

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1514 of 2024 & I.A. No. 5492, 5493 of 2024

(Arising out of the Order dated 16.04.2024 passed by the National Company Law Tribunal Kolkata Bench (Court-II) Kolkata in I.A. No. 723 of 2023 in C.P. No. 176/KB/2018)

IN THE MATTER OF:

Maithan Alloys Limited

having its registered office at 9, AJC Bose Road,
Kolkata- 700 020, West Bengal.

...Appellant

Versus

1. Easter Power Distribution Company

of Andhra Pradesh Limited, having its corporate
office at C/o 50-27-5/1, TPT Colony,
Seethammadhara, Vishakhapatnam, Andhra
Pradesh- 530013.

...Respondent No. 1

2. Mr. Samir Kumar Bhattacharya,

Liquidator of Impex Metal & Ferro Alloys Ltd.,
Sagar Trade Cube, 104, S. P. Mukherjee Road, 2nd
Floor, Kolkata - 700026.

...Respondent No. 2

Present

For Appellant:

Mr. Rishav Banerjee, Ms. Madhuja Burman, Ms.
Anoushka Dey, Advocates.

For Respondents:

Mr. Joy Saha, Sr. Advocate with Mr. Sidhartha
Sharma, Mr. Arjun Asthana, Mr. Aditya Mishra,
Advocates.

With

Comp. App. (AT) (Ins) No. 1537 of 2024 & I.A. No. 5572, 5573 of 2024

(Arising out of the Order dated 23.04.2024 passed by the National Company Law Tribunal Kolkata Bench (Court-II) Kolkata in I.A. No. 712 of 2023 in C.P.(IB) No. 176/KB/2018)

IN THE MATTER OF:

Maithan Alloys Limited

having its registered office at 9, AJC Bose Road,
Kolkata- 700 020, West Bengal.

...Appellant

Versus

1. Easter Power Distribution Company

of Andhra Pradesh Limited, having its corporate
office at C/o 50-27-5/1, TPT Colony,
Seethammadhara, Vishakhapatnam, Andhra
Pradesh- 530013.

...Respondent No. 1

2. K. Santosha Rao,

Pradesh Chairman & Managing Director, P&T,
Colony, Seethammadhara, Visakhapatnam
530013.

...Respondent No. 2

3. Shamsheer Singh Rawat,

IAS, Director, P&T, Colony, Seethammadhara,
Visakhapatnam 530013

...Respondent No. 3

4. Dandagala Chandram,

IRAS, Director (Finance & HRD), P&T, Colony,
Seethammadhara, Visakhapatnam 530013

...Respondent No. 4

5. B. Ramesh Prasad,

Director (Operations), P&T, Colony,
Seethammadhara, Visakhapatnam 530013

...Respondent No. 5

6. AV.V, Surya Pratap,

Director (Projects), P&T, Colony,
Seethammadhara, Visakhapatnam 530013

...Respondent No. 6

7. B.A.V.P. KumaraReddy,

Director, P&T, Colony, Seethammadhara,
Visakhapatnam 530013

...Respondent No. 7

8. Radhika Anusuri, Director, P&T, Colony,
Seethammadhara, Visakhapatnam 530013

...Respondent No. 8

9. The Superintending Engineer,

Operation Circle, P&T, Colony,
Seethammadhara, Visakhapatnam 530013

And also at:

Operation Circle, Vidyuth Bhavan,
Dasannapeta Vizianagaram 535002.

...Respondent No. 9

10. Samir Bhattacharya,

Liquidator of Impex Metal & Ferro Alloys Ltd. (in
liquidation)
Sagar Trade Cube, 104, S.P. Mukherjee Road, 2nd
Floor, Kolkata 700026.

...Respondent No. 10

Present

For Appellant:

Mr. Rishav Banerjee, Ms. Madhuja Burman, Ms.
Anoushka Dey, Advocates.

For Respondents:

Mr. Joy Saha, Sr. Advocate with Mr. Sidhartha
Sharma, Mr. Arjun Asthana, Mr. Aditya Mishra,
Advocates.

