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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9404/2017

NEW DELHI MUNICIPAL COUNCIL Petitioner

Through: Mr Nirvikar Verma, Advocate.

versus

M/S GOLDEN ASSETS HOLDING (P) LTD. Respondent

Through: Ms Jasmeet Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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10.11.2017

CM No.38308/2017

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 9404/2017 & CM No.38307/2017

3. The petitioner has filed the present petition, *inter alia*, impugning an order dated 02.05.2017 passed by the Electricity Consumer Grievances Redressal Forum, New Delhi (hereinafter 'the CGRF').
4. The principal ground urged by the learned counsel for the petitioner is that CGRF had no jurisdiction to entertain the complaint filed by the respondent. He contends that as per the Regulation 8(1) of DERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers & Ombudsman) Regulation, 2003; CGRF would not entertain any grievance, *inter alia*, arising under Section 126 of the Electricity Act, 2003 (hereinafter 'the Act'), which includes matters relating to unauthorised

use of electricity. He submits that in terms of Section 126(6)(b) of the Act, the expression “unauthorized use of electricity” also includes use by means not authorized by the concerned person or authority or licensee. He states that since the respondent’s grievance relates to the action taken against the respondent under Section 126 of the said Act, the CGRF had no jurisdiction to consider the same and the impugned order is liable to be set aside.

5. The principal allegation against the respondent was that the load connected to the meters was in excess of the sanctioned load. It was also urged that the electricity drawn from the meter was being used in three premises and was not limited to the premises for which the electricity connection was granted.

6. The respondent had explained that the three premises were not separate premises but was a single unit. Even though electricity was provided by three meters, the unit being single, the use of electricity was not specifically limited to any particular area of the premises.

7. Concededly, there is no allegation that the electricity was being drawn by any means other than the connections provided by the petitioner. The only controversy that requires to be addressed was whether the petitioner was entitled to charge 50% as misuse charges only for the reason that connected load was found by them to be in excess of the sanctioned load.

8. It is pointed out that it was the petitioner’s stand in the earlier round that the respondent be relegated to CGRF. Thus, it is not necessary to examine the question whether the case against the petitioner had been established under Section 126 of the Act. The respondent had filed a writ petition challenging the bills raised by the petitioner by way of a Writ Petition being W.P.(C) No.3343/2016 captioned ‘**Golden Assets Holding**

(P) Ltd. v. New Delhi Municipal Council'. The said petition was moved on 22.04.2016 and on the said date, the learned counsel for the petitioner had opposed the petition by referring to the decision in the case of ***Raghubir Saran Charitable Trust v. New Delhi Municipal Council: W.P.(C) 766/2016 dated 29.01.2016.*** The said decision related to a similar controversy and this Court had relegated to the consumer (the petitioner therein) to CGRF. It was petitioner's contention - arrayed as respondent in W.P.(C) No.3343/2016 - that a similar order be passed in that case as well. In view of the aforesaid statement, counsel for the respondent (petitioner therein) had sought liberty to approach to the CGRF and the said petition (W.P.(C) 3343/2016) was disposed of with such liberty.

9. The petitioner having successfully pursued its stand before this Court that the respondent should be relegated to CGRF to agitate its grievance, is now not entitled to contend to the contrary. It is no longer open for the petitioner to contend that the CGRF had no jurisdiction to entertain the petitioner's claims. The petitioner cannot be permitted to approbate and reprobate.

10. In view of the above, without going further into the question whether CGRF had jurisdiction to entertain the respondent's complaint, this Court is not persuaded to exercise the discretionary jurisdiction in favour of the petitioner for the reasons stated above.

11. The petition and the pending application are, accordingly, dismissed.

12. No order as to costs.

VIBHU BAKHRU, J

NOVEMBER 10, 2017/MK