

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.2700 of 2017

(Arising out of order / letter dated 8-9-2017 passed by the Executive Engineer, CSPDCL, Bhilai, District Durg)

Order reserved on: 30-11-2017

Order delivered on: 25-1-2018

M/s Maheshwari Steels, a partnership firm through partner Murlidhar Rathi, S/o Late Durgadasji Rathi, Aged about 60 years, 1-A, Heavy Industrial Area, Hathkhoj, Bhilai, District Durg (C.G.)

---- Petitioner

Versus

1. Chhattisgarh State Power Distribution Company Limited, Through Additional Chief Engineer, City Circle, 32 Bungalow, Bhilai, District Durg (C.G.)
2. The Executive Engineer, City Division, Chhattisgarh State Power Distribution Company Limited, Bhilai, District Durg (C.G.)
3. Punjab National Bank, Through Chief Manager, Civic Centre, Bhilai, District Durg (C.G.)

---- Respondents

For Petitioner: Mr. P.R. Patankar, Advocate.

For Respondents No.1 and 2: -

Mr. K.R. Nair and Ms. Veena Nair, Advocates.

For Respondent No.3: Mr. Sachin Singh Rajput, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Punjab National Bank – respondent No.3 herein auctioned the subject property owned by M/s. Nibi Steels Limited in favour of the petitioner herein under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (for short, 'the SARFAESI Act') and the rules made thereunder. Accordingly, sale certificate was issued in favour of the petitioner under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002. Thereafter, the District Trade and Industries Centre, Durg, granted exemption from payment of stamp duty for execution of lease deed holding that it is a declared sick industry under the Chhattisgarh Band Avam Bimar Udyogon Hetu Vishesh Protsahan Niti 2016 and thereafter, lease deed was executed in favour of the petitioner by the Chief General Manager, District Trade and Industries Centre, Durg on 5-5-2017 for a period of 62 years. The State Government by its memo dated 29-12-2016 allowed the transfer of subject property by M/s. Nibi Steels Limited in favour of the petitioner herein subject to condition that all dues payable if any found outstanding to any Government/Semi-Government/Local Body/Financial Institution or anybody else shall be payable by M/s. Nibi Steels Limited, as the subject property has been auctioned by Punjab National Bank under the provisions of the SARFAESI Act and the rules made thereunder. After the issuance of sale certificate and grant of lease by State authorities in favour of the petitioner, the petitioner made an application for grant of electricity connection of 2500 KVA to respondent No.2 herein. The said application was rejected by respondent No.2 stating inter alia that an amount of ₹ 1,08,80,420/- is outstanding in favour of M/s. Nibi Steels Limited and as per clause 4.19 of the Chhattisgarh State Electricity Supply Code-2011 (for short, 'the Code'), unless the

amount due is cleared by the petitioner, such an electricity connection cannot be granted to the petitioner.

2. Feeling aggrieved against the order dated 8-9-2017, this writ petition has been filed principally on the ground that the petitioner is auction purchaser in the auction-sale held by respondent No.3 Bank under the provisions of the SARFAESI Act and the rules made thereunder and the sale certificate clearly incorporates that the subject property is free from all encumbrances and also stating that the State Government has already issued memo dated 29-12-2016 in favour of the petitioner allowing M/s. Nibi Steels Limited to transfer the unit in favour of the petitioner subject to condition that any dues outstanding of any Government Department or local body or any financial institution shall be payable by M/s. Nibi Steels Limited and the petitioner being bona fide purchaser cannot be held liable, as if this is allowed to stand, it will affect the finality of auction which the petitioner has bona fide purchased. Therefore, the impugned order be set aside and respondents No.1 and 2 be directed to provide electricity connection to the petitioner forthwith.
3. Return has been filed on behalf of respondents No.1 and 2 controverting the allegations made in the writ petition stating inter alia that the amount of electricity arrears to the tune of ₹ 1,08,80,420/- is outstanding against M/s. Nibi Steels Limited and there is a statutory provision in the Electricity Supply Code in shape

of clause 4.19 of the Code enabling the respondents for recovering electricity charges from the new owner of the premises which is the petitioner herein before restoring the old service connection or providing for a new supply connection. Therefore, the petitioner is not entitled for electricity connection till dues as indicated are cleared by the petitioner and as such, the writ petition deserves to be dismissed.

