REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7899 OF 2012
(Arising out of SLP (C) No. 35573 of 2010

Special Officer, Commerce,
North Eastern Electricity
Company of Orissa (NESCO) & Anr. .... Appellant (s)

Versus

M/s Raghunath Paper Mills Private
Limited & Anr. .... Respondent (s)

J U D G M E N T

P. Sathasivam, J.

1) Leave granted.

2) This appeal is directed against the final judgment and order dated 04.11.2010 passed by the High Court of Orissa at Cuttack in Writ Appeal No. 237 of 2010 whereby the Division Bench while affirming the order dated 05.08.2010 passed by the learned single Judge dismissed the appeal filed by the appellants herein.

3) **Brief Facts:**

a) In the year 2007, pursuant to the order of the Company Judge, High Court of Orissa, in Companies Act Case No. 25 of 2005, the Official Liquidator, made an advertisement for sale of movable and immovable assets and properties of the

Factory Unit of M/s Konark Paper & Industries Limited which was in liquidation on "*as is where is and whatever there is*" basis.

b) The sale was confirmed in favour of respondent No.1 – M/s Raghunath Paper Mills Pvt. Ltd., being the highest bidder, and the possession of the Unit was handed over on 28.03.2008. Since there was no power supply, respondent No.1 made an application to the Chief Executive Officer, North Eastern Electricity Supply Company of Orissa Limited (in short " the NESCO") for restoration of the same. Respondent No. 1 also executed an agreement dated 27.03.2009 with the NESCO for supply of construction power in the Unit. There being no reply from the side of the NESCO, respondent No.1, vide letter dated 26.08.2009, again requested for permanent supply of power. By letter dated 21.05.2010, the NESCO directed respondent No.1 to pay the arrears of electricity dues amounting to Rs. 79,02,262/- outstanding against the premises in question.

c) Being aggrieved, respondent No.1 filed a petition being Writ Petition (C) No. 9807 of 2010 before the High Court of Orissa praying for quashing of the demand letter dated 21.05.2010 issued by the NESCO with a direction to provide permanent supply of power.

d) Learned single Judge, by order dated 05.08.2010, after considering various provisions of law governing the issue in question allowed the petition and directed the NESCO to provide electricity to the Unit of respondent No.1 within a period of 7 days from the date of his judgment.

e) Dissatisfied with the decision of the learned single Judge, the appellants filed Writ Appeal No. 237 of 2010 before the Division Bench of the High Court. The

Division Bench, by order dated 04.11.2010, finding no illegality in the order of the learned single Judge, dismissed the appeal filed by the appellants.

f) Aggrieved by the said decision, the appellants have preferred this appeal by way of special leave petition before this Court.

4) Heard Mr. Suresh Chandra Tripathy, learned counsel for the appellants and Mr. P.P. Rao, learned senior counsel for respondent No.1.

5) The only point for consideration in this appeal is whether a Company, which purchased the property of another Company under liquidation through auction, is liable to pay the arrears of electricity dues outstanding against the erstwhile Company.

6) It is not in dispute that respondent No. 1 was the highest bidder and the sale was confirmed in its favour and possession of the Unit was handed over on 28.03.2008 itself. It is further seen that after getting the possession and after finding that there is no supply power in the premises in question, respondent No. 1 made an application for availing the same to the Chief Executive Officer, NESCO. Since there was no reply on their part, respondent No. 1, by letter dated 26.08.2009, again requested for permanent supply of electricity, for which, by letter dated 21.05.2010, the NESCO directed respondent No. 1 to pay the arrears of electricity dues amounting to Rs. 79,02,262/- outstanding against the premises which was purchased in auction through Official Liquidator. Being aggrieved by the same, respondent No. 1 challenged the said demand order before the High Court. Learned single Judge, with reference to various guidelines/rules applicable, quashed the demand order dated 21.05.2010 and the Division Bench also affirmed the same which necessitated filing of the above appeal.

