IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.159 of 2007

1. Shri Ambey Forging Pvt. Ltd.,
a Company registered under the
Indian Companies Act, 1956 and
having its registered office at
EDC Complex, Patto, Panaji-Goa.

2. Shri Pawan Lila,
residing at 373, D.B. Marg,
Miramar, Panaji-Goa .. Appellants

V/s

1. Government of Goa,
through its Chief Secretary,
having its office at Secretariat,
Panaji-Goa.

2. The Chief Electrical Engineer,
Government of Goa, having its
office at Vidyut Bhavan, Panaji-
Goa. .. Respondents

Mr. Y. V. Nadkarni and Ms. P. Kale, Advocates for the appellant.

Mr. Deep Shirodkar, Additional Government Advocate for respondents.

CORAM :- **C. V. BHADANG, J.**

Reserved on : 18th July, 2017

Pronounced on : 21st July, 2017

JUDGMENT :

The challenge in this appeal is to the judgment and decree dated 31/03/2007, passed by the learned Ad hoc District

Judge at Panaji in Civil Suit No.167/2004 (Old Special Civil Suit No.22/2002/A). By the impugned judgment, the learned Trial Court has dismissed the suit filed by the appellants for declaration that the demand of Rs.48,50,360/- made by the second respondent against the appellants by his letter dated 29/05/2001, is without any authority of law, illegal and null and void.

2. The brief facts, necessary for the disposal of the appeal, may be stated thus :

The appellant no.1 is a Company registered under the Companies Act, 1956, having its registered office at Panaji, Goa. The appellant no.2 is the Director of the appellant no.1. The second respondent is Chief Electrical Engineer, Government of Goa.

It appears that the Maharashtra State Financial Corporation (MSFC) had extended financial assistance to one M/s. Gaurav Strips, an Industrial Establishment manufacturing M. S. ingots, having its factory at plot No.343 at Kundaim Industrial Estate, Kundaim, Goa. There were defaults in the repayment of the loan. On or about 10/11/2000, MSFC issued an advertisement, calling tenders for purchase of the Plant and Machinery of M/s. Gaurav Strips along with some other industrial undertakings. The appellants offered to purchase the said property belonging to M/s.

Gaurav Strips. By a letter dated 15/01/2001, MSFC had decided to negotiate with the bidders within the zone of consideration and had requested the appellant no.2 to attend the negotiations on 17/01/2001. By a subsequent letter dated 08/02/2001, MSFC informed the appellants that they have decided to favourably consider the 'Cash Down' offer of Rs.50 Lakhs made by the appellants for the purchase of the said property i.e. building, plant and machinery at plot no.303 at Kundaim Industrial Estate, Kundaim, Goa on the terms and conditions, as stipulated in the said letter. MSFC also requested the appellant no.2 to send his unqualified acceptance within a period of 7 days and also to make payment as per the schedule set out in the terms and conditions. One of the conditions namely condition no.3, was that all existing and future liabilities with respect to the arrears of the Electricity Department, Revenue Department, Water Charges, Transfer fees, Excise and Sales Tax, etc. were to be borne and paid by the appellant no.2.

3. On 13/02/2001, the appellant no.2 wrote to the MSFC, requesting them to modify the aforesaid condition no.3, restricting it to only future liability and not the existing one. It was also pointed out that the condition no.3 was substantially at variance with the original tender conditions and the cash down offer of

Rs.50 Lakhs for purchase of the suit property by the appellants was on a bonafide assumption that the terms and conditions, as contained in the tender document, would be adhered to and not varied or altered.

4. By a letter dated 14/02/2001, the MSFC informed the appellants that the condition no.3 in their offer letter dated 08/02/2001, has been substituted by a condition that the property offered for sale is on "as is where is basis" and the Corporation does not undertake any responsibility to procure any permission/ licence in respect of the suit property from the various statutory authorities and the electricity department. After this, the appellants, by their letter dated 16/02/2001, conveyed their unqualified acceptance to the terms and conditions stipulated by the MSFC in their letter dated 08/02/2001 as modified by the letter dated 14/02/2001 (pertaining to condition no.3.)