J U D G E M E N T

(04.09.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e. Maithan Alloys Limited, who is the Auction Purchaser, under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('**Code**') against the Impugned Order dated 16.04.2024 passed by the National Company Law Tribunal, Kolkata Bench ('**Adjudicating Authority**') in I.A. No. 723 of 2023 in C.P.(IB) No. 176/KB/2018).
2. Eastern Power Distribution Company of Andhra Pradesh Limited is the Respondent No. 1 herein.
3. Mr. Samir Kumar Bhattacharya, Liquidator of the Corporate Debtor is the Respondent No. 2 herein.
4. The Appellant submitted that the Liquidator informed Respondent No. 1, on 05.06.2021, of the Appellant's status as the auction purchaser of the Corporate Debtor, clarifying that no monies were payable to Respondent No. 1 under the waterfall mechanism of Section 53 of the Code. The Appellant contended that Respondent No. 1's inaction since June 2021 indicates its implicit acceptance of this position, thereby precluding any subsequent claims against the Appellant.
5. The Appellant submitted that State Bank of India filed IA No. 924 of 2021 before this Appellate Tribunal in C.A. (AT) (Ins) No. 1245-1247 of 2019 to record the Joint Settlement Agreement dated 24.05.2021. The Appellant contended that this Appellate Tribunal, vide its order dated 21.06.2021, disposed

of the application, noting the Appellant's payment of the full consideration as per the settlement, and directed the Liquidator to cooperate in restoring electricity supply, binding all parties to the agreement's terms.

6. The Appellant submitted that Respondent No. 1, vide its letter dated 07.08.2021, demanded Rs. 49,07,75,523/- from the Appellant, including pre-CIRP and moratorium period dues, as a precondition for issuing a new electricity connection. The Appellant contended that this demand was legally unsustainable, as it sought to impose liabilities on the Appellant that were outside the scope of the liquidation process and the Joint Settlement Agreement.

7. The Appellant submitted that, due to Respondent No. 1's refusal to restore the electricity connection, it filed I.A. (IB) 748 of 2021 before the Adjudicating Authority, praying for directions to energize the connection and ensure uninterrupted supply to maintain the Corporate Debtor as a going concern. The Appellant contends that this application was a necessary step to protect its investment and operational viability post-auction. The Appellant submitted that, pending the adjudication of I.A. 748 of 2021, it offered to deposit Rs. 20 Crores plus applicable charges with Respondent No. 1, which was accepted, leading the Adjudicating Authority to direct Respondent No. 1 vide order dated 06.09.2021 to energize the connection. The Appellant contended that this interim arrangement was made without prejudice to its rights, reflecting its willingness to cooperate. The Appellant submitted that it deposited Rs. 24.50 Crores, including a Rs. 4.5 Crores security deposit, with Respondent No. 1 on 15.09.2021,

pursuant to the Adjudicating Authority's order dated 06.09.2021. The Appellant further submitted that this payment, made without prejudice, facilitated the issuance of a Sale Certificate by the Liquidator on 16.09.2021, solidifying its ownership of the Corporate Debtor.

8. The Appellant submitted that the Adjudicating Authority, vide its order dated 05.10.2021 in I.A. 748 of 2021, directed Respondent No. 1 to energize the connection within three days, retain the security deposit as per regulations, refund the balance within seven days, and approach the Liquidator for dues under Section 53 of the Code. The Appellant contended that these directions were lawful and aligned with the Appellant's rights as the purchaser. The Appellant submitted that Respondent No. 1 challenged the order dated 05.10.2021 before this Appellate Tribunal in C.A. (AT) (Ins) No. 961 of 2021, which was dismissed vide order dated 26.05.2022, upholding the Adjudicating Authority's directions while granting liberty to Respondent No. 1 to claim dues under Section 53. The Appellant contended that this order reinforced the Appellant's position and limited Respondent No. 1's claims to the liquidation estate.

9. It is the case of the Appellant that Respondent No. 1, vide its letter dated 25.10.2022, refused to refund the balance amount, citing a pending appeal before the Hon'ble Supreme Court, and demanded an additional Rs. 8,64,73,000/- as Adequacy Consumption Deposit. The Appellant contended that this refusal and demand were in blatant violation of the Adjudicating Authority's and this Appellate Tribunal's orders.