4. Mr. P.R. Patankar, learned counsel appearing for the petitioner, would submit that the petitioner has purchased the suit property / industry in the auction conducted by Punjab National Bank – respondent No.3 herein under the provisions of the SARFAESI Act and the rules made thereunder on “as is where is basis” and sale certificate has been issued under the Security Interest (Enforcement) Rules, 2002 clearly stating that the property is free from all encumbrances. He would further submit that the State of Chhattisgarh, District Trade and Industries Centre, Durg, has already allowed M/s. Nibi Steels Limited to transfer in favour of the petitioner subject to condition that all dues outstanding, if any, of the Government Departments shall be payable by M/s. Nibi Steels Limited, therefore, the petitioner is not at all liable for payment of said electricity arrears due to M/s. Nibi Steels Limited which is only payable by M/s. Nibi Steels Limited. He relied upon the decision of the Supreme Court recently pronounced in the matter of **Southern Power Distribution Company of Telengana Ltd. through its CMD**

and others v. Gopal Agarwal and others¹.

5. Mr. K.R. Nair, learned counsel for respondents No.1 and 2, would submit that the petitioner is bound by clause 4.19 of the Code as there is a provision in the said Code for clearance of electricity dues by the purchaser of old unit and unless the electricity dues are cleared, the petitioner is not entitled for new electricity connection and placed reliance upon the decision of the Supreme Court in the matter of **Paschimanchal Vidyut Vitran Nigam Limited and others v. DVS Steels and Alloys Private Limited and others**² reiterated by the Supreme Court in the matter of **Haryana SEB v. Hanuman Rice Mills**³ and the decision of the Supreme Court in the matter of **Special Officer, Commerce, North Eastern Electricity Supply Company of Orissa (NESCO) and another v. Raghunath Paper Mills Private Limited and another**⁴ to buttress his submission.
6. I have heard learned counsel for the parties and considered their rival submissions and went through the record with utmost circumspection.
7. The petitioner is auction-purchaser and purchased the property in auction-sale held by the secured creditor i.e. the Punjab National Bank – respondent No.3 herein in exercise of power conferred under the SARFAESI Act and therefore duties, rights and liabilities

1 2017 SCC OnLine SC 819

2 (2009) 1 SCC 210

3 (2010) 9 SCC 145

4 (2012) 13 SCC 479

of the secured creditor and the auction-purchaser under the said Act are required to be traced out.

8. The SARFAESI Act is enacted to provide speedy and summary remedy for recovery of dues which are due to Banks. The Act enables the financial institutions to realise long-term assets, manage problems of liquidity, and to improve recovery of debts by exercising powers to take possession of securities, sell them and thereby reduce non-performing assets by adopting and reconstruction. The Bank/financial institution is entitled to take actual possession of the secured assets from the borrower or from any other person in terms of Section 13(4) of the SARFAESI Act and also take the aid and assistance of Section 14 of the Act. Any transfer of secured assets by the Banks/financial institutions after taking possession of the same shall vest in the transferee all rights in relation to the secured assets as if the transfer has been made by the owner of such secured assets. Chapter III of the SARFAESI Act deals with Enforcement of Security Interest. Sub-sections (1) and (4) of Section 13 of the SARFAESI Act state as under: -

“13. Enforcement of security interest.—(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

(3) xxx

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

.....

.....”

9. The aforesaid provision makes it clear that where any borrower, who is under liability to the secured creditor, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then the secured creditor may issue notice to the borrower to discharge his liabilities in full within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4) of Section 13 of the SARFAESI Act which shall include “sale” under Section 13(4)(a).