5. It appears that by a letter dated 14/02/2001, the appellant no.2 requested the second respondent to intimate the formalities, which will have to be gone into for securing the reconnection of the power supply to the suit property as the power supply was already disconnected. The second respondent, by a letter dated 29/05/2001, informed the appellants that on

examination of the entire case by the Law Department, it was concluded that the appellants (purchaser) are fully responsible to clear the arrears of the electricity charges of the earlier consumer (M/s. Gaurav Strips) and requiring the appellants to clear the arrears of Rs.48,50,360/- in lumpsum. Alternatively, the appellants were called upon to give an undertaking to clear the entire dues in instalments along with co-lateral security. As the appellants were in emergent need of restoration of the electricity supply, in order to start their unit, they wrote to the second respondent on 07/06/2001, agreeing to give an undertaking to clear the entire dues in monthly instalments of Rs.50,000/-, without prejudice to their claim that the arrears are not recoverable from them and reserving their right to approach the appropriate forum.

6. By letter dated 20/06/2001, the second respondent informed the appellants that the appellants may clear the arrears in monthly instalment of Rs.1 Lakh each, payable on the first day of each month and to furnish a bank guarntee of Rs.20 Lakhs as co-lateral security. On 21/06/2001, the appellants accepted the conditions as stipulated in the letter dated 20/06/2001, which was further reiterated by yet another letter dated 27/06/2001.

7. It appears that by an order dated 20/07/2001, the Goa Industrial Development Corporation (GIDC) transferred the plot no.343 at Kundaim Industrial Estate from M/s. Gaurav Strips to appellant no.1.

8. On 02/08/2001, the second respondent asked the appellants to comply with certain conditions for restoration of power supply to the Industrial Undertaking of the appellants. Pursuant to the letter dated 02/08/2001, the appellant complied with all the necessary formalities as required, including payment of the instalment of Rs.1 Lakh and also furnishing a Bank Guarantee of Rs. 20 Lakhs towards co-lateral security. The electricity supply was accordingly restored on 08/08/2001. It is further undisputed that by now the appellants have paid the entire arrears of Rs.48,50,360/- to the second respondent.

9. On 19/09/2001, the appellants served a notice on the respondents under Section 80 of the Code of Civil Procedure (Code, for short) and filed the aforesaid suit on 14/03/2002, seeking following substantive reliefs :

> *"A) For a declaration that the demand of Rs.48,50,360/- made by the Chief Electrical Engineer (Defendant No.2) against the plaintiffs in his letter dated 29/05/2001 (EXHIBIT L) is without any*

authority of law, illegal, null and void;

B) For a decree against the defendants jointly and / or severally to refund the sum of Rs.8,00,000/- only paid by the plaintiffs as installments till the date of filing of the suit as also such further installments paid by the plaintiffs during the pendency of the suit along with interest at 2 percent per month compounded monthly from the date of respective payment till the date of actual refund;"

10. The respondents resisted the suit. It was contended that the appellants are not entitled to challenge the letter dated 29/05/2001 as the appellants had agreed to the terms and conditions for installation and payment of the arrears. It was contended that the appellants have purchased the suit property from MSFC on "as is where is basis" and the appellants are fully responsible to clear the liabilities of the earlier consumer.

11. On the basis of rival pleadings, the learned Trial Court framed the following issues :

"1. Whether the plaintiffs proves that the demand of Rs.48,50,360/- made by the defendant no.2 against plaintiffs is without any authority of law, illegal, null and void ?

