

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 151/MP/2016**

Subject : Petition under Section 79 (1) (c) read with Sections 142 and 146 of the Electricity Act, 2003 regarding non-compliance of order dated 8.6.2013 in Petition No. 245/MP/2012.

Date of Hearing : 21.8.2018

Coram : Shri P. K. Pujari, Chairperson  
Shri A. K. Singhal, Member  
Dr. M. K. Iyer, Member

Petitioner : Dakshin Gujarat Vij Company Limited (DGVCL)

Respondents : Essar Steel India Limited (ESIL) and Others

Parties present : Ms. Ranjeetha Ramachandran, Advocate, DGVCL  
Ms. Neha Nagpal, Advocate, Resolution Professional  
Shri Viswajit, Advocate, Resolution Professional  
Shri G. Srilkar, Essar Steel

**Record of Proceeding**

Learned counsel for the Resolution Professional submitted as under:

a) The lenders have filed petitions against Essar Steel under the Insolvency Bankruptcy Code, 2016 for the commencement of Insolvency Resolution Proceedings before the National Company Law Tribunal, Ahmedabad. Section 14 of the Insolvency and Bankruptcy Code, 2016 (*IRB Code*), prohibits the institution or continuation of suits or any legal proceedings against a corporate debtor including the execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.

b) The Petitioner has also filed its claim before the Resolution Professional, which is pending adjudication. Therefore, if the present proceeding is kept in abeyance till the moratorium proceeding is over, the interest of the Petitioner would not be prejudiced.

c) Since, the issue of cross subsidy surcharge is pending before the GERC, any change in the present status quo would prejudice the interest of the parties.

2. Learned counsel for the Petitioner submitted as under :

a) The moratorium proceedings only bar the recovery of the money from the corporate debtor. It does not bar the payment of the money for the services

enjoyed during the moratorium proceedings. The present proceeding is not hit by embargo under Section 14 of the IRB Code, 2016.

b) The Hon'ble High Court of Delhi in the case of PGCIL vs Jyoti Structures Limited has held that proceedings do not mean all proceedings. Moratorium under Section 14(1)(a) of the Code is intended to prohibit debt recovery actions against the assets of corporate debtor, but continuation of proceedings under Section 34 of the Arbitration Act, which do not result in endangering, diminishing, dissipating or adversely impacting the assets of corporate debtor are not prohibited under Section 14(1)(a) of the IRB Code. The term proceeding would be restricted to the nature of action that follows it i.e. debt recovery action against assets of the corporate debtor. The use of narrower term against the corporate debtor in Section 14(1) (a) as opposed to the wider phrase by or against the corporate debtor used in Section 33(5) of the code further makes it evident that Section 14(1)(a) is intended to have restrictive meaning and applicability.

c) The National Company Law Appellate Tribunal in the case of Dakshin Gujarat Vij Company limited vs ABG Shipyard Limited has held that Section 14(2) of the IRB Code, 2016 makes it clear that essential goods or services including electricity, water, telecommunication services and information technology services, if they are not a direct input to the output product or supplied by the Corporate Debtor cannot be terminated or suspended or interrupted during the Moratorium period. The IRB Code nowhere prohibits the payment of current charges of essential services. Such payment is not covered by the order of Moratorium.

d) GERC in its order dated 13.8.2016 has held that "there is no stay granted by the Commission on the recovery of the amount of cross subsidy charges claimed by DGVCL and GUVNL from ESIL and are at liberty to take necessary action for recovery of the said amount as per the provisions of the Electricity Act, 2003."

4. After hearing the learned counsels for the parties, the Commission directed the Petitioner and Essar Steel to file their written submissions by 7.9.2018. The Commission further directed the Resolution Professional to place on record the copy of claim filed by the Petitioner before it, by 31.8.2018.

5. Subject to the above, the Commission reserved the order in the Petition.

**By order of the Commission**

**Sd/-  
T. Rout  
Chief (Law)**