10. The Appellant submitted that it paid Rs. 9,34,91,770/- on 06.01.2023 and Rs. 2,55,865/- on 17.02.2023 under protest as Adequacy Consumption Deposits to prevent disconnection. The Appellant contended that these payments were coerced and should not prejudice its claim for refund.

11. The Appellant submitted that it filed I.A. No. 712 of 2023 seeking contempt proceedings against Respondent No. 1 for non-compliance, and I.A. No. 723 of 2023 praying for a refund of Rs. 11,35,27,000/- plus interest at 18% per annum, including the coerced deposits. The Appellant contended that the Adjudicating Authority's direction to the Respondent No. 1 on 16.06.2023 to refund the balance within seven days led to a partial refund of Rs. 16,83,91,560/- on 24.07.2023 by the Respondent No. 1. The Appellant submitted that the Impugned Order dated 16.04.2024 upheld Respondent No. 1's deduction of Rs. 3,16,08,440/- as true-up charges for 2014-2019, contrary to the APERC's (Andhra Pradesh Electricity Regulatory Commission) Common Order dated 30.03.2022 and this Appellate Tribunal's order dated 26.05.2022. The Appellant contended that saddling it with pre-CIRP and CIRP dues violates Section 53 and seeks reversal of the order, asserting entitlement to Rs. 20,72,74,635/- less the refunded amount.

12. Concluding his arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order and to allow the appeal.

13. Per contra, the Respondent No. 1, who is the contesting Respondent, denied all averments made by the Appellants as misleading and baseless.

14. The Respondent No. 1 submitted that it is an Electricity Distribution Company wholly owned by the State of Andhra Pradesh. Its status as a state-owned entity imposes a statutory obligation to adhere strictly to the Tariff Regulations promulgated by the APERC. The Respondent No. 1 submitted that these regulations of the APERC are enacted under the authority of the Electricity Act, 2003 which constitute binding legal framework that governs its operations, including the determination, levy, and recovery of electricity tariffs including true-up charges, thereby rendering the Appellant's challenge to such actions legally unsustainable.

15. The Respondent No. 1 submitted that the APERC issued comprehensive common order dated 30.03.2022, addressing wide array of regulatory and financial matters pertinent to the electricity sector in Andhra Pradesh. This order specifically encompasses: (i) the determination of tariffs for the retail sale of electricity during the financial year 2022-2023, (ii) the true-up of retail sale of electricity for the financial years 2019-2020 and 2020-2021, (iii) the true-up for the distribution business covering the third control period from FY 2014-15 to FY 2018-2019, and (iv) the true-up for the transmission business over the same control period. The Respondent No. 1 contended that this common order, being a statutory authority, serves as a binding directive that underpins the Respondent No. 1's actions in recovering outstanding dues, including the true-up charges of Rs. 3,16,08,440/- from the Appellant.

16. The Respondent No. 1 submitted that the common order dated 30.03.2022, explicitly relies upon the Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Wheeling and Retail Sale of Electricity) Regulation 2005 (hereinafter "**Regulation 4 of 2005**"), notified by the APERC. The Respondent No. 1 contended that this regulation provides the legal foundation for its claims, particularly through Clause 19, which mandates the Distribution Licensee like the Appellant to file proposals for the pass-through and sharing of gains or losses arising from variations in "uncontrollable" items (e.g., cost of power purchase) and "controllable" items (e.g., operation and maintenance expenses) of the Aggregate Revenue Requirement (ARR), in accordance with Clause 10. The Respondent No. 1 asserted that this provision ensures transparent and equitable mechanism for adjusting financial imbalances, which the Appellant is obliged to respect.

17. The Respondent No. 1 submitted that Clause 10 of Regulation 4 of 2005 establishes a multi-year tariff framework designed to ensure financial stability and regulatory predictability, as Clause 10.1 outlines the approach for calculating the ARR and expected revenue from tariffs and charges, providing a structured methodology for tariff determination. Clause 10.2 stipulates that base year values for the control period are derived from audited accounts, best estimates, and other factors deemed appropriate by the APERC. The Respondent No. 1 contended that this clause underscores the robustness of the true-up process, as the base year data

for the third control period (FY 2014-15 to FY 2018-2019) was meticulously evaluated, justifying the true-up charges imposed on the Appellant.

