HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 27040 of 2025

A F R

Reserved on : 25th August, 2025
Pronounced on : 18th September, 2025

M/S Dharti Agro Industries Pvt. Ltd.

.....Petitioner(s)

Versus

The Managing Director, Pashchimanchal Vidyut Vitran Nigam Ltd And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Ashish Kumar, Deepak Kumar Pandey, Sandeep Pandey
Counsel for Respondent(s)	:	Kartikeya Saran

Court No. - 39

HON'BLE ARINDAM SINHA, J.
HON'BLE PRASHANT KUMAR, J.

(Per Prashant Kumar, J.)

1. Mr. Ashish Kumar, learned counsel appears for the petitioner and Mr. Kartikeya Saran, learned Additional Advocate General appears for the State-respondents.

2. The factual matrix of the case which has given rise to instant dispute are as under :-

The petitioner is a private company engaged in trading of steel products at Delhi. The petitioner came across an advertisement in the newspaper dated 13th/14th April, 2022 wherein auction purchasers were invited to participate in the online auction sale of immovable assets of M/s Chaudhary Ingots Pvt. Ltd. on “as is where is whatever there is basis”. Apparently, the company, i.e. Ms. Chaudhary Ingots P.Ltd. had gone into insolvency but COC did not approve the resolution plan and thereafter, the company had gone into liquidation. Under the direction of NCLT, Allahabad auction seller/Liquidator Sandeep Goel called for online auction of the assets of the debtor company, to be conducted by a company known as M/s Link Star Infosys Pvt. Ltd.

3. The petitioner, who was interested in buying immovable assets of the debtor company, had deposited earnest money of Rs.30 lakhs as fixed by

the auctioneer, and participated in the auction wherein the reserved price was fixed at Rs.284.39 lakhs. During auction proceedings against the reserved price Rs.284.39 lakhs, the petitioner had given bid of Rs.518.39 lakhs. His bid being the highest, he was declared successful bidder. As per the auction conditions at the end of the day of auction, the balance amount was to be paid by the purchaser to the Liquidator. The petitioner paid the full amount, towards full and final payment of the auction money. Thereafter, the sale certificate was issued on 7th July, 2022 in favour of the petitioner and the possession letter was also issued on 27th July, 2022 for the immovable properties of M/s Chaudhary Ingots Pvt. Ltd. Later on, the title deed/sale deed was also executed on 29th May, 2024 of the auctioned property in the name of the petitioner.

4. Thereafter, the petitioner company had applied for electricity connection on the said property but the same was refused by respondent no.1 on the ground that there was certain dues by the erstwhile owner on the premises and unless and until the same is cleared, no electricity connection can be granted to the petitioner. The petitioner made number of representations to the respondent but could not get any relief. On the contrary, respondent nos.1 to 3 asked the petitioner to deposit Rs.4,92,69,142, outstanding electricity dues of the erstwhile company.

5. Aggrieved by the demand to pay outstanding dues of the erstwhile company, the petitioner moved a writ petition before this Court being Writ C No.9142 of 2025 (M/s Dharti Agro Industries v. The Managing Director, PVVNL). This writ petition was disposed of vide order dated 10th April, 2025. The said order is reproduced below :

> "*1. Heard learned counsel appearing on behalf of the petitioner and the learned counsel appearing on behalf of the respondents.*
>
> *2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner has prayed for the following reliefs:*
>
> *"(i) Issue a writ order or direction in the nature of mandamus directing the respondent Pashchimanchal Vidyut Vitran Nigam Ltd (PVVNL) to install the power connection of 10 KW at the petitioner's premises situated at Vill: Vehelna, Meerut Road, Muzaffar Nagar, U.P. Pincode-251003 within certain stipulated period of time as this Hon'ble Court may deem fit and proper considering the facts and circumstances of the case.*