2. Whether the plaintiff proves that they are entitled for refund of the amount of Rs.8 Lakhs towards arrears of said amount along with interest *of Rs.20 % p.m. compounded monthly from date of each payment ?"*

12. Parties led evidence, in which the appellant no.2 examined himself as PW1 and produced certain documents, including exchange of correspondence between the parties. On behalf of the respondents, one Nirmal Braganza (DW1), who was working as Chief Electrical Engineer, was examined. The learned Trial Court answered both the issues in the negative and dismissed the suit. Hence, this appeal.

13. I have heard Shri Nadkarni, the learned Counsel for the appellants and Shri Deep Shirodkar, the learned Additional Government Advocate for the respondents. With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned judgment.

14. It is submitted by Shri Nadkarni, the learned Counsel for the appellants that the suit property has been purchased by the appellants under Section 29 of the Financial Corporation Act. It is submitted that the property was auctioned on "as is where is basis". It is submitted that condition No.3 imposed in the letter dated 08/02/2001, was deleted subsequently to bring the terms

and conditions of the purchase in conformity with those as set out in the tender notice. The learned Counsel was at pains to point out that at no point of time, the appellants had agreed for unconditional deposit of arrears of electricity charges in respect of the former consumer, namely M/s. Gaurav Strips. The learned Counsel points out that the appellants had issued two replies, first dated 21/06/2001 and the second on 27/01/2001 to the letter dated 20/06/2001. It is submitted that both these replies have to be read together and if so read, would make it explicit that there was no unconditional deposit of the arrears and the appellants had all along adhered to their stand that they are not liable to pay the arrears of the previous consumer. On behalf of the appellants, strong reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***Isha Marbles vs. Bihar State Electricity Board***; (1995)2 SCC 648, in order to submit that the auction purchaser is not liable to pay arrears of electricity charges, of the previous consumer.

15. It is submitted that the second respondent hurriedly went on to withdraw the Revenue Recovery Case (RRC) against M/s. Gaurav Strips even before the conditions as stipulated by the second respondent were complied with by the appellants. It is, thus, submitted that the respondents cannot be allowed to put a

premium on their own act of withdrawal of RRC case against M/s. Gaurav Strips. It is submitted that at no point of time, there was any promise or representation from the appellants that the arrears of electricity charges will be paid unconditionally. It is submitted that the Trial Court was in error in importing principle of 'promissory estoppel', which was never pleaded and no case was made out in that regard by the respondents. The learned Counsel points out that there was no issue framed on the aspect of the appellants being precluded on the principle of promissory estoppel and thus, the Trial Court could not have adverted to the same. The learned Counsel has placed reliance on the decision of the Supreme Court in the case of ***Ganga Retreat and Towers Ltd Vs. State of Rajasthan***, (2003)12 SCC 91, in order to submit that the doctrine of promissory estoppel is not available when any action is desired to be taken in contravention of the provisions of law. Thus, the contention is that when the respondents were not entitled in law to insist for recovery of the arrears of M/s. Gaurav Strips from the appellants, no promissory estoppel can arise as against the appellants on account of the payment of the arrears, which were otherwise conditional as the appellants had reserved their right to take appropriate legal remedy against the claim. The learned Counsel has further placed reliance on the Division Bench judgment of this Court in the case of ***Namco Industries***

Pvt. Ltd. Vs. State of Maharashtra; 2012(4) ALL MR 250.

16. On the contrary, it is submitted by Shri Shirodkar, the learned Additional Government Advocate (AGA) for the respondents that the case of ***Isha Marbles*** (supra) is distinguishable on facts. The learned AGA has referred to para 9 of the judgment in the case of ***Isha Marbles*** (supra), in order to submit that in that case, there was a circular dated 19/01/1972 issued by the Board stating that in case of genuine purchase, if the old consumer had committed default and the purchaser has no connection with the old consumer, the Board will not insist on the realisation of the arrears due, for effecting reconnection. It is submitted that the auction notice was issued by the Corporation, or even the subsequent transfer did not mention anything about the outstanding electricity dues of the previous consumer. The learned AGA has, then, referred to the requisition form filled in by the purchaser in that case (which is produced in para 48 of the judgment), in order to submit that in that case, the purchaser had declined to clear the past liability. It is, thus, submitted that the appellants cannot place reliance on the decision in the case of ***Isha Marbles*** (supra) to avoid liability to pay the arrears of electricity charges.