18. The Respondent No. 1 submitted that Clause 10.3 of Regulation 4 of 2005 empowers the APERC to set targets for "controllable" items, including operation and maintenance costs, financing costs, and distribution losses, with incentives and disincentives applied to improve performance. The Respondent No. 1 contended that this provision reflects the Commission's proactive role in regulating efficiency, thereby legitimizing the true-up adjustments made to recover costs efficiently managed by the Respondent No. 1 during the relevant period.

19. The Respondent No. 1 submitted that Clause 10.4 classifies ARR items into "controllable" and "uncontrollable" categories for both the distribution and retail supply businesses. For the distribution business, items such as operation and maintenance expenses, return on capital employed, depreciation, and non-tariff income are deemed "controllable," while taxes on income are "uncontrollable." For the retail supply business, the cost of power purchase is classified as "uncontrollable." The Respondent No. 1 contended that this classification provides a clear basis for the true-up calculations, ensuring that only justifiable variations are passed on to consumers, including the Appellant.

20. The Respondent No. 1 submitted that Clause 10.5 allows the Distribution Licensee to claim variations in "uncontrollable" items in the succeeding year, with financing costs accounted for any delay in true-up realization, and prohibits

revisiting corrections unless exceptional circumstances arise. The Respondent No. 1 further submitted that this clause safeguards the financial viability of DISCOMs, including the Respondent No. 1, by ensuring timely recovery of legitimate costs.

21. The Respondent No. 1 submitted that Clause 10.6 requires the annual filing of gains and losses on "controllable" items, adjusted for uncontrollable factors, while Clause 10.7 mandates a review of aggregate gains or losses over the control period, with yearly sharing for the first control period. The Respondent No. 1 contended that Clause 10.8 further provides for pass-through of gains or losses due to force majeure, subject to the Commission's order, demonstrating the regulatory framework's adaptability to unforeseen circumstances, which supports the Respondent No. 1's actions.

22. The Respondent No. 1 submitted that paragraph 470(5) specifies that for service connections taken over under the CIRP approved on 16.12.2019, DISCOMs shall act as per law. The Respondent No. 1 contended that this provision, read with the Appellant's status as the successful resolution applicant, imposes liability for true-up charges, justifying the retention of Rs. 3,16,08,440/- from the Appellant's deposit as a lawful exercise of regulatory authority.

23. The Respondent No. 1 submitted that the true-up charges of Rs. 3,16,08,440/- were levied in strict compliance with the common order dated 30.03.2022, with detailed calculations based on monthly electricity bills from July 2022 to June 2023, each amounting to Rs. 26,34,036.63/-. The Respondent

No. 1 contended that this retention from the Appellant's security deposit, originally Rs. 4,90,00,000/-, was a lawful adjustment of outstanding dues accrued prior to and during the CIRP, which the Appellant, as the successor entity, is obligated to settle.

24. The Respondent No. 1 submitted that its actions, including energizing the Corporate Debtor's connection on 04.12.2021 for 30 MW (matching the pre-disconnection load) and refunding Rs. 16,83,91,560/- after true-up deductions, fully comply with the Adjudicating Authority's order dated 05.10.2021 and the APERC's common order 30.03.2022. The Respondent No. 1 contended that the Appellant's challenge to the true-up charges lacks merit, given the statutory backing of Regulation 4 of 2005 and the common order.

25. The Respondent No. 1 requested this Appellate Tribunal to dismiss the appeal and uphold the retention of Rs. 3,16,08,440/- as true-up charges per the common order dated 30.03.2022.