(ii) Issue a writ order or direction in the nature of mandamus in the nature of mandamus commanding the respondent no.1 to take decision on the representation of the petitioner dated: 29.08.2024 and 14.09.2024 in light of decision rendered by Hon'ble Apex Court in Civil Appeal No. 1918 of 2016 Southern Power Distribution Company of Telengana Ltd through its CMD & ORS Versus Gopal Agarwal & ORS within certain stipulated period of time as this Hon'ble Court may deem fit and proper considering the facts and circumstances of the case.

iii) Issuance of other appropriate instruction/instructions, order/orders, direction/directions in light of the facts and circumstances of this case to compensate the loss of petitioner's investment of approx. Rs.5.55 Crore made since Apr/May-2022, which has intentionally entangled into unwarranted dispute from the last 30-31 months by the officers working under control of the respondent no.1."

3. Counsel appearing for the petitioner submits that the he is not pressing the relief No.(iii).

4. Upon perusal of the record and and after hearing counsel appearing on behalf of the parties, we are of the view that respondents authority should grant an opportunity of hearing to the petitioner with regard to connection to be given to the petitioner. The respondents authority should consider the judgement of the Supreme Court with regard to non recovery of payments from the present owner with regard to the dues of the erstwhile owner when the property is bought through liquidation process. The petitioner shall be at liberty to produce the judgement of the Supreme Court before the respondents authority. The respondents authority is directed to consider the said judgment, and thereafter, pass a reasoned order in accordance with law within a period of six weeks from date. If the authority finds that the electricity connection should be granted to the petitioner, it shall grant the same expeditiously without any delay.

5. With the aforesaid directions, the writ petition is disposed of."

6. In response to the aforesaid order, the petitioner made representation on 15th April, 2025. However, no decision was taken, so the petitioner again made a fresh representation on 15th May, 2025, in which a decision was taken whereby respondent no.3 rejected the representation and held that petitioner had to pay Rs.4,041,92,94/- to get the electricity connection as there was electricity dues outstanding against the property. Aggrieved by the order, the petitioner had filed the instant writ petition seeking following reliefs :-

"*(i) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 15.05.2025 passed by respondent no.3/Executive Engineer, (SS) Pashchimanchal Vidyut Vitran Nigam Ltd. (PVVNL) Near Sport Stadium, Numais Ground, Muzaffar Nagar, U.P.-251001.*

(ii) issue a writ, order or direction in the nature of mandamus directing the respondent Pashchimanchal Vidyut Vitran Nigam Ltd. (PVVNL) to install the power connection of 10 KW at the petitioner's premises situated at Vill: Vehelna, Meerut Road, Muzaffar Nagar, U.P. Pincode-251003 within certain stipulated period of time as this Hon'ble Court may deem fit and proper considering the facts and circumstances of the case.

(iii) issue any other writ or direction as this Hon'ble Court may deem fit and proper considering the facts and circumstances of the case."

ARGUMENT ON BEHALF OF THE PETITIONER

7. Counsel for the petitioner submitted that the erstwhile owner of the property namely, M/s Chaudhary Ingots Pvt. Ltd. seems to have outstanding electricity dues of Rs.492.69 lakhs and respondent nos.1 to 3 are refusing to grant electricity connection to the petitioner on the ground that there was electricity dues against the erstwhile owner and the dues has to be recovered from the premises as per provision of Electricity Act, 2003 and the Electricity Supply Code, 2005 and unless and until the same is cleared, electricity connection cannot be granted.

8. Learned counsel further submits that the petitioner has bought the property in an online auction held by the liquidator under Insolvency and Bankruptcy Code, 2016 (hereinafter referred as IB Code for the sake of brevity). He further submits that IB Code, 2016 is a special Act dealing with the entire subject of insolvency, bankruptcy and winding up of companies. He further submitted that respondents had participated in the liquidation proceeding and had made a claim. Their claim would be decided by the liquidator and the same would be paid as per the mechanism set up under the IB Code.

