

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

% *Date of decision: January 22, 2018*

+ W.P.(C) 9671/2015, CM No. 23085/2015

TATA POWER DELHI DISTRIBUTION LIMITED

..... Petitioner

Through: Mr. Manish Srivastava, Adv. with
Mr. Shagun Trisal & Ms. Moulshree
Shukla, Advs.

versus

NEERAJ GULATI

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. The present petition has been filed by the petitioner namely Tata Power Delhi Distribution Ltd, challenging the order dated August 28, 2015 passed by the Consumer Redressal Forum in the Consumer Grievance No. 6636/06/15/MTN titled Neeraj Gulati v. TPDDL. The said complaint was filed by the respondent herein against the action of the petitioner herein not to release new connection applied against Notification No. 2008949481 dated April 06, 2015 at Shop No. 5, Lower Ground Floor, Block-N, Kirti Nagar, Delhi with sanctioned load of 1 KW. The same was denied

by the petitioner as dues to the extent of Rs.71804/- were outstanding on the said premises.

2. It was the case of the respondent, before the forum that the said outstanding dues are not payable by her as she purchased the shops by way of auction under Rules 60, 61 and 62 of the Schedule of Income Tax Act, 1961. It is noted from the judgment that the Consumer Forum had directed the site inspection of the premises to be carried out in the presence of the respondent and filing of status report and also directed the relevant file of the connections to be submitted to it.

3. It was the case of the petitioner before the forum that in terms of Clause 2.1(iv) of General Condition of Supply forming part of tariff order dated May 23, 2001, if there are electricity dues against previous owner or occupants of the premises who transfers the premises to a new owner or occupant, the new owner or occupant applying for a fresh electricity connection can be compelled by the distribution company to pay the arrears of electricity dues of the previous owner or occupant and the distribution company can refuse to supply electricity to the premises on account of such non payment. The petitioner herein relied upon the judgment of the Supreme Court in the case of ***Paschimanchal Vidyut Nigam Ltd. and Ors v. DVS Steels and Alloys Pvt. Ltd and Ors MANU/SC/8234/2008 [(2009) 1 SCC 210]*** in support of its case. The petitioner also relied upon the judgments of this Court in the case of ***Madhu Garg & Anr v. North Delhi Power Ltd. 129 (2006) DLT 213 (DB)*** and ***BSES Rajdhani Power Ltd. v.***

Saurashtra Color Tones Pvt. Ltd. & Anr 161 (2009) DLT 28 (FB)
in support of its case.

4. On the other hand, the respondent had relied upon the judgment of the Supreme Court in the case of ***Special Officer, Commerce, North eastern Electricity Company of Orissa (NESCO) and Anr. v. Raghunath Paper Mills Private Limited and Anr MANU/SC/0962/2012*** in support of her case. The Consumer Forum allowed the complaint on the following terms:-

“After hearing both the parties, form decides that:-

- 1. The complainant Smt. Neeraj Gulati has purchased the property by way of auction on “as is where is and whatsoever there is basis” done by Debt Recovery Tribunal II Delhi in the matter of Punjab and Sind Bank on 23.3.15 on payment of Rs.15,50,000/- which does not constitute charge or liability to make the payment of outstanding dues raised by the respondent. The complainant cannot be made responsible to clear the electricity arrears which does not constitute the charge over the property which has been purchased through auction on “as is where is or whatsoever there is basis”. The forum relied upon the judgment of Hon. Supreme Court of India, Division Bench in the matter of Special Officer, Commerce, North Eastern Electricity Company of Orissa (NESCO) & Anr V.s M/s Raghuna Paper Mills Pvt. Ltd & Anr. Therefore the dues raised by the*

respondent is hereby quashed as the same is not payable by complainant.

2. The demand note be issued within a week's time subject to completion of commercial formalities and connection be released within 5 days from the date of compliance of demand note."

5. It is the submission of Mr. Manish Srivastava, learned counsel for the petitioner that the Consumer Forum has erred in coming to the aforesaid conclusion. According to him, the electricity connection bearing CA No. 60003481827 was sanctioned in the name of Upesh Singh at Shop No. 5, N-1A, Lower Ground Floor, Kirti Nagar, New Delhi. The respondent applied for new commercial connection on April 06, 2015 in her favour at Shop No. 5, Lower Ground Floor, Kirti Nagar, Delhi for a load of 1 KW. Upon initiating the process for release of new connection, it was found that dues amounting to Rs.60,101/- and Rs.11,703/- against CA Nos.60003481821 and 60003544933 respectively as per Dues Intimation Letter were pending on the applied premises. Respondent filed complaint before the Consumer Forum and the only ground taken by the respondent was that the shop in question was purchased in auction conducted by the DRT-II, Delhi. He would state that the petitioner has specifically stated in the reply that the respondent herein was liable to pay the dues against the premises in accordance with law in view of various regulations of the Delhi Electricity Supply Code and Performance Standards Regulation-2007. According to him, the learned Consumer Forum

