HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.A.No.2 of 2018 in W.P.No.36812 of 2018
and
W.P.No.36812 of 2018

ORDER:

Heard learned counsel for the petitioners and Sri Zakir Ali Danish, learned Standing Counsel for TSNPDCL.

2. This Writ Petition is filed by the petitioner contending that the petitioner is the purchaser of a unit which is a par boiled rice mill in a sale conducted by the Canara Bank under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002; that Sale Certificate was issued to them on 03-05-2018 by the said bank; that the said bank had power to sell the movable secured assets as well as immovable secured properties under Rules 6 and 8 of the Rules framed under the said Act and the secured assets sold would be free from all encumbrances; but even after the transfer of the assets in favour of the petitioner, respondent Nos.1 to 6 are not restoring power supply to the petitioner. Petitioner contends that the respondent Nos.1 to 6 are unlawfully insisting that there are dues of the previous owner M/s. Nikitha Agro Tech Para Boil Rice Mill which petitioner should clear, and only then, power supply shall be restored in petitioner's favour.

3. Petitioner contends that this action on the part of the respondent Nos.1 to 6 in insisting that the petitioner should clear all

unsecured dues of the previous owner is highly arbitrary, illegal, unjust and contrary to the judgment of the Supreme Court in **Isha Marbles Vs. Bihar State Electricity Board and another**[1]**, NESCO Vs. Raghunath Paper Mill Private Limited**[2] and the judgment of the Supreme Court in **TSSPDCL Vs. Gopal Agarwal and others**[3].

4. On 10-10-2018, while admitting the Writ Petition, the following interim order was granted by this Court.

> *"Sri Zakir Ali Danish, learned counsel, takes notice for respondent Nos.1 to 7.*
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> *Since the petitioner is a purchaser in an auction conducted under the SARFAESI Act, 2002 of a par boiled rice mill, the petitioner cannot be made liable for the dues of the earlier owner of the mill as held in order dt.30-04-2018 in W.P.No.15064 of 2018. Therefore, there shall be interim direction as prayed for."*

5. I.A.No.2 of 2018 was filed by respondent Nos.2 to 6 to vacate the said order.

6. It is contended in the vacate stay petition/counter by respondent Nos.1 to 6 that the predecessor of the petitioner had entered into agreement with the respondent for supply of power under L.T. category on 23-01-2011; Under the terms of the said agreement, it has to pay all the sums due to the respondents; and clause 8.4 of the General Terms and Conditions of Supply (GTCS) mandates that a seller of the property should clear all the dues to the respondents before selling such property and if not, the respondents can refuse to

[1] (1995) 2 S.C.C. 648
[2] (2012) 13 S.C.C. 479
[3] dt.27-07-2017 in Civil Appeal No.1918 of 2016

supply electricity to the premises through the already existing connection or refuse to give a new connection to the premises till all the dues of the sellers are cleared.

7. Learned counsel also refers to a letter dt.04-09-2018 and the 1st petitioner's undertaking to pay the arrears of electricity charges of the previous owner.

8. The petitioners have filed reply affidavit denying the said allegation.

9. In **Isha Marbles** (1 supra), the Supreme Court held after referring to the provisions of the Electricity Act, 1910 and the Electricity (Supply) Act, 1948 that electricity dues do not amount to charge over the property where electricity supply is being made and when the property changes hands and the purchaser seeks supply of electrical energy, he cannot be called upon to clear the past arrears as a condition precedent to supply. The Court pointed out that what matters is the contract entered into by the erstwhile consumer with the Board and the Board cannot seek the enforcement of the contractual liability against a third party and the *bona fides* of the sale may not be relevant. This principle has been reiterated in **Gopal Agarwal and others** (3 supra).

10. This judgment has been followed in **NESCO** (2 supra) wherein a purchaser in 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 and 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. But the Supreme Court held that a purchaser is not liable for payment of electricity arrears of the earlier owner once there is a change in ownership pursuant to an auction.

11. This principle has also been reiterated in **Gopal Agarwal and others** (3 supra) where an additional reason was also quoted i.e. the purchaser had not undertaken to discharge the liability of the previous consumer.

12. In the instant case, the agreement for supply of electricity was between the respondents and the previous owner and the petitioner was not a party to it. Any dues payable under the said agreement can therefore be recovered only from the previous owner and not from the petitioner.

13. Clause 8.4 of the GTCS no doubt it states that the ‘seller’ of the property should clear all the dues before selling such property. So, it directs the Canara Bank, which has invoked the provisions of SARFAESI Act, and the term ‘seller’ in the said provision, cannot be read as ‘buyer’, and the purchaser cannot be liable for it.

14. The contention of the respondents that since the sale was "as is where is" basis, the petitioner is liable to pay the dues of the previous owner cannot be accepted in view of the judgments in **NESCO** (2 supra) and **Gopal Agarwal and others** (3 supra), referred to above.

15. Though a letter dt.07-09-2018 has been relied upon by the respondents to suggest that there is an undertaking by the 1st petitioner to make the payment of the electricity dues of the previous owner, in the reply affidavit, the same has been denied. In any event, even if there is such a promise, it is not supported by consideration, and there is no obligation in law for the petitioner to make the payment of electricity dues of the previous owner.

16. Also in view of the decision of the Division Bench of this Court in **Sithani Textiles and Fabrics Pvt. Ltd. and Ors. vs. The A.P. State Electricity Board and Others**[4]**,** since the service line for supply of electricity is the property of the auction purchaser too, it is not necessary for the petitioners to take any fresh service connection; and so the petitioner is entitled to restoration of power supply to the existing service connection and also entitled to the benefit of security deposit given for the said service connection by the previous owner.

17. Therefore, the Writ Petition is allowed and the respondents are directed to restore power supply to the property purchased by the petitioners from the Canara Bank without insisting

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[4] 2011 (6) ALD 569 (DB)

on the petitioners clearing the alleged dues of the previous owner M/s.Nikitha Agro Tech Para Boiled Rice Mill, within one week from the date of receipt of a copy of this order. No costs.

18. Consequently, I.A.No.2 of 2018 is dismissed.

19. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-12-2018
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