9. He further submitted that the provisions of Section 173 and 174 of Electricity Act, 2003 read with Electricity Supply Code, 2005 would not prevail over the provisions of IB Code, 2016 as IB Code, 2016 is a later enactment. As per Section 238 of IB Code, 2016, the provisions of Electricity Act, 2003 and Electricity Supply Code, 2005 would be overriden by Insolvency and Bankruptcy Code, 2016.

10. He further submits that when there is overlapping of two enactments, the doctrine of pith and substance has to be applied to find true nature of Legislation. To buttress his argument, he has placed reliance on decision of Hon'ble Supreme Court in the matter of **Union of India vs. Shah Goverdhan L. Kabra Teachers' College (2002) 8 SCC 228** and **UCO Bank and another v. Dipak Debbarma and others (2017) 2 SCC 385**.

11. The counsel for the petitioner has placed reliance on the ratio laid down in the matter of **Ahemdabad Electricity Supply Company Ltd. vs. Gujarat Inns Pvt. Ltd., 2004 (3) SCC 587,** wherein it has been held that the auction purchaser cannot be denied power supply due to non-payment of arrears by the erstwhile company.

12. He further placed reliance on the ratio laid down by Hon'ble Supreme Court in the matter of **Southern Power Distribution Company of Telengana Ltd. through Its CMD & Ors vs. Gopal Agarwal & Ors.** passed in **Civil Appeal No.1918 of 2016** wherein the Court has held as follows:-

> "……..*The High Court relied upon the judgment in Isha Marbles(supra) to grant relief to the First Respondent. It was held in the said judgement that an auction purchaser cannot be called upon to clear the past arrears. It was also held that a power connection to an auction purchaser cannot be withheld for the dues of the past owner.*
>
> "…...*NESCO v. Raghunath Paper Mills (P) Ltd., (2012) 13 SCC 479, the purchaser in an auction sale conducted by the official liquidator on "as is where is" and "whatever there is" basis was found not liable for payment of the electricity arrears. In the said case an advertisement was issued by the official liquidator for sale of moveable and immoveable property of M/s Konark Paper and Industries Limited on "as is where is" and whatever there is" basis. The auction purchaser applied for a fresh electricity connection to its unit which was denied on the ground of non payment of arrears by the past owner. After considering the judgments in Ahemdabad Electricity Company (supra) and Isha Marbles (supra), this Court held that the request of the auction purchaser for a fresh connection could not have been rejected."*

13. He further submitted that Hon'ble Supreme Court has dealt with identical situation in **Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Ltd. AIR 2023 SC 3501** wherein Court has held that the electricity supply company (i.e. respondent herein) by virtue of Electricity Supply Code, 2005 and as per agreement between the parties, wherein charge was created on the assets of the corporate debtor, but in case of Insolvency Proceedings the respondent herein (the electricity supply company) would be a secured creditor towards its corporate debtor and its claim would be classified as per provision prescribed in section 53

of IB Code, 2016 i.e. as per ‘waterfall mechanism’. In paragraph 52 of the judgment, the Court has held as held as follows:-

> “*52. The views expressed by the present judgment finds support in the decision reported as Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs. In that case, Section 142A of the Customs Act 1962 was in issue authorities had submitted that dues payable to it were to be treated as 'first charge' on the property of the assessee concerned in the resolution process, it was argued that the Customs Act, 1962 acquired primacy and had to be given effect to. This court, after noticing the overriding effect of Section 238 of the IBC, held as follows:*
>
> > *55. For the sake of clarity following questions, may be answered as under:*
> >
> > *(a) Whether the provisions of the IBC would prevail over the Customs Act, and if so, to what extent?*
> >
> > *The IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case inay be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.*
> >
> > *(b) Whether the respondent could claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated?”*

It was further held that Section 238 of this Code shall override provisions of Electricity Supply Code, 2005 and the Electricity Act, 2005. The Hon'ble Supreme Court in the present judgment had relied upon *Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs*, wherein, it was held that owing to Section 238 of the IBC, the Code would prevail over the Customs Act, 1962. Similarly, in *Duncans Industries Ltd. v. AJ Agrochem*, Section 16G of the Tea Act, 1953, which required prior consent of the Central Government (for initiation of winding up proceedings) was held to be overridden by the IBC. In view of the same, the Court, in the present case held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003, despite the former containing two specific provisions, which opens with non-obstante clauses (i.e., Sections 173 and 174 of the 2003 Act).

