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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CWP No.17600 of 2017 (O&M)**
**Date of decision:18.09.2017**

M/s S.N. Bajaj Alloys ...Petitioner

Versus

Punjab State Power Corporation Limited and others ...Respondents

**CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain**

Present: Mr. Sunil Chadha, Senior Advocate, with
Ms. Swati Verma, Advocate, for the petitioner.

Mr. J.S.Puri, Advocate,
for respondents no.1 and 2.

Mr. P.K.Khurana, Advocate,
for respondent no.3.

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**Rakesh Kumar Jain, J.**

The petitioner is aggrieved against the decision of the Punjab State Power Corporation Limited (hereinafter referred to as the “Corporation”), by which its request for temporary electricity connection to its site has been declined on the ground that there is an outstanding amount of ₹1,08,84,468/- against A/c No.K31LS100001 of M/s Garg Malleables India Pvt. Ltd. (hereinafter referred to as the “company”).

In brief, the company obtained certain credit facilities from the Oriental Bank of Commerce (hereinafter referred to as the “bank”), which it failed to re-pay, resulting into initiation of proceedings by the bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the “Act”) on the basis of

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which mortgaged property of the company was sold by sale deed dated 18.04.2017 in favour of the petitioner and in the said sale deed, the scheduled property was referred to be free from all encumbrances. After obtaining possession, the petitioner applied for a new temporary electricity connection by depositing ₹1,625/- against receipt dated 26.04.2017 but the Corporation declined it on 05.05.2017 on the ground that against the earlier connection bearing A/c No.K31LA100001, an outstanding amount of ₹1,08,84,468/- is recoverable and referred to Rule 3.3(viii) B of ESIM of Powercom, as per which the said amount has to be first deposited.

The petitioner has raised a legal issue as to whether a subsequent auction purchaser is liable to clear the arrears of electricity charges of the previous owner/consumer? In support of his submissions, he has relied upon the following decisions:-

1. **M/s Isha Marbles vs. Bihar State Electricity Board,** 1995(2) SCC 648;
2. **M/s. Paramount Polymers Private Ltd. vs. Dakshin Haryana Bijli Vitran Nigam Ltd. and others,** 2005(3) PLR 796;
3. **Paramjit Singh vs. State of Punjab through Financial Commissioner Revenue and others,** CWP No.9121 of 2007, decided on 8th April, 2011; and
4. **Uttar Haryana Bijli Vitran Nigam Limited vs. Recovery Officer-II, Debt Recovery Tribunal, Chandigarh, and another,** 2013(23) R.C.R. (Civil) 267.

During the pendency of the present petition, the bank and the company were also impleaded as parties.

Learned counsel for the bank has submitted that the petitioner had purchased the property in question on 18.04.2017 in e-auction held on

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31.01.2017 for an amount of ₹72.73 lacs and possession certificate was issued to them on 18.04.2017 and in the sale certificate, it was categorically mentioned that the sale of the scheduled property was made free from all encumbrances known to the creditor and it is also submitted that the property was sold on “as is where is” and “whatever there is” basis.