has erroneously come to the conclusion that the outstanding dues are not payable by the respondent. This, according to him, is contrary to the provisions of the DERC Supply Code, 2007 and the law laid down by this Court and the Supreme Court. He would refer to Regulation 15 of the DERC Supply Code, 2007 to contend that where the applicant seeking connection has purchased the property and connection is lying disconnected, it shall be the duty of the applicant to verify that the previous owner has paid all dues to the licensee and has obtained No Dues Certificate from the licensee. In case No Dues Certificate is not obtained by the previous owner, the applicant before purchase of the property can approach the Business Manager of the licensee for a No Dues Certificate. The Business Manager then shall intimate in writing the outstanding dues, if any on the premises or issue No Dues Certificate within one month from the date of application. In case the licensee does not intimate outstanding dues or issues No Dues Certificate within the specified time, new connection on the premises shall not be denied on ground of outstanding dues of previous consumer. In other words, it is his submission that the respondent herein had not undertaken this process of seeking No Dues Certificate either from the previous owner or from the petitioner herein. In the absence of any due diligence being carried out by the respondent, the respondent shall liable to pay the outstanding dues before she could be granted the connection.

6. Before I deal with the submissions made by Mr. Manish Srivastava, it is noted from the record, despite service the respondent has not appeared in these proceedings. This fact has

been noted by this Court in its order dated May 19, 2016. She was also proceeded ex-parte vide order dated September 13, 2016.

7. Having heard Mr. Manish Srivastava, learned counsel for the petitioner, the questions, which arises for consideration in this case are; (i) whether the Consumer Forum was justified in allowing the complaint of the respondent; (ii) whether Regulations 15 and 20 of the DERC Supply Code, 2007, on which reliance was placed by Mr. Srivastava shall be applicable to the facts of this case.

8. I intend to deal with the question No.2 first as any conclusion thereof would have a bearing on the issue No.1. Regulations 15 and 20 of the Code 2007, on which Mr. Srivastava has relied upon reads as under:-

“ 15. General

i The Licensee shall prominently display at all offices where application for new connection is accepted , the detailed procedure for new connection and the complete list of documents required to be furnished along with the application. No other document, which has not been listed, shall be asked to be submitted by the applicant. Rate/amount of security and cost of service line to be deposited by the applicant in accordance with the stipulation in the Regulations shall also be displayed.

ii Where applicant has purchased existing property and connection is lying disconnected, it shall be the duty of the applicant to verify that the previous owner has paid all dues to the Licensee and has obtained “nodues certificate” from the Licensee. In case “no-due certificate” is not obtained by the previous owner, the applicant before purchase of property may approach the Business Manager of the Licensee for a “nodues certificate”. The Business Manager shall acknowledge receipt of such request and shall either

intimate in writing outstanding dues, if any, on the premises or issue "no-dues certificate" within one month from the date of application. In case the Licensee does not intimate outstanding dues or issues "no-dues certificate" within specified time, new connection on the premises shall not be denied on ground of outstanding dues of previous consumer.

iii Where a property/premises has been sub-divided, the outstanding dues for the consumption of energy on such Premises, if any, shall be divided on pro-rata basis based on area of sub-division.

iv A new connection to such sub-divided premises shall be given only after the share of outstanding dues attributed to such sub-divided premises is duly paid by the applicant. A Licensee shall not refuse connection to an applicant only on the ground that dues on the other portion(s) of such premises have not been paid, nor shall the Licensee demand record of last paid bills of other portion(s) from such applicants.

v In case of complete demolition and reconstruction of the premises or the building, the existing installation shall be surrendered and agreement terminated. Meter and service line will be removed, and only fresh connection shall be arranged for the reconstructed premises or building, treating it as a new premises after clearing the old dues on the premises by the consumer(s).

20. Transfer of Connection

The Licensee shall deal with the application relating to transfer as prescribed below:

(1) Change of consumer's name due to change in ownership/occupancy of property

(i) The applicant shall apply for change of consumer's name in the format prescribed at ANNEXE-III to these Regulations or as approved by Commission from time to time, along with copy of latest bill duly paid. The application shall be accepted on showing proof of lawful

ownership/occupancy of property; NOC (No Objection certificate) from the registered consumer/ authorized person/ previous occupant of the premises shall be required for cases involving transfer of security deposit in the name of applicant. The Licensee shall issue dated receipt of the request of the applicant. Any deficiencies in the application shall be intimated in writing within seven days of receipt of application. The application shall be accepted only on removal of such difficulties.

(ii) The change of consumer's name shall be effected within two billing cycles after acceptance of application. However, if the change of consumer's name is not effected within the said two billing cycles, compensation as specified in Schedule III shall be paid by the Licensee.

(iii) In case NOC (No Objection certificate) from the registered consumer/ authorized person/previous occupant is not submitted, application for change of name shall be entertained only if security deposit as stipulated in this Regulation is paid afresh. However, the original security deposit shall be refunded to the claimant as and when a claim is preferred by the concerned.