14. He further submitted that the respondent herein (PVVNL) undoubtedly is a government corporation but it cannot be strictly said to

be government participation as their functions are replicated by other private entities, i.e. supply of electricity, generation, transmission and distribution of electricity. The private entities are also entitled to hold licenses, hence, dues of PVVNL cannot be said to be government dues in the strict sense as per Section 53(1)(f) of the IBC.

15. He further submitted that in Civil Appeal No.5556 of 2023- ***"Tata Power Western Odisha Distribution Limited (TPWODL) & Anr. vs. Jagannath Sponge Private Limited"***. The power company was insisting for payment of arrears of its dues. The Hon'ble Supreme Court relied on the earlier judgment passed in **"Paschimanchal Vidyut Vitran Nigam Ltd."** (supra) and has held as follows:-

> "*In our opinion, the legal issue is covered by the judgment of this Court in "Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Limited and Others" and the order of this Court in "Southern Power Distribution Company of Andhra Pradesh Limited vs. Gavi Siddeswara Steels (India) Pvt. Ltd. and Another. The appellant Tata Power Western Odisha Distribution Limited cannot insist on payment of arrears, which have to be paid in terms of the waterfall mechanism, for grant of an electricity connection. However, the successful resolution applicant will have to comply with the other requirements for grant of electricity connection."*

16. He further submitted that in **M/s Uttrakhand Power Corporation Limited Versus M/s Shyam Baba Developers & Builders Pvt. Ltd**., **Company Appeal (AT) No.346 of 2023** the **judgment rendered** by Hon'ble Apex Court in **K.C. Ninan v. Kerala State Electricity Board and others, 2023 SCC Online SC 663 : (2023) 9 S.C.R. 637** has been considered and it was held that **K.C. Ninan's case** (supra) passed in Civil Appeal No 2109-2110 of 2004 was not applicable as aforesaid judgment is not in reference to liquidation proceeding where electricity authority has filed any claim.

17. Counsel for the petitioner submits that Insolvency and Bankruptcy Code superseded the Indian Electricity Act or Rules framed therein that Section 238 of IB Code, 2016 will override the provisions of section 173, 174 of Electricity Act, 2003 read with Electricity Supply Code, 2005.

ARGUMENT ON BEHALF OF RESPONDENT

18. Mr. Kartikeya Saran, learned Additional Advocate General assisted by Mr. S.C. Upadhyay, learned Standing Counsel appears on behalf of State-respondent nos.1, 2 and 3 and stated that in the field of supply of electricity, the provisions of Electricity Act, 2003 is fully applicable.

19. He submitted that on plain reading of the aforesaid sections clearly shows that provisions of Electricity Act, 2003 would have primacy over all laws including IB Code, 2016. He added that the provisions of the Electricity Act, 2003 shows that the Act, 2003 is a special Act with non-obstante clause and has overriding effect over any other law. He further submitted that as far as recovery of electricity dues are concerned, the Electricity Act, 2003 lays down a special mechanism, and hence, the role of electricity supply by PVVNL (respondent nos.1 to 3) would not be subordinate or subject to priority claims mechanism under IB Code, 2016, hence, the respondents can recover the dues from the petitioner, which was over the immovable property bought by the petitioner.