17. It is next submitted that the letter dated 27/06/2001 would clearly show that the appellants had unconditionally agreed to clear the arrears of instalment, which they accordingly did and thus, the learned Trial Court had rightly invoked doctrine of promissory estoppel in as much as the respondents acting on the representation, had acted to their detriment by withdrawing RRC case against M/s. Gaurav Strips. The learned AGA has placed reliance on the following decisions :

"i) ***Depuru Veeraragjhava Reddi Vs. Depuru Kamalamma and another***; AIR (38) 1951 Madras 403.

ii) ***H. R. Basavaraj (dead) by his Lrs and Another Vs. Canara Bank and others***; (2010)12 SCC 458.

iii) ***Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. Paramount Polymers (P) Ltd***; (2006)13 SCC 101.

iv) ***Jaswantsingh Mathurasingh and another Vs. Ahmedabad Municipal Corporation and others;*** 1992 Supp (1) SCC 5.

v) ***Provash Chandra Dalui and another Vs. Biswanath Banerjee and another***; 1989 Supp (1) SCC 487.

vi) ***Paschimanchal Vidyut Vitran Nigam Ltd and others Vs. DVS Steels and alloys Pvt Ltd and others***; (2009)1 SCC 210."

18. Lastly, it is submitted that the issue whether the electricity dues constitute a charge on the property/ unit, has been referred by the Supreme Court to a Larger Bench, which reference is still pending. He submits that the impugned judgment is legal and proper and does not require any interference.

19. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out.

20. The Trial Court has held that the case of ***Isha Marbles*** (supra) is distinguishable on facts. Secondly, it has been held that there was an unconditional offer by the appellants to pay the arrears as contained in their letter dated 27/06/2001 (Exhibit 35) and acting on the said representation, the respondents had withdrawn RRC case against M/s. Gaurav Strips and had altered their position to their detriment and as such, the doctrine of promissory estoppel can be invoked in this case. The learned Trial Court refused to accept that there was any promise made contrary to law so as to hold that the doctrine of promissory estoppel was inapplicable and in that view of the matter, dismissed the suit.

21. The submissions made on behalf of the appellants can

be summarised thus :

(i) That there is no promise or representation by the appellants that the amount of arrears will be paid unconditionally. It is contended that the deposit of the arrears was without prejudice to the right to challenge the demand;

(ii) That the case of promissory estoppel has not been pleaded and no issue was framed and thus, the principle could not have been invoked and;

(iii) That in any event, the doctrine cannot be invoked when the promise made is against law. Precisely, the contention is that in as much as the appellants were not liable to clear the arrears in law, any promise to pay the arrears being against such legal position, no promissory estoppel can be attracted in such a case.

Except these, no other contentions are raised.

22. Firstly, it is necessary to consider the legal position as to the liability of a purchaser to pay or the right of Board to insist for the payment of arrears of a previous consumer from the subsequent purchaser. The law is no longer *res integra* as it has been subject matter of several decisions of the Supreme Court and of this Court. In the case of ***Isha Marbles*** (supra), the issue which fell for consideration of the Supreme Court was whether the

auction purchaser is liable to meet the liability of the old consumer of the electricity to the premises, which is purchased by him in the auction sale from the State Financial Corporation (as in the present case). It has been, *inter alia,* held that when such purchaser seeks supply of electricity, he cannot be called upon to clear the past arrears as a condition precedent for a fresh connection or a reconnection. This is because, there is no charge over the property in so far as such arrears are concerned and the Board cannot seek enforcement of the contractual liability with the erstwhile consumer against the auction purchaser, who would be a third party.