(2) Transfer of consumer's name to legal heir:

(i) The applicant shall apply for change of consumer's name in the format prescribed at ANNEXE-IV to these Regulations or as approved by the Commission from time to time, with a copy of latest bill duly paid. The application shall be accepted on showing mutation letter issued by the land agencies or any other proof of legal heir ship. The change of consumer's name shall be effected within two billing cycles after acceptance of application. The Licensee shall issue dated receipt of the request of the applicant. Any deficiencies in the application shall be intimated in writing within seven days of receipt of application. The application shall be accepted only on removal of such difficulties.

(ii) However, if the change of consumer's name is not effected within the said two billing cycles, a compensation as specified in Schedule III shall be paid by the Licensee.

(iii) Any charge for electricity or any sum other than charge for electricity as due and payable to licensee which remains unpaid by a deceased consumer or the erstwhile owner/occupier of any land/premises as the case may be, shall be a charge on the premise transmitted to the legal representative/ successors-in-law or transferred to the new owner of the premise as the case may be, and same shall be recoverable by the licensee as due from such legal representative or successor-in-law or new owner/occupier of the premises as the case may be.”

9. There is no dispute that the respondent had purchased the premises in an auction conducted by the DRT-II and the said premises had an electricity meter bearing CA No. 60003481821 and was in the name of one Upesh Singh. The respondent had applied for a new connection vide Notification No. 2008949481 on April 06, 2015 for a load of 1KW. It is the case of the petitioner, on receipt of such a request, when the application was being processed, it was found that dues amounting to Rs.71,804/- are pending against the premises/earlier connection. The submission of Mr. Srivastava is that the respondent herein was liable to pay dues against the premises in view of the provisions referred to above. Regulation 15, as referred to above contemplate a situation where an applicant had purchased existing property and the connection is lying disconnected, a duty has been cast upon the applicant to verify that the previous owner has paid all dues to the licensee and that the previous owner has obtained No Dues Certificate from the licensee. In the eventuality, No Dues Certificate is not obtained by the previous owner, an obligation has been put on the applicant i.e the subsequent purchaser to obtained No Dues Certificate from the licensee. If the No Dues Certificate is not given by the licensee

within one month then new connection on the premises shall not be denied on the ground of outstanding dues of previous consumer.

10. Insofar as Regulation 20 more specifically 20 (2) (iii) on which reliance has been placed by Mr. Srivastava, suffice to state that Regulation 20(2) relates to transfer of consumer's name to legal heir.

11. The Consumer Forum relied upon the judgment of the Supreme Court in the case of *Special Officer, Commerce, North eastern Electricity Company of Orissa (NESCO) and Anr. (supra)*. In the said case, in the year 2007, pursuant to the order of the Company Judge, High Court of Orissa, the Official Liquidator, made an advertisement for sale of movable and immovable assets and properties of the Factory Unit of M/s Konark Paper & Industries Limited which was in liquidation on "as is where is and whatever there is" basis. The sale was confirmed in favour of Respondent No. 1- M/s Raghunath Paper Mills Pvt. Ltd., being the highest bidder, and the possession of the Unit was handed over on March 28, 2008. Since there was no power supply, Respondent No. 1 made an application to the Chief Executive Officer, North Eastern Electricity Supply Company of Orissa Limited (in short "the NESCO") for restoration of the same. Respondent No. 1 also executed an agreement dated March 27, 2009 with the NESCO for supply of construction power in the Unit. There being no reply from the side of the NESCO, Respondent No. 1, vide letter dated August 26, 2009, again requested for permanent supply of power. By letter dated May 21, 2010, the NESCO directed Respondent No. 1 to pay

the arrears of electricity dues amounting to Rs. 79,02,262/- outstanding against the premises in question. Being aggrieved, Respondent No. 1 filed a Writ Petition before the High Court of Orissa for quashing of the demand letter dated May 21, 2010 issued by the NESCO appellant before the Supreme Court. The learned Single Judge, vide order dated August 05, 2010, after considering various provisions of law governing the issue in question allowed the petition and directed the NESCO to provide electricity to the Unit of Respondent No. 1. Dissatisfied with the decision, the appellants filed Writ Appeal No. 237/2010 before the Division Bench of the High Court. The Division Bench, vide its order dated November 04, 2010, did not find any illegality in the order of the learned Single Judge. The Supreme Court considered the provisions of the Orissa Electricity Regulatory Commission Distribution (Conditions of Supply), Code, 2004. Sub-clause 10 of Regulation 13 of the Electricity Supply Code is as follows:

(10) Transfer of service connection:

(a) Subject to the Regulation 8, the transfer of service connection shall be effected within 15 days from the date of receipt of complete application.

(b) The service connection from the name of a person to the name of another consumer shall not be transferred unless the arrear charges pending against the previous occupier are cleared.

