

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.851 of 2014**

1. M/s Bhagya Nidhi Exports Limited A Company Duly Incorporated and registered under the Companies Act, 1956 having its registered office at Mcloed House, first floor 3 Netaji Subhash Road, Kolkata (West Bengal) 700 001 and having its works at 4D Light Industrial Area, Bhilai, P.S. Chhawani, Distt. Durg C.G.
2. Sanjiv Fatehpuria S/o Shri Gopal Fatehpuria aged about 51 years Director of M/s Bhagya Nidhi Exports Ltd. R/o 49 Nehru Nagar old Bhilai, P.S. Nehru Nagar, District Durg C.G. Civil & Revenue Distt. Durg C.G.

---- Petitioners**Versus**

1. Chhattisgarh State Power Distribution Company Limited (CSPDCL) a company incorporated under the relevant provisions of the Companies Act, 1956 and a power sector undertaking of the State Govt. of Chhattisgarh and a successor of Chhattisgarh State Electricity (CSEB) having its registered office at fourth floor, Vidyut Sewa Bhawan, Daganiya Raipur C.G.
2. Chhattisgarh State Electricity Regulatory Commission (CSERC) A Body corporate constituted under Section 82 of the Electricity Act, 2003 having its head office at G.E. Road, Civil Lines, Raipur C.G.
3. Union of India through the Secretary, Ministry of Power, Govt. of India, Vidyut Bhawan, New Delhi.
4. State of Chhattisgarh through the Secretary, Ministry of Energy, Govt. of Chhattisgarh, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
5. Official Liquidator, office of the Official Liquidator, High Court of M.P. and Chhattisgarh State, 1st Floor, old CIA Building, opp. GPO, residency area, Indore (M.P.)

---- Respondents

For Petitioners	:	Shri B.P. Sharma and Shri Sameer Oraon, Advocates
For Respondent No.1	:	Shri A.S. Geharwar, Advocate.
For Respondent No.2	:	Shri Anumeh Shrivastava, Advocate.
For Respondent No.3	:	Shri Narendra Kumar Vyas, ASG and Shri Rajesh Tiwari, Advocate
For Respondent/State	:	Shri U.N.S. Deo, Government Advocate

**HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.**

Order On Board

Per NAVIN SINHA, C.J.

7/5/2015

1. In Company Petition No. 9 of 1996, M/s Kedia Distilleries Limited was ordered to be wound up on 27.1.2004 by the High Court of Madhya Pradesh, Indore Bench. Under orders of the Company Judge the Official Liquidator published an advertisement inviting bids for sale of the assets of the Company. The Petitioner was the highest bidder at the auction on 6.4.2010 which was accepted in Company Petition No. 9 of 1996 on 21.4.2011. The Official Liquidator then executed a registered deed of conveyance on 22.7.2011 in favour of the Petitioner. The Petitioner was granted temporary electricity connection for a period of three months by Respondent No.1. The request for continuation of the electricity connection was met by a demand for arrears of Rs.48,13,749/- stated to be owed by M/s. Kedia Distilleries Limited to Respondent No.1 as electricity charges.

2. The Petitioner approached this Court in Writ Petition (C) No.6233 of 2011. By order dated 25.4.2014, the writ petition was dismissed with liberty to challenge the *vires*. Thus, the fresh writ petition challenging the *vires* of clause 4.19 of the Chhattisgarh State Electricity Supply Code-2011 (hereinafter referred to as 'the Code, 2011') seeking the same relief.

3. Learned Counsel for the Petitioner submitted that the arrears due from M/s Kedia Distilleries Limited pertained to the years 1996 to 1998. Power supply had been disconnected on 31.7.1996 itself and the electric meter also removed on 5.12.1997. The dues were

time-barred under the electricity laws. Clause 9 of the deed of conveyance stated that the property was not encumbered or charged after the date of winding up order. The Petitioner is not liable to pay the aforesaid arrears. The remedy of Respondent No.1, for recovery of the arrears appropriately lies before the Official Liquidator.

4. Learned Counsel for the Respondents have objected to the maintainability of the writ application submitting that complete facts have not been placed before the Court. On account of subsequent developments, the writ petition has become infructuous and the issues sought to be urged academic. The question for grant of any relief or consideration of the question of law sought to be urged does not arise in the present case.

5. We have considered the submissions on behalf of the parties.

6. The auction sale was held on 6.4.2010 and the registered deed of conveyance executed in favour of the Petitioner on 22.7.2011. Writ Petition (C) No.6233 of 2011 filed earlier by the Petitioner challenging the same demand by Respondent No.1 for arrears of electricity dues payable by M/s Kedia Distilleries Limited was dismissed on 25.4.2014 on merits. Liberty was however granted to challenge the vires of Clause 4.19 of the Chhattisgarh State Electricity Supply Code 2011. The fresh writ petition has then been filed on 1.5.2014.

7. The counter-affidavit on behalf of Respondent No.1 states that the Petitioner sold the auction purchased assets to M/s. Shivam Hitech Steel Private Limited pursuant to which the District Trade and Industries Center on 29.10.2012 executed an amended lease deed in favour of M/s. Shivam Hitech Steel Private Limited, engaged in

manufacturing of Steel Plant spares, Engineering Works, Fabrication and Machining. This fact was not brought to the attention of the Court by the Petitioner, in Writ Petition (C) No. 6233 of 2011 or when it was being disposed on 25.4.2014.

8. Learned Counsel for the Respondent next submitted that the outstanding arrears of electricity dues payable by M/s. Kedia Distilleries Limited have already been paid by the transferee M/s Shivam Hitech Steel Private Limited. The pleadings in this regard at paragraph 12 and 13 of the counter-affidavit of the Power Company dated 30.11.2014 is answered in paragraph 25 of the Additional affidavit on behalf of the Petitioner dated 5.2.2015 that the Petitioner surrendered the auction purchased premises to the District and Trade Industries Center for allotment to another entity. The additional affidavit on behalf of the Petitioner seeks to raise a whole new cause of action now seeking refund of the auction payment of Rs.48,13,749/-.

9. We are satisfied that there is no need to examine the validity of clause 4.19 of the Code in the present case due to the subsequent developments. The larger question sought to be raised is left open for consideration in an appropriate case. If the Petitioner has surrendered the auction purchased premises to the District Trade and Industries Center the question of its seeking any fresh electricity connection in the auction purchased premises does not arise.

10. Learned Counsel for the State has submitted that M/s. Shivam Hitech Steel Private Limited, the transferee has already paid the

arrears. There is no denial on part of the Petitioner. The relief sought in the additional affidavit for refund of the auction price paid is completely foreign to the scope to the present writ petition and therefore it cannot be examined in the present writ application.

11. The Counsel for the Official Liquidator will be entitled to professional remuneration of Rs.10,000/- as ordered in the previous writ petition also.

12. The writ petition is dismissed.

(Navin Sinha)
CHIEF JUSTICE

(P. Sam Koshy)
JUDGE