10. The procedure and method of “sale” of secured assets has been prescribed under the Security Interest (Enforcement) Rules, 2002. The Central Government in exercise of the powers conferred by sub-section (1) and clause (b) of sub-section (2) of Section 38 read with sub-sections (4), (10) and (12) of Section 13 of the SARFAESI Act,

has framed these statutory rules. “Sale” of immovable secured assets is prescribed in sub-rule (6) of Rule 8 of the Security Interest (Enforcement) Rules, 2002 which reads as under: -

“8. Sale of immovable secured assets.—(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

x x x

(6) The authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5);

Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public action, the secured creditor shall cause a public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include,—

(a) The description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price, below which the property may not be sold;

(d) time and place of public action or the time after

which sale by any other mode shall be completed;

(e) depositing earnest money as may be stipulated by the secured creditor;

(f) any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.”

11. From the aforesaid legal analysis, it is clear that whenever the authorised officer puts the secured assets on 'sale', he should cause the public notice setting out the terms of sale which shall include the description as prescribed under clauses (a) to (f) of sub-rule (6) of Rule 8 of the Security Interest (Enforcement) Rules, 2002. It is pertinent to notice that while putting the secured assets on sale, the details of encumbrances and any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property, should be specified in public notice and public notice has to be published in two leading newspapers one in vernacular language having sufficient circulation in the locality and as such, the authorised officer is obliged to disclose the auction-purchaser entire material in the title or any other material which could be construed that the purchaser was misled by making the auction. By virtue of Section 55(1)(a) of the Transfer of Property Act, 1882, the seller is bound to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover.

12. Thus, in view of the provisions contemplated in clauses (a) and (f) of Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, it is quite vivid that when the Bank/financial institution puts the property on sale, the principles of '*caveat venditor*' (seller beware) is applied instead of '*caveat emptor*' (buyer beware).

13. The Law Lexicon (Second Edition) : P. Ramanatha Aiyar's : defines '*caveat venditor*' as :

'Caveat venditor' : A maxim meaning "Let the seller beware" (Broom) "If the seller wishes to secure himself from future responsibility in case the article sold should afterwards be found to be different in kind or quality from what the party supposed it to be, he must take care or provide against such responsibility by a particular agreement with the purchaser."

Let the seller beware (Latin for lawyer)

This maxim of the civil law express a doctrine the reverse of the rule of *caveat emptor* of the common law. It applies to executor sales, to contract for goods to be manufactured or produced or to sales where the buyer has no opportunity to inspect the article purchased.

14. In the matter of **S. Shanmuganathan v. Authorized Officer Indian Overseas Bank, Chennai**⁵, the Madras High Court has clearly held that requirement of description of property and details of encumbrance to secured creditor are mandatory in nature and the purchaser should be put on specific notice about all the encumbrances and other materials so as to enable him to take a

conscious decision with regard to his participation in the auction and the amount to be quoted in his bid. The disclosure is not an empty formality. The auction notification is defective and improper in case the encumbrances and known litigations are not disclosed. Apart from this, by virtue of sub-rule (9) of Rule 9 of the Security Interest (Enforcement) Rules, 2002, the statutory obligation on the part of the secured creditor is to deliver the property free from encumbrance to the purchaser and such disclosure must be made well before the auction to give an option to the purchaser to take part in the auction. Thus, there is a statutory obligation on the part of the Bank/financial institution to disclose the encumbrance in auction-sale.