Provided that this shall not be applicable when the ownership of the premises is transferred under the provisions of the State Financial Corporation Act."

12. The argument of the appellant NESCO before the Supreme Court was, since the respondent No.1 did not pay the arrears of

electricity dues against the erstwhile company, electricity supply cannot be restored to its Unit. The Supreme Court held, the above sub-clause makes it clear that the said provision is not applicable to Respondent No. 1. The respondent No. 1 had purchased the unit in an auction sale conducted by the Official Liquidator on "as is where is" and "whatever there is" basis and had applied for a fresh service connection for supply of energy. The Supreme Court stated that the respondent No. 1 had not applied for transfer of service connection from the name of the erstwhile company to its name. The Supreme Court agreed with the submission on behalf of respondent No.1 that respondent No.1 was not a party to the Contract with the supplier. The Supreme Court relied upon its judgment in the case of ***Ahmedabad Electricity Company Ltd. v. Gujarat Inns Pvt. Ltd. and Ors. (2004) 3 SCC 587***, wherein in para 3, it was held by the Supreme Court that in case of a fresh connection though the premises are the same, the auction-purchasers cannot be held liable to clear the arrears incurred by the previous owners in respect of power supply to the premises in the absence of there being a specific statutory provision in that regard.

13. Having noted the judgment relied upon by the Consumer Forum, I proceed to refer with the judgments relied upon by Mr. Srivastava.

14. Insofar as ***Paschimanchal Vidyut Nigam Ltd. and Ors (supra)*** is concerned, the Supreme Court was concerned with the facts that the appellant Nigam was holding an electricity distribution licence and is one of the successors-in- interest of Uttar Pradesh

State Electricity Board. The third respondent was a consumer receiving electricity supply from the Board to its industrial unit at Ghaziabad. In April, 1994, the Board raised supplementary bills for Rs.105.78 lakhs against the third respondent towards difference in tariff. The third respondent filed civil suit disputing the said claim and obtained an order of injunction restraining the Board from recovering the said supplementary bills amount. The Board challenged the order of the civil court by filing appeal before the Allahabad High Court. The High Court stayed the injunction granted by the Civil Court thereby permitted recovery of the outstanding dues. The third respondent closed its unit in the year 1998. In 2001-2002, it sub-divided its industrial plot into 129 smaller plots of different sizes with the permission of Uttar Pradesh State Industrial Development Corporation. One of those plots was sold by the third respondent to the first respondent. The first respondent applied to the appellant for supply of electricity by sanctioning a load of 3200 KVA for running an induction furnace in the plot purchased by it. The appellant sanctioned the request on September 04, 2004 subject to the condition that it should pay the arrears due from the third respondent, in proportion to the area purchased by it, as a condition precedent for supply of electricity. The first respondent agreed to the demand and gave an undertaking that the pro-rata electricity dues of the third respondent would be paid by them. The appellant thereafter called upon the first respondent to pay Rs.8,63,451/- being the arrears, on pro rata basis, by letter dated September 09, 2004. Accordingly on September 18, 2004 the first respondent deposited a sum of Rs.8,63,451/- being the

dues of the third respondent, pro rata, subject to the condition that in the event of the pending challenge to the demand being decided in favour of third respondent, the appellant shall refund the amount deposited by first respondent. It is noted that several other plot-purchasers from third respondent, did not pay the dues of the third respondent. The appellant did not give them electricity supply. Therefore, in November, 2005, the third respondent moved an application before the Uttar Pradesh Electricity Regulatory Commission complaining that the appellant was arbitrarily refusing power connection to the purchasers of sub-divided plots on the ground that Rs.105.78 lakhs was due by third respondent, though the said liability was disputed and was pending adjudication in court. The Commission by order dated November 25, 2005, issued the following directions to the appellant; (i) to accept a bank guarantee from the third respondent in regard to the disputed claim of Rs.105.78 lakhs; and (ii) on the third defendant furnishing guarantee, release new power connections to the purchasers of sub-divided plots from the third respondent, without insisting upon payment of any amounts towards the alleged dues of third respondent. The first respondent by letter dated September 15, 2006 made a demand for refund of the sum of Rs.8,63,451/- with interest. The appellant refused the request of the first respondent. According to the appellant, it was entitled to recover the dues of the previous occupier of a premises, from any subsequent occupier thereof who seeks electricity supply. It also pointed out the order of the Commission operated prospectively and did not apply to payments received by the Appellant, prior to the order and there was no

direction to refund the pro-rata payments already received. Feeling aggrieved, the first respondent filed W.P. No.59163/2006 seeking a direction to the appellant not to recover from it, any dues of the third respondent. It also sought a consequential direction to appellant to refund the sum of Rs.8,63,451/- with interest at 12% per annum. The High Court by order dated May 14, 2007 allowed the said writ petition and directed the appellant to refund the sum of Rs.8,63,451/- with interest at the rate of 6% per annum from the date of payment. The High Court was of the view that the amounts said to be due by third respondent were secured by a bank guarantee furnished by the third respondent, and therefore there was no need to retain any amount from the purchasers of the sub-divided plots. The said order was challenged by the appellant before the Supreme Court. The Supreme Court posed itself a question whether the supplier can recover the electricity dues from the purchaser of a sub-divided plot. The Supreme Court relied upon sub clause (g) and (h) of Clause 4.3 of the Electricity Supply Code, which are reproduced as under:

"(g) Where the property has been legally sub-divided, the outstanding dues for the consumption of energy on such premises, if any, shall be divided on pro-rata basis.

