* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 29th September, 2016.

\+ **W.P.(C) 434/2013**

M/S VANSHIKA BUILDTECH LTD ..... Petitioner
Through: Mr. Ajay Jain with Mr. S. Bhardwaj & Mr. R.P. Kaushal, Advs.

Versus

NEW DELHI MUNICIPAL COUNCIL & ANR ..... Respondents
Through: Mr. Malvika Trivedi & Mr. Jitendra Kumar Tripathi, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the demand of the respondent New Delhi Municipal Council (NDMC) (respondent no.2 is the Chief Engineer (Elect.) of NDMC) of Rs.3,86,967/- towards arrears of electricity charges owed by the earlier consumer / owner of Flat No.4 (2nd Floor), Building No.3, Scindia House, Connaught Place, New Delhi.

2. It is the case of the petitioner:

(i) that the petitioner acquired Flat No.4 (2nd Floor), Building No.3, Scindia House, Connaught Place, New Delhi in a public auction held by the Recovery Officer of the Debts Recovery Tribunal-I, Delhi and a Sale Certificate with respect thereto was issued in favour of the petitioner;

(ii) that the respondent NDMC issued a *challan* dated 3rd September, 2002 and a notice dated 4th September, 2002 requiring the petitioner to clear the electricity dues of Rs.11,82,428/- of earlier registered consumer of electricity at the said flat;

(iii) that the petitioner challenged the said demand by way of W.P.(C) No.6058/2002 and vide interim order wherein, subject to the petitioner depositing Rs.8 lakhs, electricity connection at the said flat was ordered to be granted to the petitioner;

(iv) that however the writ petition aforesaid was ultimately dismissed vide judgment dated 20th October, 2010;

(v) that the petitioner preferred LPA No.13/2011 against the judgment aforesaid but which appeal was dismissed on 5th January, 2012;

(vi) that the petitioner accordingly deposited the balance amount of Rs.3,82,428/- with the respondent NDMC and continued to enjoy the electricity connection in the aforesaid flat;

(vii) that the respondent NDMC in July, 2012 for the first time raised the impugned demand of Rs.3,86,967/- alleging the same also to be due of electricity connection earlier issued in the name of M/s Surya Agroils Ltd. at the address of the said flat;

(viii) that the petitioner represented thereagainst;

(ix) that though the respondent NDMC did not respond to the aforesaid representation but stopped accepting the amounts of the current bills tendered by the petitioner, for the reason of the petitioner having not paid the aforesaid arrears of Rs.3,86,967/-.

3. It is the contention of the petitioner (a) that pursuant to the purchase in the year 2002 of the aforesaid flat by the petitioner, the respondent NDMC had made a demand of Rs.11,82,428/- only towards arrears of electricity charges and could not after ten years, in the year 2012, claim the sum of Rs.3,86,967/- to be also due towards arrears of electricity charges for the period prior to 2002; (b) that the demand for Rs.3,86,967/- is time barred; (c) that the demand of Rs.3,86,967/- is arbitrary, unreasonable, onerous and taking advantage of the monopolistic position enjoyed by the respondent NDMC as provider of electricity; (d) that the petitioner being the auction purchaser of the flat cannot be saddled with outstanding electricity dues of erstwhile owners of the said flat; (e) that the respondent NDMC, after

claiming and receiving Rs.11,82,428/- from the petitioner towards arrears, is estopped from demanding Rs.3,86,967/- on the same account.

4. Notice of the petition was issued and vide order dated 28th January, 2013 the impugned demand stayed. The said order was made absolute on 20th January, 2014.

5. The respondent NDMC in its counter affidavit has stated (I) that the petitioner as owner of the flat cannot escape the liability for legitimate electricity dues of the said flat; (II) that the dues of Rs.3,86,967/- had inadvertently escaped attention of the respondent NDMC while claiming the dues of Rs.11,82,428/- and immediately after this fact came to notice, the demand therefor was made; (III) that though the demand has been made after a lapse of sometime but as per the judgment in the earlier writ petition filed by the petitioner, cannot be said to be barred; (IV) that the earlier demand being of Rs.11,82,428/- and the subject demand of Rs.3,86,967/- are against electricity connections though installed at the same address but in different names and for which reason the demand for Rs.3,86,967/- remained to be made while making the demand for Rs.11,82,428/-; (V) that the petitioner as owner of the flat has inherited the liability for electricity dues of the flat; (VI) that the respondent NDMC is entitled to recover the amount which is

legally due; (VII) that the law of estoppel cannot be applied because the demand of Rs.3,86,967/- made in 2012 was not part of the claim of Rs.11,82,428/- made in the year 2002.

6. The petitioner declined the opportunity to file rejoinder to the counter affidavit aforesaid. The counsels were heard on 14th March, 2016. It was the contention of the counsel for the petitioner that the respondent NDMC cannot make successive demands towards old electricity dues and the impugned demand was time barred. Section 363 of the New Delhi Municipal Act, 1994 which empowers the NDMC to recover its dues as arrears of land revenue was noticed on that date and it was further noticed that the Proviso thereto limits the period therefor to expiry of three years from the date on which the same became due. It was accordingly enquired from the counsel as to when the electricity charges subject matter of demand for Rs.3,86,967/- became due to the respondent NDMC. It was the contention of the counsel for the respondent NDMC on that date that the said demand was made for the first time in 2012 and thus it could not be said that the same was barred by the Proviso to Section 363 of the Act. Opportunity was given to the counsels on that date to show any rules, bye-laws or regulations as to when the amount due towards electricity becomes due.