15. The provision of Rule 8 of the Security Interest (Enforcement) Rules, 2002 and extent of its applicability has been scanned by the Supreme Court in the matter of **Mathew Varghese v. M. Amritha Kumar and others**⁶ and it has been held by Their Lordships that such a detailed procedure while resorting to a sale of an immovable secured assets is prescribed under Rules 8 and 9(1) of the Security Interest (Enforcement) Rules, 2002. It has further been held that twin objective has to be achieved by the said Rules, first one is omitted and second one is pertinent and applicable to the facts of the present case which is reproduced herein below: -

“33.2. Secondly, when such a secured asset of an immovable property is brought for sale, the intending

6 (2014) 5 SCC 610

purchasers should know the nature of the property, the extent of liability pertaining to the said property, any other encumbrances pertaining to the said property, the minimum price below which one cannot make a bid and the total liability of the borrower to the secured creditor. Since, the proviso to sub-rule (6) also mentions that any other material aspect should also be made known when effecting the publication, it would only mean that the intending purchaser should have entire details about the property brought for sale in order to rule out any possibility of the bidders later on to express ignorance about the factors connected with the asset in question.”

16. In view of the aforesaid provision, Rule 8(6)(a) and (f) read with Rule 9(9) of the Security Interest (Enforcement) Rules, 2002 and the principle of law laid down by the Supreme Court in Mathew Varghese (supra), it is absolutely clear the bank / financial institution has to exercise due diligence on the secured asset before the same is put to auction-sale for the reason to rule out that the property is free from any encumbrance or liability, as Rule 8(6)(a) and (f) of the Security Interest (Enforcement) Rules, 2002, are mandatory in nature.
17. The industrial unit in dispute was made to auction-sale by the secured creditor Punjab National Bank – respondent No.3 herein under the provisions of the SARFAESI Act and the rules made thereunder and sale certificate under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002 was issued in favour of the petitioner stating to be free from all encumbrances, which states as

under: -

“Whereas the undersigned being the Authorised Officer of the Punjab National Bank Nandini Road (Nehru Nagar) Bhilai under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Act, 2002 and in exercise of the powers conferred under Section 13 read with rule 12 of the Security Interest (Enforcement) Rules, 2002 sold on behalf of the Punjab National Bank in favour of M/s Maheshwari Steels, (PAN No.AAOFM1325N) the immovable property shown in the schedule below secured in favour of the Punjab National Bank by M/s Nibi Steels Ltd. towards the financial facility Cash Credit offered by Punjab National Bank.

The undersigned acknowledge the receipt of the sale price of Rs.5,05,10,000 (Rupees Five Crore Five Lac Ten thousand only) in full and handed over the delivery and possession of the scheduled property. The sale of the scheduled property was made free from all encumbrances known to the secured creditor listed below on deposit of the money demanded by the undersigned.

1. DESCRIPTION OF THE MOVABLE/
IMMOVABLE PROPERTY

Land (Lease hold) and Building, Plant & Machinery Plot No.1/A, Total Area 1,30,000 sq.ft. situated at Heavy Industrial Area, Hathkhoj, Bhilai Distt. Durg (CG) in the name of M/s Nibi Steels Ltd. Plant & Machinery situated at Plot 1/B, Total Area 2.00 Acre approximately.”

18. Thereafter, the Chief General Manager, District Trade and

Industries Centre, Durg on 29-12-2016 permitted M/s. Nibi Steels Limited to transfer the industrial unit in favour of the petitioner firm subject to the condition that dues, if any, found outstanding shall be payable by M/s Nibi Steels Ltd., which states as under: -

यदि इकाई पर शासकीय/अर्द्धशासकीय विभाग/स्थानीय निकाय/वित्तीय संस्था/अथवा अन्य कोई देनदारी निकलती है, तो उसके भुगतान की जिम्मेदारी पूर्व इकाई मेसर्स निबी स्टील्स के संचालक की होगी। नवीन इकाई मेसर्स माहेश्वरी स्टील्स द्वारा मेसर्स निबी स्टील्स की सम्पत्ति पंजाब नेशनल बैंक, नेहरू नगर भिलाई, जिला दुर्ग, द्वारा सरफेशी एक्ट के तहत ऋण वसूली करने हेतु नीलामी के माध्यम से क्रय की गयी है।