23. The legal principles apart, there are certain facts obtaining in the case of ***Isha Marbles*** (supra), which may make the said case distinguishable in as much as there was a circular issued by the Electricity Board in that case on 19/01/1972 that in case of genuine purchase, if the old consumer had committed default and purchaser has no connection with the old consumer, it would not be legal and proper to insist on the realisation of arrears from the purchaser. Another distinct feature was that in the auction notice, the Bihar State Financial Corporation did not mention anything about the outstanding electricity dues and, therefore, it was found that the liability of the previous consumer

cannot be fastened on the auction purchaser and lastly, the auction purchaser, while filing the requisition form, had specifically answered item no.4 as to whether the applicant (auction purchaser) undertakes to clear the past liability of the previous connection, in the negative.

24. A similar issue again fell for consideration of the Supreme Court in a later decision in the case of ***Haryana State Electricity Board Vs*. *Hanuman Rice Mills;*** (2010)9 SCC 145. The Supreme Court, after taking note of several decisions, including the case of ***Isha Marbles*** (supra) and ***Paschimanchal Vidyut Vitaran Nigam Ltd*** (supra), summarised the legal position in para 12 as under :

> *"12. The position therefore can may be summarized thus :*
> *(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, authorize the supplier of electricity, to demand from the purchaser of a property claiming re-connection 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."

25. In the case of ***Haryana State Electricity Board*** (supra), the Supreme Court took note of clause 21A in the statutory terms and conditions of supply, which authorised the Electricity Board to insist for the arrears of electricity charges pertaining to the previous consumer from the subsequent purchaser. The Supreme Court found that in the case of ***Isha Marbles*** (supra), the Court had no occasion to consider the effect of clause like clause 21-A in the statutory terms and conditions of supply. Be that as it may, the legal position, which can be deduced is that the electricity arrears do not constitute a charge over the property and, therefore, in general law, a transferee of the premises, cannot be made liable for the dues of previous owner/ occupier. This would, however, be subject to any statutory rules or terms and conditions of supply, to the contrary, authorising 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. At this stage, it may be mentioned that there is no clause similar to clause 21-A in the statutory terms and conditions of supply prevailing in the State of Goa. In the absence thereof, the legal position as set out in para 12 (i) in the case of ***Haryana***

State Electricity Board (supra), would apply. In the case of ***Paschimanchal Vidyut Vitaran Nigam Ltd*** (supra), it has been held by the Supreme Court that in the absence of contract to the contrary, the electricity supplier cannot recover dues of previous consumer or occupier from the purchaser, as there is no privity of contract between the board and purchaser. It has however been held that specific stipulation to the contrary is not arbitrary and unreasonable. The following observations in paragraphs 11 to 13 are apposite: -

> *"11. 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.

12. But the above legal position is not of any practical help to a purchaser of a 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 fulfillment 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.

13. A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the

> *electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishments, provisions similar to clause 4.3(g) and (h) of Electricity Supply Code are necessary to safeguard the interests of the distributor."*

26. It can, thus, be seen that in the absence of any statutory conditions of supply similar to clause 21A, as referred above, or any statutory rules or terms and conditions of supply, the Electricity Board cannot insist for recovery of the arrears from the purchaser/ auction purchaser. However, this may not preclude the purchaser from voluntarily agreeing to pay such arrears. In all fairness, the learned Counsel for the appellants had not disputed that notwithstanding the fact that the supplier cannot insist for the payment of the arrears from the purchaser/ auction purchaser, in a given case, this may not preclude and there cannot be any prohibition in law for such a purchaser/ auction purchaser from agreeing to pay such arrears as a condition for reconnection and/ or obtaining a new connection. This later aspect would be a question of fact peculiar to each case. In other words, whether

there was a voluntary agreement to pay arrears of the previous consumer or whether it was under protest or conditional subject to the right to challenge such demand, has necessarily to be considered in the light of the facts and circumstances of each case.