20. He next submitted that the mechanism for speedy recovery of electricity has to be given full effect and for this he has placed reliance on a judgment passed by Hon'ble Supreme Court in the matter of **K.C. Ninan** (supra) wherein Court has held as follows:

> "*107. Consequently, in general law, a transferee of the premises cannot be made liable for the outstanding dues of the previous owner since electricity arrears do not automatically become a charge over the premises. Such an action is permissible only where the statutory conditions of supply authorise the recovery of outstanding electricity dues from a subsequent purchaser claiming fresh connection of electricity, or if there is an express provision of law providing for creation of a statutory charge upon the transferee."*

ANALYSIS

21. Heard learned counsel for the parties and perused the record.

22. The relevant provisions of the Electricity Act, 2003 are quoted hereunder:-

> "***Section 56.*** *(Disconnection of supply in default of payment): -- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the*

generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

(a) an amount equal to the sum claimed from him, or

b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

x x x x

Section 173. *Inconsistency in laws. Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 (68 of 1986) or the Atomic Energy Act, 1962 (33 of 1962) or the Railways Act, 1989 (24 of 1989).*

Section 174. *Act to have overriding effect.-Save as otherwise in section 173, the provisions of this Act shall have effect notwithstanding, anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*

Section 175. *Provisions of this Act to be in addition to and not in derogation of other laws- The provisions of this Act are in addition to and not in derogation of any other law for the time being in force."*

23. By virtue of Section 181(2)(x) of the 2003 Act, State Commissions are empowered to frame regulations. Section 50 empowers the State Commissions to frame the "Electricity Supply Code" to provide for recovery of electricity charges, disconnection

of supply of electricity for non-payment, etc. In the present case, the Uttar Pradesh State Commission had framed the U.P. Electricity Supply Code, 2005. The relevant Clause 4.3 (f) (iv) of the Code is reproduced hereunder:

> *"The outstanding dues will be first charge on the assets of the company, and the licensee shall ensure that this is entered in an agreement with new applicant."*

Clause 6.15 of the 2005 Code lays that recovery of arrears shall be in accordance with the provisions of the Uttar Pradesh Government Electrical Undertakings (Dues Recovery) Act, 1958:

> *" Clause 6.15 Recovery of Arrears*
>
> *(a) The payments due to the Licensee shall be recovered as per provision of Section 56 of the Act, and arrears of land revenue as per the provisions of the U.P. Government Electrical Undertaking (Dues Recovery) Act, 1958, as amended from time to time.*
>
> *(b) Notwithstanding anything contained in any other law for the time being in force, no sum dre from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges of electricity supplied, and the licensee shall not cut off the supply of the electricity.*
>
> *(Explanation: The date from which such charges becomes 'first due', needs to be correctly interpreted. If as a result of regular meter reading/inspection of installation of consumer, such charges / penalties levied as per this code or tariff schedule, shall become first due after 15 days of receipt of such a bill by consumer, and such bill shall be provided to the consumer not later than two billing cycle for that category of consumer)."*

24. These provisions in the 2003 Act and the U.P. Electricity Supply Code form the legal framework for recovery of dues by various kinds of licensees under the 2003 Act.

25. As previously stated, the corporate debtor had entered into an agreement with PVVNL for supply of electricity on 14-02-2010 which provided that outstanding electricity dues would constitute a 'charge' on its assets, which was in accordance with Clause 4.3(f) (iv) of the 2005 Code. Clause 8 of the agreement also mentioned that the parties would be governed by the provisions of the Electricity Act, 2003.

26. The issue as to whether arrears of electricity can become a charge or encumbrance over the premises has been decided in the matter of **K.C. N inan (supra)** wherein it has been held as under"-