Thereafter, the said authority by its memo dated 13-4-2017 in exercise of power conferred under sub-section (1) of Section 9 of the Indian Stamp Act, 1899, granted exemption from payment of stamp duty in the lease deed to be executed in favour of M/s. Maheshwari Steels and accordingly, amendment to lease deed was executed on 5-5-2017 granting lease from 5-5-2017 to 19-1-2099 in favour of the petitioner granting lease for a period of 62 years. The petitioner unit then made an application for supply of electricity connection i.e. 2500 KVA to respondent No.2 which was rejected by respondent No.2 by the impugned order (Annexure P-13) on the ground that an amount of ₹ 1,08,80,420/- is outstanding against M/s. Nibi Steels Limited which the petitioner is liable as per clause 4.19 of the Electricity Supply Code.

19. The Chhattisgarh State Electricity Supply Code-2011 has been framed in exercise of power conferred under Section 43(1) read

with Section 181(t), Section 44, Section 46 read with Section 181 (1), Section 47(1) read with Section 181(v), Section 47(4) read with Section 181(w), Section 47(2), (3) and (5), Section 48(b) and Section 50 read with Section 181 (x) and Section 56 of the Electricity Act, 2003 and the Electricity (Removal of Difficulties) Order, 2005 issued by the Ministry of Power, Government of India on 8-6-2005. Clause 4.19 of the Code states as under: -

“4.19 If the consumer, in respect of an earlier agreement executed in his name or in the name of a firm or company with which he was associated either as a partner, director or managing director, has any arrears of electricity dues on the premises for which the new connection is applied and such dues are payable to the licensee, the requisition for supply may not be entertained by the licensee until the dues are paid in full. In case of a person occupying a new property, it will be the obligation of that person to check the electricity bills for the previous months or, in case of disconnected supply, the amount due as per the licensee's records immediately before his occupation and ensure that all outstanding electricity dues as specified in the bills are duly paid up and discharged. The licensee shall be obliged to issue a certificate of the amount outstanding against the connection that was installed or is installed in such premises on request made by such person within 30 days from the date of receipt of such request and release the connection after clearance of outstanding dues.”

20. The Electricity Supply Code obliges the person occupying the new property to clear the dues as per the licensee's records before his

occupation and ensure that all electricity dues as specified in the bills are duly paid and that has been made the condition precedent for entertaining the requisition for supply of new electricity connection.

21. In the matter of **Isha Marbles v. Bihar State Electricity Board and another**⁷, the Supreme Court has held that Bihar State Electricity Board is a 'State' within the meaning of Article 12 of the Constitution and therefore its action must pass the test of fairness and reasonableness, and a purchaser therein (Isha Marbles), the writ petitioner therein, was not expected to make an enquiry from the Board so as to know whether any dues were outstanding to the Board from the previous consumer; nor is it possible for the auction-purchaser to find out the personal liability of the debtor. It further held that the electricity dues by the previous industry is a contractual liability between the industry and the respondent-Board. It is not statutory in nature since electricity is consumed by consumer on the basis of a written contract as prescribed in Form EB-70 approved by Section 26 of the Indian Electricity Act, 1910. It also held that neither under the scheme of the Electricity Act nor the Electricity (Supply) Act, 1948 is there any concept of the premises of the consumer being liable for the electricity dues dehors the consumer, whose premises it is. The Supreme Court finally held that the auction-purchaser of the premises who has purchased the property under Section 29(1) of the State Financial Corporations

⁷ (1995) 2 SCC 648

Act, 1951, would not be liable to meet the liability of the previous consumer in order to secure reconnection.