27. In so far as the reference of issue to a Larger Bench, which is pending before the Supreme Court, is concerned, it is now well settled that unless and until the law is rewritten by the Supreme Court, the existing law will continue to operate. In other words, mere reference of a particular issue to Larger Bench, does not have the effect of taking away the efficacy of the existing legal position unless and until the legal position is reversed or altered by the Larger Bench.

28. Coming back to the present case, the tender conditions and the exchange of correspondence between the parties are matters of record, which are obviously not in dispute. It is apparent from the record that as per the condition no.10 of conditions of tender, the property was offered for sale on "as is where is basis". Clauses 10 and 11 of the conditions of the tender, which are relevant for the purpose may be reproduced thus :

"10. The property offered for sale is on 'as is where is

basis'. The Corporation, therefore, does not undertake any responsibility to procure any permission/ licence, etc. in respect of the property offered for sale or for any dues like MIDC/GDDIDC /water/ service charges, transfer fees, electricity dues, dues of the Municipal Corporation/ local authority or other dues taxes if any, in respect of the said property.

11. The tenderers are advised in their own interest to verify the areas of land and built- up areas of building and details of machinery as also dues of MIDC/GDDIDC/ Sales Tax Dept./ Excise Dept/ local authorities etc. from respective authorities to their satisfaction before submitting the tenders."

29. The MSFC by its letter dated 08/02/2001, had set out the following condition no.3 amongst others, while accepting the offer of the appellants :

"3. All the liabilities existing and which may arise in future in respect of payment to Electricity Department, Revenue Authorities, water charges, transfer fees of Goa IDC, Excise dues, Sales Tax dues or dues of any other authority etc shall be paid by you."

30. The appellants, by their letter dated 13/02/2001, had brought it to the notice of the MSFC that condition no.3 in the letter dated 08/02/2001, was at variance with condition no.10 of

the conditions of tender and, therefore, ultimately the MSFC, by their letter dated 14/02/2001, substituted the original condition no.10 in place of the condition no.3, as stated above. This, however, in my considered view, does not take the case of the appellants any further. All that the MSFC had said is that the property was offered on “as is where is basis” and tenderers were advised in their own interest to verify the dues of statutory authorities/ local authorities.

31. Let us now come to the correspondence between the second respondent and the appellants. The appellants, by their letter dated 14/02/2001, requested the Electricity Department to reconnect the electricity supply as their deal with the MSFC was already settled. The Electricity Department, by their letter dated 29/05/2001 and after taking legal opinion, had intimated the appellants that as the property is purchased by the appellants from the MSFC on “as is where is basis”, the appellants are fully responsible to clear the liabilities of the earlier consumer i.e. M/s. Gaurav Strips. The appellants were called upon to clear arrears of 48,50,360/- or alternatively, to give an undertaking to clear the entire dues with co-lateral security. The appellants, by their letter dated 07/06/2001, did not dispute the quantum of arrears towards outstanding dues from M/s. Gaurav Strips. The only dispute was

whether the said dues are legally recoverable from the appellants. The appellants even sent a copy of the judgment of the Supreme Court in the case of ***Isha Marbles*** (supra), to claim that they are not liable to pay the arrears. The appellants then agreed to give an undertaking to clear the entire dues in monthly instalment of Rs.50,000/-. The second respondent, by a letter dated 20/06/2001, reiterated their stand and proposed that an undertaking be given to clear the arrears in instalements of Rs.1 Lakh per month and furnishing of a Bank Guarantee for Rs.20 Lakhs. There are two replies issued to this letter dated 20/06/2001 and it would be worthwhile to reproduce both the replies as the entire controversy hinges on the construction to be placed on these two letters sent by the appellants. Letter dated 21/06/2001 (Exh. O colly) may be reproduced thus :

> *"As desired by you in your letter no.154/III/HTC/ CEE/TECH/933 dated 20/06/2001, we hereby give our acceptance to the conditions stipulated in the said letter. This acceptance as also any payments made pursuant to this acceptance is without prejudice to our contention that the arrears of Rs.48,50,360/- is not recoverable from us and reserving out right to approach appropriate legal forum for a legal decision in the matter as mentioned in our letter dated 7/6/2001.*
>
> *Further in the event the amount of arrears of Rs.48,50,360/- for any reason is reduced, we reserve*

the liberty to limit our liability to pay such reduced amount which would be also without prejudice as aforementioned.”