> "*117. In light of the above discussion, we are of the opinion that the electricity utilities can create a charge by framing subordinate legislation or statutory conditions of supply enabling recovery of electricity arrears from a subsequent transferee. Such a condition is rooted in the importance of protecting electricity which is a public good. Public utilities invest huge amounts of capital and infrastructure in providing electricity supply. The failure or inability to recover outstanding electricity dues of the premises would negatively impact the functioning of such public utilities and licensees. In the larger public interest, conditions are incorporated in subordinate legislation whereby Electric Utilities can recoup electricity arrears. Recoupment of electricity arrears is necessary to provide funding and investment in laying down new infrastructure and maintaining the existing infrastructure. In the absence of such a provision, Electric Utilities would be left without any recourse and would be compelled to grant a fresh electricity connection, even when huge arrears of electricity are outstanding. Besides impacting on the financial health of the Utilities, this would impact the wider body of consumers.*
>
> *341. Taking all facts and circumstances into consideration, including the lapse of more than two decades since the appeals were filed before this Court and the equities arising in favour of one party or the other, we direct the Electric Utilities to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction purchasers."*

27. The Hon'ble Supreme Court while deciding the abovementioned case of **K.C. Ninan (supra)** had confined its ratio on the Electricity Act and the Supply Code but had no opportunity to deal with the situation wherein there was a conflict between the two enactments, hence, the ratio laid down by the Hon'ble Supreme Court in the matter of **K.C. Kinnan (supra)** would only be applicable, when there is dues outstanding by the previous owner, but not if the property was settled by a proceeding under the IB Code.

INSOLVENCY & BANKRUPTCY CODE, 2016

28. The Bankruptcy Law Reforms Committee Report, 2015 had made following recommendation :-

> "*The Committee has recommended to keep the right of the Central and State Government in the distribution waterfall in liquidation at a priority below the unsecured financial creditors in addition to all kinds of secured creditors for promoting the availability of credit and*

developing a market for unsecured financing (including the development of bond markets). In the long run, this would increase the availability of finance, reduce the cost of capital, promote entrepreneurship and lead to faster economic growth. The Government also will be the beneficiary of this process as economic growth will increase revenues. Further, efficiency enhancement and consequent greater value capture through the proposed insolvency regime will bring in additional gains to both the economy and the exchequer."

***\

convinced that there is a default, it initiates insolvency proceeding. The Committee of Creditors (hereinafter referred to as COC for the sake of brevity) decides whether Resolution Plan should be initiated or the corporate debtor company may be put into liquidation.

30. Section 33 of IB Code, 2016 lays down provision for initiation of liquidation. Once the liquidation process is initiated, Liquidator is appointed to carry out liquidation process. The powers and duties of the Liquidator are prescribed by Section 35 of IB Code, 2016, which includes verification of claim of the creditors, evaluation of assets of the corporate debtor. The Liquidator has to issue public announcement to creditors and other persons to submit their claims in relation to corporate debtor within 30 days of initiation of liquidation process. After receipt of the claim, the Liquidator has to verify the claims and for that he may ask evidence for the purpose of verification. The adjudicating authority also does not have power to evaluate commercial decision of COC and once COC has decided for liquidation, the liquidation process has to begin. Section 53 of Insolvency and Bankruptcy Code, 2016 lays down a mechanism for distribution of assets.

31. Section 238 of IB Code establishes the overriding effect of the Code, stating that the provisions of the Code will take precedence over any other enactment which is inconsistent or in conflict of the Code.

Section 238 of IB Code: Provisions of this Code to override other laws

> **"***The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

32. In the Rajya Sabha debates, on 29th July, 2019, when the Bill for amending IB Code came up for discussion, there were certain issues raised by certain Members. While replying to the issues raised by certain Members, the Hon'ble Finance Minister stated thus:

> *"IBC has actually an overriding effect. For instance, you asked whether IBC will override SEBI. Section 238 provides that IBC will prevail in case of inconsistency between two laws. Actually, Indian courts will have to decide, in specific cases, depending upon the material before them, but largely, yes, it is IBC.[…]*