Findings

26. We note that the Appellant is a Successful Auction Purchaser of the Corporate Debtor. The Appellant has paid to Respondent Rs. 24.50 Crores including Rs. 4.5 Crores as security deposit before energizing the Corporate Debtor to the Respondent which is an electricity distribution company of Andhra Pradesh and thereafter the sale certificate was issued by the liquidator on 16.09.2021. In pursuant to the Adjudicating Authority's order dated 06.09.2021,

the Appellant had subsequently filed IA No. 748 of 2021 before the Adjudicating Authority and the Adjudicating Authority directed the Respondent No. 1 to energize the Appellant plant after retaining amount including security deposit as per Regulation and refund the balance within seven days. The Appellant challenged the Adjudicating Authority's order dated 05.10.2021 in IA No. 748 of 2021 before this Appellate Tribunal in Company Appeal (AT) (Ins.) No. 961 of 2021 which was dismissed by this Appellate Tribunal on 26.05.2022, upholding the Adjudicating Authority's directions.

27. The Appellant has also brought out that based on another I.A. bearing I.A. No. 712 of 2023 for refund, the Adjudicating Authority vide its order dated 16.06.2023 asked the Respondent No. 1 to refund the amount and thereafter, the Respondent No. 1 made partial refund of Rs. 16,83,91,560/- on 24.07.2023. The Appellant assailed the Impugned Order to the extent that it upheld Respondent No. 1's deduction of Rs. 3,16,08,440/- as true up charges based common order dated 30.03.2022 of APERC. It is the case of the Appellant that it is liable to pay dues of electricity post CIRP period and cannot be burdened with any pre CIRP period.

28. On the other hand, it is the case of the Respondent No. 1 that the Respondent No. 1 being a company wholly owned by State of Andhra Pradesh is required to follow statutory obligations to the regulations stipulated APERC, which derives authority under Electricity Act, 2003 having binding legal framework, which covers "determination" of various charges including true-up

charges. The Respondent No.1 submitted that outstanding dues, it retained including true up charges of Rs. 3,16,08,440/-, are based on the common order dated 30.03.2022 of APERC. The Respondent also brought to our notice that these regulations of APERC provides for a multi-year tariff framework to ensure financial stability and regularity predictability for DISCOMs. The Respondent No. 1 brought to our notice and explained implications of various Clauses of Regulation 4 of 2005 and highlighted that true-up charges process takes certain base years data for relevant control period i.e., from 2014-15 to FY 2018-19 for third control period.

29. The Respondent No. 1 also explained details of “controllable” and “uncontrollable” charges. The Respondent No. 1 justified the retention of amount based on Para 470 of the Common Order of APERC dated 30.03.2022 which directs DISCOMs like the Respondent No. 1 to calculate true-up charges based on per unit cost for third control period which are required to be recovered from the registered consumers in 36 monthly instalments starting from 01.08.2022.

30. The Appellant clarified that based on detail calculation and methodology placed by APERC, per month true-up charges were determinated at Rs. 26,34,036.63/- from July 2022 to June 2023 totalling to Rs. 3,16,08,440/-. The Appellant highlighted that the Appellant claims for refund of Rs. 20,72,74,635/- was considered and refund of Rs. 16,83,91,560/- was made on 24.07.2023 thus, retaining its legal dues of Rs. 3,16,08,440/- as true-up charges.

31. We note that the only issue in the present appeal is regarding alleged illegality of Respondent No. 1 to levy true-up charges. We understand that true-up charges are stipulated by APERC, being Regulator for power sector in Andhra Pradesh, which refers to additional amount, DISCOMs are allowed to collect from consumers to recover the actual cost incurred in power supply. True-up charges are basically the difference between the actual cost of electricity supply and the estimated cost which are considered during annual tariff setting by APERC. These true-up charges are revised periodically for which APERC issues the formal orders, like common order dated 30.03.2022. As already noted true-up charges are to be calculated over a period of time based on certain base years figures.

32. The short point of Appellant is that since true-up charges are calculated on the base years of 2014 to 2019, the Appellant cannot be saddled with the true-up charges. On this issue, the Respondent no. 1 has brought out that the Appellant has become successful auction purchaser in terms of “Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. We note relevant portion reads as under: -

“45. Final report prior to dissolution-

(3) The liquidator shall submit an application along with the final report and the compliance certificate in Form H to the Adjudicating Authority for-

(a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern.”