It can, thus, be seen that even upto issuance of letter dated 21/06/2001, the appellants were maintaining their stand that an amount of arrears is not recoverable from them and reserved their right to approach the legal forum.

The letter dated 27/06/2001 (Exhibit 46) reads thus :

“Sir,
With reference to the letter received from the office of the Chief Electrical Engineer, Panaji-Goa, bearing No.154/111/HTC/ CEE/Tech/933 dated 20/06/2001, we hereby accept and agree with all the 5 conditions as follows :

1. We agree to clear the Arrears of the Installation in suitable installment to restore supply on the old installation.

2. (a) We agree to pay monthly installments of Rs.One Lakh on the 1st of every month till the total arrears are cleared, and we also agree to pay the first installment of Rs.One Lakh at the time of releasing supply;

(b) We agree to furnish a Bank Guarantee (from any Schedule Bank of Goa) of Rs.20 Lakhs valid for a period of minimum 2 years towards arrears as collateral security, and if needed we agree to extend the Bank Guarantee. We also agree to submit the Bank Guarantee before re-correction.

> *3. We agree to furnish Bank Guarantee (from any Schedule Bank of Goa) of Rs.30 Lakhs towards restoring power supply on our name against payment of monthly bills.*
>
> *4. We agree to comply towards payment of service connection charges and also comply with any other formalities.*
>
> *5. We agree to install a check Meter within a period of 3 months from the date of connection and allowe the department to install the Department Metering at your desired location in our premises.*
>
> *Further, the details pertaining to the IDC Land will be submitted within a week's time as required by you."*

32. It can, thus, be seen that the said letter refers to the earlier communication from the respondent no.2 dated 20/06/2001 and in categorical terms states that the appellants accept and agree with all the five conditions, which are again reproduced in the letter dated 27/06/2001. It is significant to note that in the letter at Exh.46, the appellants have not reserved any right or have not stipulated that the amount is paid under protest, subject to their right to challenge the demand, before appropriate forum. In my considered view, there is a clear shift in the stand of the appellants while issuing letter dated 27/06/2001, which shows that there was unconditional acceptance of the claim of the second

respondent as to the clearance of arrears.

33. Thus, the first contention on behalf of the appellants that there was no promise or representation that the amount will be paid unconditionally, in my considered view, cannot be accepted.

34. This takes us to the next issue of promissory estoppel. The second respondent, by a letter dated 02/08/2001 intimated the appellants that RRC case against M/s Gaurav Strips has been withdrawn. It would be worthwhile to reproduce the said letter as under :

> *"With reference to the above subject and your letter dated 27/06/2001, this is to inform you that you have to comply the following conditions at the earliest for restoring the power supply to your installation as directed to this office vide CEE's letter referred above.*
>
> *1) The R.R.C. Case has been withdrawn on the basis of your letter dated 27/06/2001. You have to pay Rs.22,500/- (Rs. Twenty two thousand Five Hundred only) towards service connection charges. Also you have to pay Rs.1.00 lakh as first installment towards arrears of Rs.48,50,360/- before releasing power supply.*
>
> *2) You have to furnish a Bank Guarantee of Rs.20.00 lakhs valid for a period of minimum two*

years towards arrears (from any schedule Bank in Goa) as a collateral security before reconnection.

3) You have to pay monthly installment of Rs.1.00 lakh on FIRST of every month as per CEE's letter No.154/III/HTC/CEE/TECH/933 dt. 20/06/2001 otherwise your installation is liable for disconnection without any further notice. An undertaking to this effect should also be furnished.