None was shown by either of the counsels and hearing was concluded on 9th May, 2016 and judgment reserved.

7. The counsel for the petitioner relied on (A) ***P.V. Raghunandan Vs. The Registrar General*** 2008 (149) DLT 529 to contend that cause of action to the respondents NDMC for recovery of the electricity dues accrued when electricity was consumed; and; (B) ***Haryana State Electricity Board Vs. Hanuman Rice Mills*** (2010) 9 SCC 145 where, observing that the Haryana State Electricity Board did not demand the alleged arrears when Hanuman Rice Mills first approached for electricity connection in its own name for the same premises and three years thereafter made the demand for the first time alleging that there were electricity dues of the previous owner, it was held that the claim relating to previous owner could not be enforced against Hanuman Rice Mills.

8. Per contra, the counsel for the respondent NDMC relied on (I) ***H.D. Shourie Vs. Municipal Corporation of Delhi*** AIR 1987 Delhi 219 wherein relying on Section 24 of the Electricity Act and Section 283 of the Delhi Municipal Corporation Act, it was held that the charges for electricity would become due and payable only with the submission of the bill and not earlier and not the moment the electricity is consumed; (II) judgment dated 16th

July, 2009 of the Division Bench of this Court in LPA No.211/2009 titled ***N.D.M.C. Vs. Karam Chand Thapar & Brothers P. Ltd.*** where relying on ***H.D. Shourie*** supra it was held that the Proviso to Section 455 of the Delhi Municipal Corporation Act (equivalent to Section 363 supra of the NDMC Act) will apply only when the bill has been sent and the remedy available for filing a suit to recover the said amount could come to an end after three years elapsed and that the provisions of Section 455 would come into play after the submission of bill for electricity charges and not earlier and the contention that no bill could have been raised after a period of three years was negatived; and, (III) judgment dated 24th April, 2009 of the Division Bench of this Court in LPA No.356/2007 titled ***North Delhi Power Ltd. Vs. Delhi Bottling Co. Ltd.*** laying down that the electricity undertaking is at liberty to issue the bill for consumption of electricity even after three years after the electricity has been consumed.

9. I had however during the hearing enquired from the counsel for the respondent NDMC, whether not NDMC in the ordinary course, at the contemporaneous time also would have raised the bill for Rs.3,86,967/- on the consumer thereof and how can it be said that the demand raised on the petitioner in the year 2012 had been raised for the first time, for three years

to be counted therefrom.

10. In my opinion, the law as expounded in ***H.D. Shourie*** supra and followed in other judgments cited by the counsel for the respondent NDMC cannot be understood as entitling the respondent NDMC to issue repeated demands with the period of three years mentioned in proviso to Section 363 supra being computed from last of such demands. The respondent NDMC has shied from pleading that no demand for the said sum of Rs.3,86,967/- was made at any time prior to the year 2012. In fact, the respondent NDMC has not even pleaded, the period of time to which this demand pertains, whether any subsequent bills were raised with respect to the electricity connection to which the demand for Rs.3,86,967/- pertains and when the said electricity connection was disconnected. Without the respondent NDMC pleading the same, this Court cannot presume the demand made in the year 2012 to be the first demand, to be said to be within limitation in accordance with law aforesaid.

11. It cannot be lost sight of that the equities are against the respondent NDMC. Ordinarily the respondent NDMC ought to have acted with promptitude and recovered its dues towards electricity contemporaneously from the consumer thereof and not allowed the same to accumulate. I have in

Rakesh Kumar Sharma & Sons Vs. BSES Rajdhani Power Ltd. 180 (2011) DLT 455 given findings in this regard though owing to subsequent developments therein it was ordered that the same is not to constitute a precedent. It cannot also be lost sight of that the petitioner is a subsequent purchaser in an auction, of the premises to which the said demand pertains and is not the consumer of the electricity to which the demand pertains. The petitioner is however liable for the past electricity dues of the premises in accordance with law laid down by the Supreme Court and as discussed by me in ***Kundan Infrastructures Vs. NDMC*** (2010) 174 DLT 1 that entities such as the NDMC are entitled to recover such dues as a condition for grant of electricity connection. In discharge of the said liability, the petitioner has already paid Rs.11,82,428/- then demanded by the respondent NDMC from the petitioner at the time of the petitioner seeking an electricity connection. The respondents NDMC, save for inadvertence, has not given any reason as to why at that time the demand for Rs.3,86,967/- also was not made.

12. The aforesaid facts of this case are more akin to the facts of ***Haryana State Electricity Board*** supra and in which facts the electricity provider was not held entitled to recover such dues. The same result has to follow here.

13. The petition is accordingly allowed; the demand of the respondent NDMC of Rs.3,86,967/- towards old electricity dues with respect to Flat No.4 (2nd Floor), Building No.3, Scindia House, Connaught Place, New Delhi is quashed and the respondent NDMC is restrained from disconnecting or taking any other action with respect to the electricity supply to the said flat of the petitioner, for the reason of non-payment of the said demand.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 29, 2016
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