7) At the foremost, it is useful to refer the original order of demand dated 21.05.2010 issued by the NESCO which reads as under:-

"NORTH EASTERN ELECTRICITY SUPPLY COMPANY OF ORISSA LTD.
Corporate Office, Januganj, Balasore-756 019, Orissa
Regd. Office: Plot No.N-1/22, Nayapalli,
Bhubaneswar-751 012, Orissa

No. FC/CO/238 12595(3) Dated: 21.05.2010

To By Regd. Post

The Director
M/s Raghunath Paper Mill (P) Ltd.
At-Jharia, Rupsa
Basta, Dist. Balasore

Sub:- Payment of arrear electricity dues amounting to Rs. 79,02,262/- against the premises.

Ref: Your Letter No. Nil dated 13.01.2010

Sir,

With reference to the subject cited above, you are requested to pay the arrear electricity dues amounting to Rs. 79,02,262/- outstanding against the premises to which you intend to avail power. On clearance of arrear electricity dues, necessary permission letter for providing power supply shall be issued in your favour.

Please arrange to pay the above arrear immediately for necessary action regarding power connection to your unit.

Yours faithfully
Sd/-
Special Officer (Commerce)

CC to EE, BTED, Basta for information and necessary action.
CC to SEEC, Balasore for information and necessary action"

8) It is not in dispute that respondent No. 1 has purchased the said unit from the Official Liquidator in pursuance of the advertisement for sale and the sale was confirmed on payment of the sale consideration and possession of the unit was handed over on 28.03.2008. It is also relevant to mention here that the Official

Liquidator, pursuant to the order of the Company Judge, High Court of Orissa in Companies Act Case No. 25 of 2005, made an advertisement for the sale of movable and immovable assets and properties of the Factory Unit of M/s Konark Paper & Industries Ltd. covering the leasehold land, buildings/sheds, plant and machinery, furniture and fixtures etc., which was in liquidation on "as is where is" and "whatever there is" basis. Inasmuch as respondent No. 1 satisfied all the conditions, made full payment of sale consideration, the possession of the Unit was handed over by the Official Liquidator to respondent No. 1 on 28.03.2008.

9) After taking possession of the Unit on "as is where is" and "whatever there is" basis, in order to establish a paper unit in the premises, respondent No. 1 made an application on 10.12.2008 to the NESCO for availing power of 100 KW at 33 KV. It is not in dispute that during the construction period of Basta feeder line to the Unit, respondent No. 1 executed an agreement with the NESCO dated 27.03.2009 for availing the required load and deposited security amount of Rs. 1,65,156/, however, even after completion of the work, the NESCO did not provide power supply to the Unit on the ground of arrears of electricity dues amounting to Rs. 79,02,262/- against the premises. According to the appellant-NESCO, without clearance of the outstanding dues for the electricity charges by the previous owner, respondent No. 1 is not entitled to power supply. On the other hand, it is the stand of respondent No. 1 that inasmuch as the application is not for seeking transfer of power from a previous owner and the Unit was purchased on "as is where is" and "whatever there is" basis after fulfilling all the formalities/conditions and in the absence of any privity of contract between respondent No. 1 and the NESCO, the demand for clearance of arrears of electricity dues is not justified.

10) Now, let us consider the relevant provisions of the Orissa Electricity Regulatory Commission Distribution (Conditions of Supply), Code, 2004 (in short 'the Electricity Supply Code'). Sub-clause 10 of Regulation 13 of the Electricity Supply Code is as follows:-

"**(10) Transfer of service connection:-**

(a) Subject to the Regulation 8, the transfer of service connection shall be effected within 15 days from the date of receipt of complete application.

(b) The service connection from the name of a person to the name of another consumer shall not be transferred unless the arrear charges pending against the previous occupier are cleared.

Provided that this shall not be applicable when the ownership of the premises is transferred under the provisions of the State Financial Corporation Act."