4) You have to furnish Bank Guarantee (from any Schedule Bank in Goa) of Rs.30.00 lakhs towards restoring power supply on your name as against security deposit.

5) Check meter has to be installed by you within a period of 3 months after releasing the power supply as agreed by you.

6) Also you will have to furnish a copy of Electrical Inspectors approval for the substation and switchyard at the installation under your control."

[Emphasis supplied]

35. It can, thus, be seen that the second respondent, acting on the letter dated 27/06/2001, had withdrawn RRC case against M/s. Gaurav Strips. The appellants sent a letter dated 08/08/2001 to the second respondent setting out the compliance with the conditions as imposed in the letter dated 02/08/2001. Although it is urged on behalf of the appellants that the RRC case against M/s. Gaurav Strips was withdrawn hurriedly and though it

could not have been withdrawn on the basis of any promise as such contained in the letter dated 27/06/2001, the letter dated 08/08/2001 is conspicuously silent on this aspect. In other words, had the offer in the reply dated 27/06/2001 been conditional, the appellants could have well said so in the reply dated 08/08/2001, taking exception to the withdrawal of RRC case and that too on the basis of the appellants' reply dated 27/06/2001. In my considered view, absence of any such objection to the withdrawal of RRC case, is indicative of the intention of the parties that the arrears of electricity charges were unconditionally paid.

Promissory estoppel is said to be a rule of evidence. It arises when a party (to whom such promise or representation is made), acting on a representation or a promise by the adversary, acts to his detriment and alters its position. After the party to whom such promise or representation is made, alters his condition to the detriment, the party making the promise and/ or representation, is estopped from going back on the promise/ representation. Here is a case where the second respondent, acting on the promise, as contained in the letter dated 27/06/2001, acted to their detriment by withdrawing the RRC case against M/s. Gaurav Strips and, thus, in my considered view, the Trial Court is justified in holding that the appellants cannot be permitted to go back on the promise/ representation.

36. Perusal of the cross-examination of Pawanlila (PW1) shows that he had not made any enquiries about the arrears of electricity charges with the Board prior to auction purchase of the suit property. All that Pawanlila (PW1) has stated is that he was not aware of the recovery proceedings against M/s. Gaurav Strips. The letter dated 02/08/2001 specifically makes a reference to withdrawal of RRC case against M/s. Gaurav Strips. It was suggested to Pawanlila (PW1) that because of the appellants' acceptance of the liability to pay arrears that the second respondent had withdrawn the recovery proceedings against M/s. Gaurav Strips. It can, thus, be seen that the case on the basis of which promissory estoppel can be involved to the witness, was put up. Thus, it cannot be accepted that on account of absence of specific pleadings or issue on the point of promissory estoppel, any prejudice is caused to the appellants or that they are taken by surprise. Thus, in my considered view, the second submission on behalf of the appellants also cannot be accepted.

37. Reliance placed on the decision in the case of ***Ganga Retreat and Towers Ltd*** (supra), in my considered view, is misplaced. As noticed earlier, the learned Counsel for the

appellants did not dispute that in a given case notwithstanding that the auction purchaser is not liable to pay the arrears of electricity charges in respect of the previous consumer, can always voluntarily agree for payment of such arrears. There is no prohibition in law from the auction purchaser voluntarily agreeing to pay such arrears. Thus, when on facts, it is found that the purchaser had voluntarily and unconditionally agreed to pay the arrears and the Board, acting on such promise/ representation, had acted to their detriment, it is difficult to envisage as to how the estoppel in such a case would be against law. The case of ***Ganga Retreat and Towers Ltd*** (supra) arose in the context of the facts, which are distinguishable.

38. I have carefully gone through the impugned judgment and I do not find that any case for interference is made out. The appeal is, accordingly, dismissed, with no order as to costs. Decree be drawn accordingly.

C. V. BHADANG, J.

SMA