(h) A new connection to such sub-divided premises shall be given only after the share of outstanding dues attributed to such sub-divided premises, is duly paid by the applicant. Licensee shall not refuse connection to an applicant only on the ground that, dues on the other portion(s) of such premises have not been paid, nor shall the licensee demand record of last paid bills of other portion(s) from such applicants." The appellant submitted that similar provisions

existed in the relevant regulations of the Board even before the said Code came into force.”

15. The Supreme Court in paras 10, 11 and 12, has held as under:-

10. But the above legal position is not of any practical help to a purchaser of a premises. When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper, to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them.

11. A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishments, provisions similar to clause 4.3(g) and (h) of Electricity Supply Code

are necessary to safeguard the interests of the distributor. We do not find anything unreasonable in a provision enabling the distributor/supplier, to disconnect electricity supply if dues are not paid, or where the electricity supply has already been disconnected for non-payment, insist upon clearance of arrears before a fresh electricity connection is given to the premises. It is obviously the duty of the purchasers/occupants of premises to satisfy themselves that there are no electricity dues before purchasing/occupying a premises. They can also incorporate in the deed of sale or lease, appropriate clauses making the vendor/lessor responsible for clearing the electricity dues up to the date of sale/lease and for indemnity in the event they are made liable. Be that as it may.

12. In this case, when the first respondent, who was the purchaser of a sub-divided plot, wanted a new electricity connection for its premises, the appellant informed the first respondent that such connection will be provided only if the electricity dues are paid pro-rata. They were justified in making the demand. Therefore, it cannot be said that the collection of Rs.8,63,451/- from first respondent was illegal or unauthorized. It is relevant to note that when the said amount was demanded and paid, there was no injunction or stay restraining the appellant from demanding or receiving the dues.”

16. Suffice to state, the Supreme Court; primarily relied upon Clause 4.3 (g) and (h) of the Electricity Supply Code to hold in favour of the appellant that such safeguards are necessary for the interest of the distributor. It also held it is the duty of the purchaser / occupants of premises to satisfy themselves that there are no electricity dues before purchasing / occupying a premises. The Supreme Court also held that the appellant was liable to refund the amount to the first respondent, if the third respondent is ultimately found to be not liable in respect of the payment under the supplementary bills or if third respondent actually clear the dues.

17. Insofar as the judgment of this Court in the case of *Madhu Garg & Anr (supra)* is concerned, the Division Bench of this Court was considering an appeal arising from the judgment of the learned Single Judge in Writ Petition No. 2532/2003. The facts in the said case are, that the petitioner had purchased the property bearing No. 10 Jamna Road, Civil Lines, Delhi 110054. The earlier owner/occupant had not paid his electricity dues due to which the electric connection was disconnected. After taking possession, the petitioner received several electricity bills from the respondents that were issued in the name of Jathedar Richpal who was the tenant of the earlier owner. These bills included arrears of more than Rs. 7,00,000/- that pertained to the period much prior to the purchase of the property. The appellant applied to the respondent for grant of fresh connection and offered to pay the electricity charges for the existing connection that was in the name of the tenant, but the respondent insisted that the appellant should first clear the arrears of electricity dues as a pre-condition for grant of electricity connection. Counter affidavit was filed by the respondent, who was a licensee and had been granted a license pursuant to the Delhi Electricity Reforms Act, 2000 (DERA) and the Delhi Electricity Reform (Transfer Scheme) Rules, 2000, to distribute electricity in North and North West Delhi. As such the respondent was obliged by the relevant Act and Regulations as also by the terms of the License itself, to abide by the orders and directions issued by the Delhi Regulatory Commission. Reliance was placed on Clause 2.1 of the General Conditions of Supply. Sub-clause (iv) of Clause 2.1 reads as under:-

“General Conditions of Supply 2.1 Supply of electricity in all cases is subject to the condition that....