11) It is the case of the appellant that as per the above provision, viz., sub-clause 10(b) of Regulation 13 of the Electricity Supply Code, unless respondent No. 1 pays the arrears of electricity dues against the erstwhile company, electricity supply cannot be restored to its Unit. We are of the view that the reading of the above sub-clause makes it clear that the said provision is not applicable to respondent No. 1. We have already quoted that respondent No. 1, after purchase of the said Unit in an auction sale conducted by the Official Liquidator on "as is where is" and "whatever there is" basis has applied for a fresh service connection for supply of energy (emphasis supplied). In other words, respondent No. 1 has not applied for transfer of service connection from the name of the erstwhile company to its name. To make it clear, respondent No. 1 applied for a fresh connection for its Unit after purchasing the same from the Official Liquidator. It is also not in dispute that the arrears of electricity dues were levied against the premises in question, on the other hand, it was levied against the erstwhile company.

12) From the above factual details in the case on hand and in the light of sub-clause 10(b) of Regulation 13 of the Electricity Supply Code, we hold that the said clause applies to a request for transfer of service connection but not to a fresh connection. The interpretation of this clause by learned single Judge as well as by the Division Bench was correct being reasonable, just and fair.

13) Similarly, Section 43 of the Electricity Act, 2003 speaks about supply of electricity on request which is as under:-

> "**43. Duty to supply on request.-** (1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:
>
> x x x
> x x x
>
> Explanation:--For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances:
> x x x
> x x x"

Section 43 of the Electricity Act, 2003 casts a duty on every distributing licencee, in the case on hand, the appellant, to supply electricity on the application made by the owner or occupier of any premises within 1 month after receipt of the application. No doubt, it should be only after fulfilling the conditions such as installation of machinery, deposit of security etc.

14) We were also taken through the other regulations, viz., Regulation Nos. 3 and 10 and various Forms which would show the words "other dues including the security as may be payable" does not mean and were not meant to convey that a new applicant for fresh connection shall pay arrears of electricity dues or other

dues for the same premises "payable by the earlier consumer" as stated in Regulation 10.

15) As rightly pointed out by Mr. P.P. Rao, learned senior counsel for respondent No. 1, the absence of these words in para 3 conclusively shows that the term "other dues" refers to security and other charges payable for a new connection in terms of the conditions of supply but not the arrears of electricity dues payable by earlier consumer who was in default.

16) In ***Isha Marbles*** vs. ***Bihar State Electricity Board and Another*** (1995) 2 SCC 648, a three-Judge Bench of this Court had an occasion to consider a similar question, viz., whether the auction-purchaser is liable to meet the liability of old consumer of electricity to the premises which is purchased by him in the auction sale from Bihar State Financial Corporation under Section 29(1) of the State Financial Corporations Act, 1951. After considering relevant provisions of the Electricity Act and the Regulations, this Court held as under:-

> "**56.** From the above it is clear that the High Court has chosen to construe Section 24 of the Electricity Act correctly. There is no charge over the property. Where that premises comes to be owned or occupied by the auction-purchaser, when such purchaser seeks supply of electric energy he cannot be called upon to clear the past arrears as a condition precedent to supply. What matters is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability against the third party. Of course, the bona fides of the sale may not be relevant.
>
> **61.** .....It is impossible to impose on the purchasers a liability which was not incurred by them.
>
> **62.** No doubt, from the tabulated statement above set out, the auction-purchasers came to purchase the property after disconnection but they cannot be "consumer or occupier" within the meaning of the above provisions till a contract is entered into.

63. We are clearly of the opinion that there is great reason and justice in holding as above. Electricity is public property. Law, in its majesty, benignly protects public property and behoves everyone to respect public property. Hence, the courts must be zealous in this regard. But, the law, as it stands, is inadequate to enforce the liability of the previous contracting party against the auction-purchaser who is a third party and is in no way connected with the previous owner/occupier. It may not be correct to state, if we hold as we have done above, it would permit dishonest consumers transferring their units from one hand to another, from time to time, *infinitum* without the payment of the dues to the extent of lakhs and lakhs of rupees and each one of them can easily say that he is not liable for the liability of the predecessor in interest.....”

