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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 158/2017 & CM APPLs. 735-736/2014

RAJEEV MALHOTRA

..... Petitioner

Through

Mr. P.K. Verma with Ms. S. Sud,
Advocates

versus

BSES YAMUNA POWER LIMITED AND ORS Respondents

Through

Mr. Manish Srivastava with
Ms. Prachi Johri, Advocates.**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****ORDER**

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09.01.2017

Present writ petition has been filed challenging the order dated 03rd August, 2016 passed by respondent-BSES alleging dishonest abstraction of energy on first floor of property bearing No.3936, Gali No.28, Reghar Pura, Karol Bagh, New Delhi.

A perusal of the files reveals that it is the case of the respondent that petitioner has indulged in dishonest abstractions of energy. A Division Bench of this Court in ***B.L. Kantroo vs. BSES Rajdhani Power Ltd., 154 (2008) DLT 56 (DB)*** has held that the Special Court has exclusive jurisdiction to decide disputes pertaining to dishonest abstraction of energy. The relevant portion of the aforesaid judgment reads as under:-

“22. It is apparent that the cases of theft under Section 135(1) involve mens rea. The jurisdiction of civil Court is not barred but the power to try offences punishable under Sections 135 to 139 is

conferred exclusively on the Special Court constituted under Section 153 of the Act and the provisions of Sub-section (5) of Section 154 specifically invest Special Court with the jurisdiction to determine any dispute regarding the quantum of civil liability in theft cases whether or not the allegation of theft is disputed, is still entitled to make such a challenge to the disputed bill before the Special Court, even in cases where no criminal complaint is filed against the consumer and the amount of civil liability so determined shall be recovered as if it were a decree of a civil Court and it can act as civil Court as well as criminal Court while conducting the cases before it.

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30. Although there is no specific provision in Section 145 of the Act for exclusion of jurisdiction of Civil Court to entertain any proceeding in respect of any matter which the Special Court is empowered by or under the Act to determine, we are of the view that any dispute about civil liability in theft cases is impliedly excluded from the jurisdiction of civil Court in view of the provisions of Sections 153 and 154 of the Act wherein special court has got the jurisdiction to determine any dispute regarding the quantum of civil liability specifically in theft cases and the said Court can act as civil Court as well as criminal Court while conducting the cases before it.”

Consequently, present writ petition and applications are disposed of with liberty to the petitioner to avail the remedy before the Special Court, if he so desires within a period of four weeks.

Needless to say, all the rights and contentions of the parties are left open and the Special Court shall decide the matters finally without being influenced by any observation made by this Court.

MANMOHAN, J

JANUARY 09, 2017

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