(Emphasis Supply)

From above, it is noted that under this clause the Liquidator process is closed when the Corporate is sold on going concern basis, which implies that the Corporate Debtor survive and there is no need to dissolve the company in terms of Section 54 of the Code. It further implies that all existing rights and obligations and responsibilities including claims, licenses, permits of various authorities, etc., continues to operate in favour of the Corporate Debtor. The Liquidator merely transfers the ownership of the Corporate Debtor to the Successful Auctioneer Purchaser like present Appellant.

33. It has been conceded by the Respondent No. 1 that the Appellant is not liable to pay any dues prior to issue of the sales certificate. We note that the Sale Certificate was issued by the Liquidator on 16.09.2021. It is the case of the Respondent No. 1 that the true-up charges of Rs. 3,16,08,440/- are pertaining to post auction purchase. It is further the case of the Respondent No. 1 that sale was made to the Appellant as “going concern basis”, therefore, the Appellant is liable to make the said payments.

34. We note that the Impugned Order has examined these issues in details and found that true-up charges were levied by the Respondent No. 1 based on the tariff order of APERC of 2022-2023, which is a post-sale period and the Adjudicating Authority found the claims of the Respondent No. 1 on true-up charges as valid.

35. One more issue has been raised by the Appellant that as per a common order dated 30.03.2022 of APERC, Rule 470(5), service connections which were taken over by the new entities under CIRP approved by the CoC under the Code are required to act as per law. It is the case of the Appellant that he is absolved of true up charges in accordance with the said Rule 470 (5). The Rule 470(5) of the common order dated 30.03.2022 of APERC reads as under: -

"In respect of the service connections which were taken over by the new entities under the corporate insolvency resolution plan approved by the committee of creditors under the Insolvency and bankruptcy code 201 dated 16.12.2019, the DISCOMs shall act as per law".

(Emphasis Supplied)

From above, we note that the parties are required to act as per law. In this connection, we note that the term as per law does not mean that the true-up charges are not payable by the Appellant. We need to appreciate that it was not a typical case of CIRP where new entity has been taken over under Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Appellant has taken over the Corporate Debtor as a going concern under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

36. We observe that in terms of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, once the successful auction purchaser

like Appellant takes over the Corporate Debtor then subsequent to date of sales certificate, the Appellant is liable to pay the charges. We have noted that true-up charges were levied by the Respondent post Sale Certificate by the Liquidator dated 16.09.2021. It is further noted that the true-up charges as per regulatory regime of APERC (covered by Electricity Act, 2003) provides for multi-year tariff setting mechanism.

37. We do not agree with the contentions of the Appellant that based on Rule 470(5) of the common order dated 30.03.2022 of APERC., the Appellant is absolved of such true up charges payment.

38. Based on above detailed observations, we do not find any error in the Impugned Order. The Appeal is devoid of any merit and stand rejected. No cost. I.A., if any, are closed

Comp. App. (AT) (Ins) No. 1537 of 2024

39. The present appeal has been filed by the Appellant i.e. Maithan Alloys Limited, who is the Auction Purchaser, under Section 61 of the Insolvency and Bankruptcy Code, 2016 (**‘Code’**) against the Impugned Order dated 23.04.2024 passed by the National Company Law Tribunal, Kolkata Bench (**‘Adjudicating Authority’**) in I.A. No. 712 of 2023 in C.P.(IB) No. 176/KB/2018).

40. Eastern Power Distribution Company of Andhra Pradesh Limited is the Respondent No. 1 herein and is the contesting Respondent. We note that

Respondent No. 2 to Respondent No. 9 are officers of the Respondent No. 1 and Respondent No. 10 is the liquidator.

41. This appeal was also heard by us along with Comp. App. (AT) (Ins) No. 1514 of 2024 (discussed & disposed above). We also observe that arguments were made by both parties only w.r.t. Comp. App. (AT) (Ins) No. 1514 of 2024 and this Comp. App. (AT) (Ins) No. 1537 of 2024 was not argued separately as fate of this appeal was dependent on outcome of Comp. App. (AT) (Ins) No. 1514 of 2024. We further note that in fact the Respondent has not even filed their reply in this appeal and has raised the issue regarding maintainability of the appeal against the contempt petition. This was noted by us in earlier order dated 13.11.2024 and the relevant part reads as under: -

“ **Comp. App. (AT) (Ins) No. 1537 of 2024**
Counsel for the Respondent has submitted that no reply has been filed rather maintainability of the appeal is being challenged on the ground that no appeal is maintainable against the contempt petition. The issue will be decided on the next date of hearing. Adjourned to 16th December, 2024.”