22. Thereafter, in a judgment by a three-Judge Bench of the Supreme Court in the matter of **Ahmedabad Electricity Co. Ltd. v. Gujarat Inns Pvt. Ltd. and others**⁸, Their Lordships of the Supreme Court again while following the principles of law laid down in **Isha Marbles** (supra) reiterated the legal position that auction-purchasers cannot be held liable to clear the arrears incurred by the previous owners in respect of a power supply to the premises in the absence of there being a specific statutory provision in that regard.

23. In **Raghunath Paper Mills Private Limited's** case (supra), the Supreme Court has again followed the decision rendered in **Ahmedabad Electricity Co. Ltd.** (supra) and held as under: -

“21. In the light of the above discussion, specific factual details regarding the position of Respondent 1 which purchased the said premises under court auction-sale from the Official Liquidator on “as-is-where-is” and “whatever-there-is” basis and in the light of the Regulations quoted above, particularly, sub-clause 10(b) of Regulation 13, we hold that the request was not for the transfer from the previous owner to the purchaser, on the other hand, it was a request for a fresh connection for the unit of Respondent 1 herein. We are in entire agreement with the decision arrived at by the learned Single Judge as affirmed by the Division Bench of the High Court.”

24. Finally and recently in **Gopal Agarwal's** case (supra), Their

Lordships of the Supreme Court have followed the decision rendered in Isha Marbles (supra) and Raghunath Paper Mills Private Limited's case (supra), and held as under: -

“6. We have heard the learned counsel appearing for the parties and we are of the opinion that there is no reason to interfere with the judgment of the High Court. The High Court relied upon the judgment in Isha Marbles (supra) to grant relief to the First Respondent. It was held in the said judgment that an auction purchaser cannot be called upon to clear the past arrears. It was also held that a power connection to an auction purchaser cannot be withheld for the dues of the past owner. The High Court also referred to a judgment in Ahmedabad Electricity Company Limited (supra) wherein the ratio of the judgment in Isha Marbles case was reiterated, particularly with reference to a fresh connection for supply of electricity. In NESCO v. Raghunath Paper Mills (P) Ltd., (2012) 13 SCC 479, the purchaser in an auction sale conducted by the official liquidator on “as is where is” and “whatever there is” basis was found not liable for payment of the electricity arrears. In the said case an advertisement was issued by the official liquidator for sale of movable and immovable property of M/s. Konark Paper and Industries Limited on “as is where is” and whatever there is” basis. The auction purchaser applied for a fresh electricity connection to its unit which was denied on the ground of non-payment of arrears by the past owner. After considering the judgments in Ahmedabad Electricity Company (supra) and Isha Marbles (supra), this Court held that the request of the auction purchaser for a fresh connection could not have been

rejected.

7. The facts of this case are similar to that of NESCO v. Raghunath Paper Mills (P) Ltd., (2012) 13 SCC 479. The tender/sale notice mentioned that the property was being auctioned on “as is where is” basis. The First Respondent applied for a fresh connection and he is in no way connected to the past owner. He has also not undertaken to pay the past arrears of the previous owner. In view of the above, the Appeal is dismissed.”

25. Gopal Agarwal's case (supra) rendered by Their Lordships of the Supreme Court squarely applies to the facts of the present case, as in that case the property was purchased by the respondent therein i.e. Gopal Agarwal in the auction held under the provisions of the SARFAESI Act on “as is where is” basis and the Power Distribution Company claimed ₹ 1,88,23,185/- towards electricity charges from M/s. J.T. Alloys Private Limited. The Supreme Court relying upon the aforesaid judgments clearly held that the respondent therein in an auction-sale conducted by the official liquidator purchased the subject property on “as is where is” and “whatever there is” basis, was found not liable for payment of the electricity arrears and therefore the first respondent therein (Gopal Agarwal) who applied for a fresh connection is in no way connected to the past owner and thus, cannot be made liable to pay past arrears of the previous owner.