> *There is also this question about indemnity for successful resolution applicant. The amendment now is clearly makingit binding on the Government. It is one of the ways in which we providing that. The Government will not are raise any further claim. The Government will not make any further claim after resolution plan is approved. So, that is going to be a major, major sense of assurance for the people who are using the resolution plan. Criminal matters alone would individuals and not company. There will be against successful resolution will be no criminal proceedings against successful resolution applicant for fraud by previous promoters. So, I hope that is absolutely clear. I would want all the hon. be proceeded against no criminal proceedings applicant. There Members to recognize this message and communicate further that this Code, therefore, gives that comfort to all new bidders. So now, they need not be scared that the taxman will come after them for the faults of the earlier promoters. No. Once the resolution plan is accepted, the earlier promoters will be dealt as individuals for their criminality but not the new bidder who is trying to restore the company. So, that is very clear with (emphasis supplied)"*

33. The Hon’ble Supreme Court in the matter of **Ghanshyam Mishra and sons Pvt. Ltd. through the authorized signatory vs. Edelweiss Asset Reconstruction Company Limited through the director and others, (2021) 21 SC 196** has held as under :-

> “*73. It could thus be seen, that in the speech the Hon'ble Minister has categorically stated, Section 238 provides that I&B Code will prevail in case of inconsistency between two laws. She also stated, that there was about indemnity for successful applicant and that the amendment was clearly making it binding Government. stated, that She Government will not make any further claim after resolution plan is approved. So, that is going to be a major sense of Finance that question resolution on the the assurance for the people who are using the resolution plan. She has categorically stated, that she would want all the Hon'ble Members and to recognize this message communicate further that I&B Code gives that comfort to all new bidders. They need not be scared that the taxman will come after them for the faults of the earlier promoters. She further states, that once the resolution plan is accepted, the earlier promoters will be dealt with as individuals for their criminality but not the new bidder who is trying to restore the company.”*

34. The Hon’ble Supreme Court in the matter of **Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs, 2022 SCC Online SC 1101** in which Section 142A of the Customs Act, 1962 was on issue, wherein authorities had submitted that dues payable to it were to be treated as 'first charge' on the property of the assessee concerned in the resolution process, it was argued that the Customs Act, 1962 acquired primacy and had to be given effect to. The court, after noticing the overriding effect of Section 238 of the IBC, held

as follows:

> *"55. For the sake of clarity following questions, may be answered as under:*
>
> *(a) Whether the provisions of the IBC would prevail, over the Customs Act, and if so, to what extent?*
>
> *The IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.*
>
> *(b) Whether the respondent could claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated?*
>
> *Answered in negative.*

35. In a similar manner the Hon'ble Supreme Court in catena of judgements has held that provisions of Section 238 of IB Code will have an overriding effect on the provisions of Electricity Act, 2003 despite the fact that Electricity Act also contain two specific provisions, with non-obsante clause i.e. Section 173 and 174.

36. Similarly, in **Duncans Industries Ltd. A.J. Agorchem, (2019) 9 SCC 725: AIR 2019 Supreme Court 5472,** Section 16G of the Tea Act, 1953 which required prior consent of the Central Government (for initiation of winding up proceedings) was held to be overridden by the IBC.

37. Since this issue has already been decided in the matter of **M/s Innoventive Industries Ltd. vs. ICICI Bank, (2018) 1 SCC 407** wherein it has been held that Section 238 of IB Code clearly mandates that the provisions of IB Code shall have effect, notwithstanding anything in consistent therewith contained in any other law for the time being in force. This being a position and considering the mandate laid down in Section 238, which is subsequent law enacted by parliament. The provisions of Section 238 of IBC would have effect. It was further held as

under:-

> *"….It is precisely for this reason that the non obstante clause, in the widest terms possible, is contained in Section 238 of the Code, so that any right of the corporate debtor under any other law cannot come in the way of the Code. For all these reasons."*

This ratio was also followed by the Hon'ble Supreme Court in the matter of **CIT vs. Monnet Ispat and Energy Ltd., (2018) 18 SCC 786.**

38. In the past as well there have been instances of inconsistencies were faced in the application of other statutes due to IBC as was found in **M/s Platinum Rent A Car (India) Private Limited vs. M/s Quest Offices, Limited (Company Appeal (AT) (CH) (Ins) No.448 of 2022),** wherein it was held that the IB Code is a self contained Code and will have an overriding effect because of Section 238 of the Code and in **K. Kishan vs. Vijay Nirman Company Private Limited, (2018) 17 SCC 662** wherein the court upheld the primacy of IBC through Section 238 against and Arbitration and Conciliation Act of 1996 respectively.

39. The respondents have already participated in the proceedings under the IB Code before the liquidator and had submitted its claim. The liquidator will duly verify and distribute the outstanding amount as per the order for mechanism set up under the IB Code. Since they have already submitted their claim with the liquidator, the liquidator will definitely decide under the IB Code.

40. Section 238 of Insolvency and Bankruptcy Code, 2016 is a non-obstante clause meaning it grants the IB Code a power of overriding effect on other laws, for the time being in force, or any instrument that is inconsistent with it. This is a Special Section, which ensures that the IBC framework for Insolvency and Bankruptcy resolution or liquidation take precedence over all other laws, establishing this Code has a comprehensive and specific law for its intended purpose.

CONCLUSION

41. It is not in dispute that the respondent PVVPL had already participated in liquidation process and had made their claim with the liquidator, hence, it will not be open for the respondents to recover

outstanding dues under the Electricity Act, 2003, specially when IB Code, 2016 has been triggered. It is clear that IB Code, 2016 will have overriding effect over Electricity Act, 2003, hence, the respondents will get their outstanding dues only in the liquidation proceeding. The respondents cannot avail two reliefs at the same time. They have participated in the liquidation proceedings but at the same time pressurizing the petitioner to pay dues of the corporate debtor under the provisions of Electricity Act.

42. A plain reading of Section 238 of IB Code, 2016 clearly shows that it has overriding effect over other Acts. Similar provision is also found in Electricity Act, 2003. Since, IB Code, 2016 is later Act, hence, it will have overriding effect on Electricity Act, 2003.

43. The ratio laid down in **K.C. Ninan's case (supra)** would not be applicable as aforesaid judgement is not in reference to the proceedings initiated under the IB Code, which is a Special Act passed later in time and as per Section 238 of IB Code this being a Special Act will have an overriding effect on the other prevailing Acts.

44. The instant issue has already been decided in the matter of **Southern Power Distribution Company of Telangana vs. Gupal Agrawal & Ors. (supra)** and in **Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Ltd (supra)** wherein it has been categorically held that the provisions of Section 238 of IBC will prevail over and override other provision of the other acts which are in force at the time of framing of this Code and the Power Company cannot deny granting them the connection.

45. The instant issue is also covered by the legal maxim **Lex Posterior Devogat Priori,** which means that in case of conflict between the laws the a later Act would repeal the earlier Act.

46. The newer Acts supersedes the older ones to the extent of in consistency. This reflects the dynamic nature of the legal system allowing it to adapt and evolve with the changing social need and priorities.

47. In case of conflict between two statutes having conflictory provisions

and both contain non-obstante clause. Section 238 of IB Code and Section 173 and 174 of Electricity Act, 2003 provide both acts to exercise primary over other laws. The Hon'ble Supreme Court while deciding the issue in **M/s Innoventive Industries Ltd. vs. ICICI Bank** (supra) had observed that the later Statue (IBC) would prevail over and override the other Statute (Electricity Act).

48. In view of aforesaid facts and discussion, impugned order dated 15th May, 2025 is set aside and the respondents are directed to install power connection in the premises of the petitioner. However, it is open for the respondents to collect its dues from the Liquidator.

49. The writ petition is, accordingly, **allowed.**

September 18, 2025
Manish Himwan

(Arindam Sinha,J.)

(Prashant Kumar,J.)

Digitally signed by :-
MANISH HIMWAN
High Court of Judicature at Allahabad