(iv) The applicant deposits developments charges, advance consumption deposit and all such charges as may be applicable including outstanding dues against the premises and / or disconnected connection(s). ”

18. It appears that the petitioner therein relied upon the judgment of the Supreme Court in the case of ***Isha Marbles case v. Bihar State electricity Board (1995) 2 SCC 618***. The Division Bench insofar as ***Isha Marbles (supra)*** is concerned, was of the view that in the said decision the facts were the previous owner of the premises in question had mortgaged/hypothecated the premises to secure a loan from the State Financial Corporation. Since the loan was not repaid, the property was auctioned/sold under Section 29 of the State Financial Corporation Act. The auction purchaser applied for reconnecting of the electricity supply to the premises, which had been disconnected for non payment of dues by the previous owner. The question arose, whether the auction purchaser had to pay the electricity dues of the previous owner to get restoration of the electricity connection. The Supreme Court held that the Electricity Board had no charge over the property and the Board could not seek enforcement of the contractual liability against the third party. The Division Bench also held that the aforesaid view of ***Isha Marbles (supra)*** was repeated by the Supreme Court in ***Ahmedabad Electricity Company Ltd. (supra)***.

19. In the case of ***Madhu Garg & Anr (supra)***, the Division Bench finally held in paras 14 to 21 and 29 as under:-

14. In our opinion, there is no distinction between the purchaser of a premises who was aware that there were outstanding electricity dues against the previous owner/tenant, and one who was not aware of it. In either case, the dues have to be paid by the new owner/occupant before supply can be continued / restored. This is because of the statutory provision contained in Clause 2 (iv) of the General Conditions of Supply which has been quoted above.

15. In our opinion, whenever a person purchases a property, it is his duty to find out whether there are outstanding electricity dues in relation to the premises or not, and he cannot be allowed to say later that he was unaware of the fact that there were electricity dues of the previous owner / tenant.

16. In view of the General Condition of Supply, it is the duty of the new owner/occupant to himself make enquiries and find out whether there was such dues or not. The General conditions of Supply are statutory in nature (being delegated legislation), and hence the question of bonafide or malafide does not arise, and in either case the new owner/occupant of the premises has to pay the dues against the previous owner / tenant,Page 1121 if he wishes the electric supply to be continued/restored.

17. It is obvious that the purpose of framing Clause 2.1 (iv) of the General Conditions of Supply was that many persons against whom there were huge electricity dues tried to avoid payment of the same by selling / transferring the property, and in this way the electricity department/electricity company could not recover its dues. In our opinion, there is no illegality or unconstitutionality in sub-clause (iv) of Clause 2 of the General Condition of Supply.

18. It may be mentioned that in *Hyderabad Vanaspati Ltd. v. A.P. State Electricity Board* AIR 1998 4 SCC 1715, the Supreme Court took the view that even in the absence of a contract the terms and conditions of supply will be governed

by the statutory Regulations and they will be applicable to the consumers who will be bound by them.

19. Under Clause 2.1 (iv) of the General Conditions of Supply contained in the tariff order 1997-98 and 2001-02 which has been framed by the Delhi Electricity Regulatory Commission, it has been specifically stated that supply of electricity is subject to the condition that the applicant deposits development charge, advance consumption deposit and all such charges as may be applicable including outstanding dues against the premises and / or disconnected connection.

20. The above Clause 2.1 (iv) of the General Conditions of Supply has been framed under Section 21(2) of the Indian Electricity Act 1910 as well as Section 49 of the Electricity Supply Act, 1948, and hence is a piece of delegated legislation.

21. The learned Single Judge in the impugned judgment has struck down Clause 2.1 (iv) of the General Conditions of Supply. With respect to him, we are of the opinion that there is no illegality in the said Clause as it comes within the purview of the Tariff Order framed by the Delhi Electricity Regulation Commission as well as under Section 21(2) of the Indian Electricity Act, 1910 and Section 49 of the Electricity Supply Act, 1948. We do not agree that the General Conditions of Supply requires approval of the State Legislature under the proviso to Section 79 of the Electricity (Supply) Act, as in our opinion they are not Regulations made under Section 79.

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29. In our opinion, the condition of supply relates to Section 49 of the Electricity (Supply) Act, as well as Section 11 and 28 of the DERA. The Court has consistently held that the condition of supply forms an integral part of the tariff and does not require approval of State Legislature. In fact, Clause 2.1 (iv) of the Condition of Supply was formulated by DESU (DVB) as far back as in 1997-98 and thereafter adopted by DERC in 2001-02.”

20. Insofar as the judgment in the case of *NDPL v. Jagiri Lal MANU/DE/1285/2017*, is concerned suffice to state in the said case, the facts were, the respondent purchased a property bearing No. 5-C/70, New Rohtak Road, Karol Bagh, New Delhi vide a Sale Deed dated November 07, 2008 from the sons of one Om Prakash Singhal. Till June 2000, the said registered consumer paid the electricity dues, but thereafter no payment was received by the petitioner NDPL towards regular consumption due to which an outstanding amount of Rs. 6,17,148/- towards regular consumption supply at the premises was disconnected and since then, there has been no electricity connection in the said premises. On September 13, 2010, respondent applied for a new electricity connection for a load of 5 KW for domestic purposes. Upon receipt of the application, the petitioner verified the records and it was found that dues of Rs.6,17,148/- were pending against the said premises. The respondent was requested to clear the said dues as per regulations before any new connection could be granted at the said premises. The CGRF vide order dated January 20, 2011 came to the conclusion that no request for issuance of no dues certificate was submitted by the respondent herein. The CGRF further directed the petitioner herein to waive off the dues pertaining to DVB period i.e. prior to June, 2002 under the policy/order bearing dated 16th /19th May, 2008 of Government of NCT and revise the bill accordingly and raise a demand note. In compliance with the order dated January 20, 2011, the petitioner NDPL revised the bill and raised a demand note of Rs. 1,93,380/- which was accepted and paid by the respondent without any demur or protest. The respondent, after

