

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5234 OF 2008

(Arising out of S.L.P. (C) No.10166 of 2007)

**Dakshin Haryana Bijli Vitran Nigam Ltd.
and Another**

...Appellant(s)

Versus

M/s. Excel Buildcon Pvt. Ltd. and Others ...Respondent(s)

O R D E R

Heard learned counsel for the parties.

Leave granted.

By the impugned order, the High Court of Punjab and Haryana, while issuing notice of motion in the writ petition filed by Respondent No.1 for striking down Clause 21-A of the Terms and Conditions of Supply framed under Section 49 read with Section 79-J of the Electricity (Supply) Act, 1948, unconditionally stayed the demand of the arrears of electricity dues raised by the appellant-Nigam and directed it to release electricity connection to Respondent No.1. Learned counsel for the appellant relied upon the judgment of this Court in Dakshin Haryana Bijli Vitran Nigam Ltd. vs. Paramount Polymers (P) Ltd. in [2006 (13) SCC 101], and argued that the High Court was not justified in granting unconditional stay ignoring the fact that in terms of Clause 21-A of the Terms and Conditions of Supply, Respondent No.1 was required to pay the arrears of electricity dues amounting to Rupees eighty five lakhs twenty one thousand and two hundred thirty five.

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Learned counsel for Respondent No.1 argued that in the absence of any stipulation in the auction notice his client cannot be burdened with the dues of electricity payable by Respondent No.3. He submitted that the judgment relied upon by the learned counsel for the appellant is not applicable to the present case because validity of Clause 21-A of the Terms and Conditions of Supply which is under challenge in the writ petition was not the subject matter of challenge in that case.

We have considered the respective arguments.

Before proceeding further, it is apposite to mention that, on 4th August, 2008, we had, after taking note of the undertaking given by the counsel for Respondent No.1 that his client will deposit a sum of Rupees ten lakhs within two days, directed the appellant-Nigam to restore electricity connection to the establishment of Respondent No.1. We have been told that the aforesaid sum of Rupees ten lakhs has been deposited and the electricity connection has been restored.

Since the writ petition filed by Respondent No.1 questioning the validity of Clause 21-A of Terms and Conditions of Supply is pending before the High Court, it is not proper for us to express any opinion on the merits of the case. However, we are convinced that the impugned order is legally unsustainable. In Dakshin Haryana Bijli Vitran Nigam Ltd. (supra), this Court interpreted Clause 21-A of the Terms and Conditions of Supply, distinguished the earlier judgment in Isha Marbles vs. Bihar State Electricity Board [1995 (2) S.C.C. 648] and directed the respondent to pay a sum of Rupees twenty five lakhs with a further direction that, in the event of deposit of the amount, the supply of electricity

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will not be disconnected. In the present case, a sum of Rupees ten lakhs has already been deposited by Respondent No.1. Therefore, we direct the said respondent to deposit a further sum of Rupees twenty five lakhs with the Nigam. Out of this, Rupees twelve lakhs and fifty thousand shall be deposited within three months and the balance amount shall be deposited within three months thereafter.

Accordingly, the appeal is allowed in-part and the impugned order is modified by directing that the stay granted by the High Court shall remain operative if Respondent No.1 deposits Rupees twelve lakhs and fifty thousand within three months and the remaining amount within three months thereafter. If Respondent No.1 fails to deposit either of the instalments, the stay order passed by the High Court shall stand automatically vacated and it will be open to the appellant-Nigam to disconnect the supply of electricity forthwith. So far as the current electricity charges are concerned, Respondent No.1 shall deposit the same within the time permissible under the law and, in case it fails to do so, the Nigam would be at liberty to disconnect the supply of electricity.

.....J.
[B.N. AGRAWAL]

.....J.
[G.S. SINGHVI]

New Delhi,
August 25, 2008.