17) In ***Paschimanchal Vidyut Vitran Nigam Ltd. & Ors.*** vs. ***DVS Steels & Alloys Pvt. Ltd. & Ors.*** AIR 2009 SC 647= (2009) 1 SCC 210, the question whether the supplier can recover electricity dues from the purchaser of a sub-divided plot was considered by this Court. The following conclusion is relevant:-

“9. The supply of electricity by a distributor to a consumer is “sale of goods”. The distributor as the supplier, and the owner/occupier of a premises with whom it enters into a contract for supply of electricity are the parties to the contract. A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of his predecessor-in-title or possession, as the amount payable towards supply of electricity does not constitute a “charge” on the premises. A purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises. The supplier can therefore neither file a suit nor initiate revenue recovery proceedings against a purchaser of a premises for the outstanding electricity dues of the vendor of the premises in the absence of any contract to the contrary.

Learned counsel for the appellant heavily relied on para 10 of the very same judgment which reads as under:-

10. But the above legal position is not of any practical help to a purchaser of premises. When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfilment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them."

If we apply the above principles as pointed out by Mr. Tripathy, learned counsel for the appellant, undoubtedly, respondent No. 1-purchaser of the premises is liable to pay entire arrears or outstanding of power dues. However, as pointed out by Mr. P.P. Rao, learned senior counsel, respondent No. 1 is not a party to the contract with the supplier, i.e., the NESCO. We have already quoted the relevant clauses, particularly, sub-Clause 10(b) of Regulation 13 of the Electricity Supply Code, which is not applicable to respondent No. 1 herein. In other words, as mentioned in the earlier paras, in the case on hand, respondent No. 1 has not applied for transfer of service connection from the name of the erstwhile company to its name but applied for a fresh connection to its Unit after purchasing the same from the Official Liquidator.

18) It is also relevant to refer a decision of a three-Judge Bench of this Court reported in ***Ahmedabad Electricity Co. Ltd.*** vs. ***Gujarat Inns Pvt. Ltd. and Others,*** (2004) 3 SCC 587. This Court, after finding that the cases are of fresh connection, in para 3, held as under:-

"3.....We are clearly of the opinion that in case of a fresh connection though the premises are the same, the auction-purchasers cannot be held liable to clear the arrears incurred by the previous owners in

> respect of power supply to the premises in the absence of there being a specific statutory provision in that regard…..”

19) In a recent decision, i.e. in ***Haryana State Electricity Board*** vs. ***Hanuman Rice Mills, Dhanauri and Others,*** (2010) 9 SCC 145, this Court, after referring to all the earlier decisions including ***Isha Marbles (supra)*** and ***Paschimanchal Vidyut Vitran Nigam Ltd. (supra)*** etc., summarized the position in the following manner which is as under:-

> **“12.** ….(*i*) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.
>
> (*ii*) Where the statutory rules or terms and conditions of supply which are statutory in character, authorise the supplier of electricity to demand from the purchaser of a property claiming reconnection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser.”

20) In the light of the above discussion, specific factual details regarding the position of respondent No. 1 which purchased the said premises under court auction sale from the Official Liquidator on “as is where is” and “whatever there is” basis and in the light of the regulations quoted above, particularly, sub-clause 10(b) of Regulation 13, we hold that the request was not for the transfer from the previous owner to the purchaser, on the other hand, it was a request for a fresh connection for the Unit of respondent No. 1 herein. We are in entire agreement with the decision arrived at by learned single Judge as affirmed by the Division Bench of the High Court.

21) In view of the above, we find no merit in the appeal, consequently, the same is dismissed.

1

....J.
(P. SATHASIVAM)

....J.
(RANJAN GOGOI)

NEW DELHI;
NOVEMBER 09, 2012.

1