paying the said amount, preferred an appeal against the order dated January 20, 2011 before the Ombudsman. The Ombudsman vide order dated April 28, 2011 restrained the petitioner from charging outstanding dues of the connection and directed the petitioner NDPL to refund the amount of Rs. 1,93,380/- deposited by the respondent towards the outstanding dues within two weeks. The Coordinate Bench of this Court relied upon the judgment of the Division Bench in *Madhu Garg & Anr (supra)*, the judgment of the Supreme Court in *Paschimanchal Vidyut Nigam Ltd. and Ors (supra)* and *BSES Rajdhani Power Ltd. (supra)*. The Coordinate Bench allowed the writ petition and quashed the order dated April 28, 2011 of the Ombudsman.

21. Insofar as the judgment of *BSES Rajdhani Power Ltd. (supra)* is concerned, the Full Bench was concerned with the facts wherein the appellant is a distribution company engaged in distribution of electricity in its area of supply under a statutory licence issued by the respondent No.2, Delhi Electricity Regulatory Commission. The respondent No.1, a company who is the original writ petitioner, purchased an industrial shed being Shed No.1 Category-1, DSIDC Complex, Nangloi, Delhi. Initially connection No.002-156-022/IP was sanctioned for a load of 89.52 KW in the name of the original allottee, Dev Arora. Inspection on April 22, 1997 allegedly revealed a connected load of 169.11 KW and, therefore, certain demands were raised. Dev Arora filed a suit in the civil court, that was eventually dismissed. On transfer of the premises in its name, the first respondent applied for resumption of supply of electricity vide applications dated November 30, 2002 and

December 30, 2002. A reliance was placed on Clause 2.1(iv) of "General Conditions of Supply" contained in the Tariff Order issued by the DERC in exercise of its powers under Section 49 of the Electricity Supply Act, 1948. It asked the first respondent to deposit development charges, advance consumption deposit and "all such charges as may be applicable including the outstanding dues against the premises and/or disconnected connections as a condition precedent for resumption of electricity supply. The first respondent therefore approached this Court by filing Writ Petition No.2479/2003 contending inter alia that a purchaser of the property cannot be asked or coerced to pay the amount which the appellant as the licensee may be claiming from the former consumer. The writ petition was disposed of by the learned Single Judge along with five connected matters relying on the decisions of the Supreme Court and this Court and by inter-alia holding that the appellant is not entitled to recover arrears of electricity charges pertaining to the electricity connection to the premises from its new owner/occupier who seeks resumption of supply of electricity unless it establishes malafides of the old and new consumer or the new consumer was in fact a heir or successor of the defaulting party or had actual notice of the existence of arrears. In any event, according to the learned Single Judge, disconnection as a stand-alone action without initiation of recovery proceedings against the actual consumer by way of civil suit for recovery of arrears will be illegal. The learned Single Judge further held that "General Conditions of Supply", as contained in the Tariff Order for the years 1997-98 and 2001-02 cannot form part of "Tariff" as contemplated under Section 49 of

the Supply Act but are essentially regulations under Section 79(j) of the Supply Act which must be approved by the State Legislature under Section 79A of the said Act. The learned Single Judge, therefore, quashed and set aside the General Conditions of Supply contained in the Tariff Orders of 1997-98 and 2001-02. Consequently, the writ petitions were allowed. The Full Bench, in paras 29 to 32 has held as under:-

“29. In our opinion, the statutory void or inadequacy of law found by the Supreme Court in Isha Marbles has been corrected in the Reforms Act empowering the distribution companies in the NCT of Delhi to recover arrears of electricity charges from the new owner/occupier. Condition 2.1(iv) of the General Conditions of Supply, as contained in the Tariff Order, issued by the DERC in exercise of its powers under Section 49 of the Supply Act read with Section 63(2) of the Reform Act provides for recovery of arrears of electricity charges from new occupiers/owners of the premises. The said condition has been continued in effect under Section 185(2)(a) of the Electricity Act, 2003 till the same is varied or abrogated. Thus the decision in Isha Marbles case is clearly distinguishable, as the Supreme Court observed therein that it was due to inadequacy of law, as applicable in the State of Bihar that arrears could not be realised from the subsequent purchaser. However, the law applicable in Delhi is different inasmuch as there is a statutory condition of supply which requires payment of such outstanding dues before resumption/continuation of the electricity supply.