26. Therefore, Isha Marbles (supra), Ahmedabad Electricity Co. Ltd. (supra) and Gopal Agarwal's case (supra) apply to the facts of the

present case in full force. Respondents No.1 and 2 have relied upon the judgment of the Supreme Court in Paschimanchal Vidyut Vitran Nigam Limited (supra) wherein it has been held that the Distribution Company can stipulate as one of the conditions for supply that the arrears in regard to the supply of electricity made to the previous owner/occupier of the same premises, should be cleared before this electricity supply is restored to the premises or a fresh connection is provided and further relied upon the decision of the Supreme Court in Haryana SEB (supra).

27. In Haryana SEB (supra), the Supreme Court after referring to all the earlier decisions including Isha Marbles (supra) and Paschimanchal Vidyut Vitran Nigam Limited (supra) summarised the position in the following manner: (Haryana SEB case, SCC pp. 150-51, para 12)

“12. ... (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, authorise 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.”

28. Reverting to the facts of the present case, after noticing the

principles of law laid down in this regard, it is quite vivid that the petitioner is an auction-purchaser to an auction sale conducted by the secured creditor under the provisions of the SARFAESI Act and the rules made thereunder and purchased the property on “as-is-where-is” basis and the petitioner has not given any undertaking to pay the arrears of electricity due to M/s. Nibi Steels Limited. On the other hand, the State Government has made it clear that any outstanding dues to the State Government or any Department of the State Government or local bodies would be payable by M/s. Nibi Steels Limited, as such, there is no contractual liability or privity of contract between the petitioner and respondents No.1 and 2. Even otherwise, respondents No.1 and 2 had no charge over the property of M/s. Nibi Steels Limited purchased in the e-auction proceeding by the petitioner under the provisions of the SARFAESI Act. Sale certificate has been issued in favour of the petitioner under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002 clearly indicating that the property is free from all encumbrances known to the secured creditor. The petitioner is not expected to make enquiry with regard to electricity arrears with respondents No.1 and 2. It was open to respondents No.1 and 2 to make an objection to the auction sale conducted openly under the provisions of the SARFAESI Act and to claim the said arrears. Respondents No.1 and 2 cannot sit tight over the matter taking advantage of the fact that they had monopoly in supply of electricity and allowed the auction-sale to be final and after the auction-sale is final and when

application is made for electricity connection, they cannot proceed to claim the disputed amount. If this is allowed, then auction made under the SARFAESI Act would never become final and always remain unconcluded and it will give rise to litigation thereby frustrating the object of the SARFAESI Act. This has never been the intention of law makers while enacting the SARFAESI Act and in view of the provisions contained in Section 35 of the SARFAESI Act having overriding effect over any other law for the time being in force and auction-sale having been made in accordance with the SARFAESI Act and the Rules of 2002 made thereunder shall prevail over clause 4.19 of the Electricity Supply Code making the Supply Code inapplicable to the extent of auction-sale which has become final.

29. Thus, following the principles of law laid down by the Supreme Court in Isha Marbles (supra), Ahmedabad Electricity Co. Ltd. (supra), which is a three-Judge Bench decision, and Gopal Agarwal's case (supra), and further, in view of Section 35 of the SARFAESI Act and auction-sale made under the Rules of 2002 which has become final, it is held that the petitioner is not liable to pay electricity arrears due to M/s. Nibi Steels Limited and therefore respondents No.1 and 2 are absolutely unjustified in not granting electricity connection as demanded by the petitioner. The impugned order dated 8-9-2017 (Annexure P-13) is hereby set-aside. Respondents No.1 and 2 are directed to entertain the requisition for supply of electricity of the petitioner and to grant

electricity connection forthwith subject to compliance of necessary formalities under the provisions of the Electricity Act, 2003. However, this would not prevent respondents No.1 and 2 from recovering the amount in dispute (electricity arrears) from M/s. Nibi Steels Limited, in accordance with law and respondents No.1 and 2 are at liberty to proceed further against that company to recover the electricity arrears.

30. The writ petition is allowed to the extent sketched herein-above, leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge