

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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Learning Curve-854

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**If electricity supply service is critical to preserve the value of CD, then the dues towards such supply must be paid by the RP during CIRP.**

<b>CASE TITLE</b>	Shailesh Verma, Resolution Professional of Lavasa Corporation Limited v/s. Maharashtra State Electricity Distribution <sup>1</sup>
<b>CASE CITATION</b>	Company Appeal (AT) (Insolvency) No. 383 of 2022
<b>SECTIONS/ REGULATION</b>	Section 14 of IBC, 2016
<b>DATE OF ORDER</b>	02.09.2022
<b>COURT/ TRIBUNAL</b>	NCLAT, New Delhi

## **Brief of the case:**

This Appeal was filed by the Resolution Professional of Lavasa Corporation Limited (Corporate Debtor/CD) challenging the order passed by NCLT, Mumbai wherein NCLT directed the Respondent not to take over the Distribution Franchisee Agreement (DFA) and to continue to supply uninterrupted electricity to the Corporate Debtor and the Resolution Professional was directed to pay the outstanding dues during the CIRP period within 90 days. Aggrieved by the order insofar as it directed the Resolution Professional to pay the outstanding dues during the CIRP period, the Resolution Professional has come up in this Appeal.

The CIRP against the CD had commenced on 30.08.2018 by order of the AA and during the moratorium period the Respondent has continued to supply the electricity to the Corporate Debtor even though Distribution Franchisee Agreement came to an end on 24.10.2019, when Respondent issued notice to take over the Distribution Franchisee Agreement. The submission of learned Counsel for the Appellant is that payment of electricity dues cannot be demanded by Respondent, since they are part of the CIRP cost and can be paid only at the conclusion of CIRP process, that is, after approval of the Resolution Plan. The only question is to be considered in this Appeal is as to whether the AA was right in issuing direction to the Appellant (RP) to make payment of outstanding electricity dues during CIRP period.

## **Decision:**

Hon'ble NCLAT dismissed the appeal and held that,

*“The scheme delineated by Section 14(1) explanation as well as Section 14(2-A) is same, that is, all benefits, which were enjoyed by the Corporate Debtor given by Government or authority should be continued, but subject to condition that there is no default of payment of current dues. Sub-section (2-A) also envisage continuation of the essential supply and provides for such termination, suspension or extension when payment has not been made for the such supply during the moratorium....When the Corporate Debtor has opined that supply of electricity is essential and is to be continued by the Respondent, it is also under obligation to make payment of electricity dues of the CIRP period and direction issued by the Adjudicating Authority to make the payment of outstanding dues, cannot be faulted..”*



**QR CODE FOR FULL ORDER/JUDGEMENT:**

<sup>1</sup>[https://efiling.nclat.gov.in/nclat/order\\_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzlwMjltMDktMDIvY291cnRzLzEvZGFpbHkvMTY2MjEwODMwMzk2Mzc0MzA2NDYzMTFjMjhmYzI1ZmEucGRm](https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzlwMjltMDktMDIvY291cnRzLzEvZGFpbHkvMTY2MjEwODMwMzk2Mzc0MzA2NDYzMTFjMjhmYzI1ZmEucGRm)