Learned counsel for the Corporation has submitted that the decision rendered in **M/s Isha Marbles's case (supra)** is not applicable and is distinguishable as the Supreme Court has held that in the absence of any statutory rules, authorizing demand for the dues of the previous occupant, from the auction purchaser who is seeking supply of electrical energy by way of fresh connection, the new owner/consumer cannot be called upon to clear the pre-sale arrears as a condition precedent for granting fresh connection, whereas in the case of **Dakshin Haryana Bijli Vitran Nigam Ltd. vs. M/s Paramount Polymers Pvt. Ltd.,** 2006(13) SCC 101 and in **Haryana State Electricity Board vs. M/s Hanuman Rice Mills Dhanauri and others,** 2010(9) SCC 145, the Supreme Court considered the **M/s Isha Marbles's case (supra)** and distinguished the two factual situations i.e. where statutory rules authorize or do not authorize the supplier to recover from the purchaser of a property and it has been held that where the rules provide for the same, the supplier of electricity can recover the outstanding dues of the previous owner from the new owner or the auction purchaser. He, thus, submitted that in the present case, Regulations 30.12 to 30.15 of the Punjab State electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2014 (hereinafter referred to as the “Regulations”) provides for authorization to recover the charges due from a transferee of the property and has also referred to a decision of this Court rendered in the case of **M/s Spray Engineering Sugars Limited vs. Punjab State Power Corporation Limited, Patiala and others,** CWP No.4454 of 2012, decided on 17.01.2013. He has further submitted that even though the Corporation has obtained *ex-parte* decree against the company in a Civil Suit on 15.05.2017, the recovery can still be effected in terms of the aforesaid Regulations. In this regard, Regulations 30.12 to 30.15 of the Regulations are reproduced as under:-

> "30.12 **Change of Occupancy**
> It shall be the responsibility of the owner/occupant of a premises to get a special reading done by the distribution licensee at the time of change of occupancy or on the premises falling vacant. The owner or occupier may request the distribution licensee in writing for a special reading at least 15 days in advance of such a change. The distribution licensee shall arrange a special reading and deliver the final bill, including all arrears till the date of billing, within 7 days of the meter reading. The final bill shall also include payment for the period between the date of special reading and the proposed vacation of the premises on a pro rata basis.
> 30.13 If a consumer vacates any premises to which electricity has been supplied by a distribution licensee without paying all charges due from him in respect of such supply, or for the provision of an electricity meter, electric line or electrical plant, the distribution licensee may refuse to give him supply at any other premises until he pays the amount due and also may refuse to connect such premises either on request from existing consumer or on application for new connection by any person till all dues are cleared.
> 30.14 Once the final bill is raised under Regulation 30.12, the distribution licensee shall not have the right to recover any other charge(s) from the new occupant of the premises.
> 30.15 In case of transfer of property by sale inheritance, the purchaser/heir shall be liable to pay all charges due with respect to such property and found subsequently recoverable from the consumer."

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I have heard learned counsel for the parties and examined the available record.

No doubt that in **M/s Isha Marbles's case (supra)**, the question was that as to 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, on which the following observations were made:-

> "57. From the above it is clear, 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 past arrears as a condition precedent to supply. What matters is the contract entered into by the rest while 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."

But in **Hanuman Rice Mills' case (supra)**, relied upon by the Corporation, the Supreme Court, while dealing with Point (ii), observed that *"the High Court held that the demand was untenable in view of the decision in Isha Marbles. In Isha Marbles, this Court held that in the absence of a charge over the property in respect of the previous electricity dues, and in the absence of any statutory rules authorizing a demand for the dues of the previous occupant, an auction-purchaser seeking supply of electrical energy by way of a fresh connection, cannot be called upon to clear the pre-sale arrears, as a condition precedent for granting fresh connection"* and finally observed as under:-

> "12. The position therefore may be summarized thus:
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> (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

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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 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.

The decisions rendered by the Supreme Court in **M/s Isha Marbles's case (supra), Paramount Polymers (P) Ltd.'s case (supra)** and **Hanuman Rice Mills' case (supra)** were discussed by this Court in **M/s Spray Engineering Sugars Limited's case (supra)**, in which this Court had held that *"therefore, the law appears to be settled that on general principles liability of previous owner would not run against new owner. However, if there is clear statutory rule occupying the field, then that rule will be the regulatory law to be given effect to without interference by the Court. In the present case, Rule 41.4(c) is the rule governing the parties which has to be given effect to. The demand is, therefore, without doubt legally justified"*.

Thus, in view of the aforesaid facts and circumstances, much-less the settled law, I do not find any reason to interfere in this petition and hence, the same is hereby dismissed, though without any order as to costs.

**September 18, 2017** **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking / reasoned: Yes/No
Whether Reportable: Yes/No