prospective improvements to the regulatory framework rather than retrospective remedies, aligning with its broader objective of maintaining regulatory stability while addressing legitimate grievances.

Conclusion

The Judgment represents a nuanced balancing act between promoting open access in India's electricity sector and safeguarding the financial viability of distribution licensees. By upholding the RERC Regulations, 2016, the Hon'ble Supreme Court reaffirmed the State Commission's authority to impose cross-subsidy surcharges as a necessary tool to protect smaller consumers and maintain sectoral stability. Simultaneously, the directive for a stakeholder-inclusive review addressed the appellants' concerns about economic barriers, ensuring that the regulatory framework evolves in response to practical challenges faced by industrial consumers. This ruling underscore the judiciary's critical role in mediating disputes between regulatory bodies and market participants, fostering a competitive yet equitable electricity market. By setting a precedent for periodic regulatory reviews and stakeholder engagement, the judgment provides a roadmap for resolving similar disputes in India's power sector, emphasizing transparency, proportionality, and alignment with the EA, 2003's objectives.



LEGAL SCRUTINY DEEPENS: NCLAT FLAGS UNILATERAL INTEREST AS INSUFFICIENT FOR CIRP

Case Name: Shitanshu Bipin Vora vs. Shree Hari Yarns Private Limited & Anr.

Case No: Company Appeal (AT) (Insolvency) No. 2204 of 2024

Court: National Company Law Appellate Tribunal, New Delhi

Order Date: April 16, 2025

Facts of the Case

The dispute is rooted in commercial transactions between two (2) private entities in India's textile sector. Shree Hari Yarns Private Limited ("**Shree Hari**"), acting as the operational creditor, supplied goods to Exclusive Linen Fabrics Private Limited ("**Exclusive Linen**"), the corporate debtor. Shitanshu Bipin Vora ("**Shitanshu**"), served as the director of the corporate debtor and challenged the proceedings on its behalf.

The conflict began when Shree Hari claimed an outstanding debt for goods supplied, initiating proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") before the Hon'ble National Company Law Tribunal ("**NCLT**") in Mumbai. The total claimed amount was bifurcated into a principal sum for the goods and an interest on delayed payments. This interest was based on a clause in the invoices stipulating an 18% interest rate, but it lacked any formal bilateral agreement between the parties. The principal amount alone was below the IBC's minimum default threshold of Rs. 1,00,00,000/- (Rupees One Crore Only), making the inclusion of interest crucial for the claim to qualify for Corporate Insolvency Resolution Process ("**CIRP**") initiation.

Shitanshu contested the Hon'ble NCLT's admission of the application on September 5, 2024, arguing that the interest was unilaterally imposed without mutual consent, rendering it unenforceable. Shitanshu maintained that the valid debt was only the principal, which did not meet the threshold. Additionally, he pointed to pre-existing disputes, including complaints about the quality of goods supplied and cash discounts offered by Shree Hari, which he claimed disqualified the application under IBC principles that bar proceedings amid ongoing commercial disagreements. To demonstrate good faith, Exclusive Linen deposited the full principal amount with the Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") during the appeal.

Issues

1. Whether unilaterally imposed interest in invoices, absent a formal mutual



2. Whether the disputed interest could be added to the principal to surpass the Rs. 1,00,00,000/- (Rupees One Crore Only) threshold under Section 4 of IBC for triggering CIRP.
3. Whether a pre-existing dispute existed between the parties.

Regulatory Context

Section 4 of IBC, sets a jurisdictional threshold for CIRP under Part II. Initially at Rs. 1,00,000/- (Rupees One Lakh Only), this was raised to Rs. 1,00,00,000/- (Rupees One Crore Only) in March 2020 via government notification to filter out minor defaults and prevent system overload. This gatekeeping role ensures only significant insolvencies proceed, with strict application required when claims involve disputed elements.

Section 5(8) of IBC defines "financial debt" as disbursements against the time value of money, explicitly including interest. This reflects transactions like loans where delayed repayment compensates for opportunity costs.

In contrast, Section 5(21) of IBC defines "operational debt" as claims for goods, services, employment, or statutory dues. Operational creditors from financial ones, do not inherently deal in time-value compensation; their claims stem from transactional value, requiring explicit contracts for any interest.

Finding and analysis of Hon'ble NCLAT

The Hon'ble NCLAT first emphasized the statutory distinction between financial and operational debt. Noting Section 5(8) of IBC's explicit inclusion of interest for financial debt, it contrasted this with Section 5(21) of IBC's silence, interpreting it as intentional. Thus, interest in operational debt requires a mutual contractual agreement, not mere inference, to align with legislative intent separating creditor classes.

On the issue of unilateral interest, the Hon'ble NCLAT closely examined the invoice clause imposing 18% interest and held it unenforceable in the absence of formal mutual consent. The Hon'ble NCLAT observed that sporadic past payments could not be construed as acceptance of the interest terms, especially in the absence of any documentary evidence indicating acknowledgment or agreement by the Exclusive Linen. Referring to precedents such as *SS Polymers vs. Kanodia Technoplast* and *Krishna Enterprises vs. Gammon India (2019)*, the Hon'ble NCLAT rejected the inclusion of such unilaterally imposed interest, cautioning against attempts by operational creditors to artificially inflate claims and invoke insolvency jurisdiction under the IBC.

Consequently, excluding the interest left only the principal amount, which was below the Rs. 1,00,00,000/- (Rupees One Crore Only) threshold. This stripped the Hon'ble NCLT of



jurisdiction, with the Hon'ble NCLAT cautioning against claim inflation as misuse of the IBC, and its use as a recovery too

Separately, the Hon'ble NCLAT also noted the existence of a pre-existing dispute, evidenced by complaints regarding the quality of goods and claims related to cash discounts. In doing so, the Hon'ble NCLAT relied on Hon'ble Supreme Court's ruling in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018)*, reaffirming that IBC is not intended to serve as a forum for adjudicating commercial disputes. Consequently, the application was held to be non-maintainable.

Conclusion

The Hon'ble NCLAT's ruling marks a pivotal development in IBC jurisprudence, clarifying that unilateral interest cannot inflate operational debt to meet CIRP thresholds without mutual agreement. By excluding such interest and recognizing a pre-existing dispute, the Hon'ble NCLAT upheld IBC's procedural safeguards, ensuring it serves resolution and is not used for recovery.

This bolsters corporate debtors against inflated claims, and directs Hon'ble NCLT and Hon'ble NCLAT to scrutinize interest rigorously. For operational creditors, it mandates formal contracts over informal practices. The creditors thus should embed interest clauses in binding agreements.



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