(Emphasis Supplied)

42. From above it is noted that the Respondent has not filed any reply and rather raised issue on maintainability of the appeal.

43. The Impugned Order w.r.t. IA No. 712 of 2023 for which the present appeal Comp. App. (AT) (Ins) No. 1537 of 2024 has been filed reads as under: -

“IA(IBC)/712(KB)2023

1. By way of this IA(IBC)/712(KB)2023, the applicant seeks the following reliefs: -

(a) Direction(s) and/or order(s) be issued compelling the respondent nos./contemnors to comply with the letter and spirit of the said order dated 05.10.2021 passed by this Learned Tribunal in IA(IBC)/748(KB)2021;

(b) Rule nisi be issued calling upon the respondents/contemnors, and each of them, to show cause as to why they should not be fined Rs. 2000/- and/or be sentenced to imprisonment and/or detention in civil prison for having wilfully, deliberately, and contumaciously having violated and/or disobeyed the said order dated 05.10.2021 passed by this Learned Tribunal in IA(IBC)/748(KB)2021;

(c) If the respondent nos./contemnors failed to show sufficient cause, the rule issued as per prayer (b) hereinabove be made absolute and fine be imposed on the respondent nos./contemnors of Rs. 2,000/- and/or imprisonment for 6 months be sentenced and/or detention in civil prison for 6 months be ordered;

2. While disposing of IA(IBC)/723(KB)2023 we have already considered the Order dated 05.10.2021 in IA(IBC)/748(KB)2021, and passed the following Orders: -

(a) We have considered the rival contentions and perused records.

(b) In as much as the Respondent was bound to levy true up charges as mandated by APERC vide tariff order of 2022-23 (post sale) and the Applicant had failed to pay the amounts raised, we find no infirmity in deduction of Rs.

3,16,08,439.56/- as per break up supra. However, we would note that out of Rs. 25.05 crores paid in term of Order dated 05.10.2021, a refund of Rs. 16,83,91,560/- has been made to the Applicant adjusting to Rs. 03,16,08,440/-towards true up charges.

(c) Hence, if the Applicant has paid Rs. 24.50 crores to Respondent No. 1, the said Respondent shall retain the following amounts:

(i) Security deposit of Rs. 13,14,73,000/-

(ii) True up charges of Rs. 03,16,08,440/-

And refund the balance to the Applicant within two weeks from the date of receipt of a copy of this order.

3. Since, it seems that the relief has been granted already in regard to the claim of Eastern Power Distribution Company of Andhra Pradesh Limited (in short “EPDCAPL”) for true up charges, nothing survives for adjudication as of now.

4. IA(IBC)/712(KB)2023 is thus disposed of with liberty to come up afresh, if further aggrieved.”

(Emphasis Supplied)

44. From above, it is apparent that the IA No. 712 of 2023 was in reference to contempt issues. The Adjudicating Authority has considered IA No. 712 of 2023 taking into consideration IA No. 723 of 2023 and disposed of IA No. 712 of 2023 as per the Impugned Order quoted above. Since, the main relief has already been given in IA No. 712 of 2023 and the Appellant was granted liberty to approach the Adjudicating Authority, if he feels further aggrieved. The relevant portion of the Impugned Order is reiterated for clarity and reads as under: -

“4. IA(IBC)/712(KB)2023 is thus disposed of with liberty to come up afresh, if further aggrieved.”

(Emphasis Supplied)

Thus, nothing survives in the present appeal. We observe that contempt of Adjudicating Authority’s order in IA 712 of 2023 in C.P.(IB) No. 176/KB/2018, if any, is required to be decided only by the Adjudicating Authority.

45. Based on above observations, we do not find any error in the Impugned Order. The Appeal is devoid of any merit and stand rejected. No cost. I.A., if any, are closed

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Justice Mohammad Faiz Alam Khan]
Member (Judicial)**

**[Mr. Naresh Salecha]
Member (Technical)**

Sim