30. We may also mention that the decision in Isha Marbles case was distinguished by the Kerala High Court in A.Ramachandran v. KSEB, AIR 2001 Kerala 51 and Seena B. Kumar v. Assistant Executive Engineer, AIR 2004 Kerala 68, in which it was held that under Section 79(j) of the Electricity Supply Act, 1948, the Kerala Electricity Board

had framed Regulation 15(d) which provided that all the dues to the Board from a consumer shall be charged on the asset of the consumer and hence can be realised as arrears of land revenue. The Division Bench of the Kerala High Court held that Regulation 15(d) is statutory in nature and it will supersede any contract between the parties. The Division Bench in Madhu Garg after noting the decisions in A.Ramachandran v. Kerala State Electricity Board and Seena B. Kumar v. Assistant Executive Engineer observed:

"13. The learned counsel for respondents has sought to distinguish the decision of the Supreme Court in Isha Marbles Case (supra) on the ground that in that case there was no statutory provision which empowered the authorities to refuse supply of electricity for outstanding dues against the previous owner. However, in the present case, there is a clear statutory provision embodied in the General Condition of Supply to that effect. We agree with this submission. In our opinion, the general conditions of supply is a piece of delegated legislation, and hence has statutory force.

14. In our opinion, there is no distinction between the purchaser of a premises who was aware that there were outstanding electricity dues against the previous owner/tenant, and one who was not aware of it. In either case, the dues have to be paid by the new owner/occupant before supply can be continued / restored. This is because of the statutory provision contained in Clause 2 (iv) of the General Conditions of Supply which has been quoted above.

15. In our opinion, whenever a person purchases a property, it is his duty to find out whether there are outstanding electricity dues in relation to the premises or not, and he cannot be allowed to say later that he was unaware of the fact that there were electricity dues of the previous owner / tenant.

16. In view of the General Condition of Supply, it is the duty of the new owner/occupant to himself make enquiries and find out whether there was such dues or not. The General conditions of supply are statutory in nature (being delegated legislation), and hence the question of bona fide or mala fide does not arise, and in either case the new owner/occupant of the premises has to pay the dues against the previous owner / tenant, if he wishes the electric supply to be continued/restored."

31. The position is now placed beyond any pale of doubt by the recent judgment of the Supreme Court in Paschimanchal Vidyut Vitaran Nigam Ltd. v. M/s. DVS Steels & Alloys Pvt. Ltd (supra). In this case the appellant distribution company was one of the successors-in-interest of the UP State Electricity Board. The third respondent was a consumer receiving electricity supply from the Board to its industrial unit at Ghaziabad. It appears that the Board had raised certain supplementary bills against the third respondent towards the difference in tariffs, in respect of which the third respondent filed a civil suit disputing the said claim and obtained an order of injunction restraining the Board from recovering the said supplementary bills amount. Injunction was stayed in appeal preferred by the Board before the Allahabad High Court. The third respondent closed its unit. It sub-divided its industrial plot into 129 smaller plots of different sizes with the permission of Uttar Pradesh State Industrial Development Corporation. One of those plots was sold by the third respondent to the first respondent. The first respondent applied to the appellant for supply of electricity which came to be sanctioned subject to the condition that it should pay arrears due by the third respondent, in proportion to the area purchased by it, as a condition precedent for supply of electricity. Accordingly, the first respondent deposited a sum of Rs.8,63,451/- being the dues of the third respondent pro rata, subject to the condition that in the event of pending challenge to the demand being decided in favour of third respondent, the appellant shall refund the amount deposited by the first respondent. Later on, on the basis of certain orders passed

by the UP State Electricity Regulatory Commission, the first respondent filed a writ petition seeking direction to the appellant to refund the sum of Rs.8,63,451/- with interest @ 12% per annum. The High Court allowed the said writ petition and directed the appellant to refund the said amount with interest @ 6% per annum from the date of payment. The question before the Supreme Court was whether the supplier can recover the electricity dues from the purchaser of sub-divided plot. Answering this question in the affirmative, the Supreme Court held as follows:

"10. But the above legal position is not of any practical help to a purchaser of a premises. When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfilment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them.

11. A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non- payment,

may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishments, provisions similar to Clauses 4.3(g) and (h) of the Electricity Supply Code are necessary to safeguard the interests of the distributor. We do not find anything unreasonable in a provision enabling the distributor/supplier to disconnect electricity supply if dues are not paid, or where the electricity supply has already been disconnected for non-payment, insist upon clearance of arrears before a fresh electricity connection is given to the premises. It is obviously the duty of the purchasers/occupants of premises to satisfy themselves that there are no electricity dues before purchasing/occupying a premises. They can also incorporate in the deed of sale or lease, appropriate clauses making the vendor/lessor responsible for clearing the electricity dues up to the date of sale/lease and for indemnity in the event they are made liable. Be that as it may.

12. In this case, when the first respondent, who was the purchaser of a sub-divided plot, wanted a new electricity connection for its premises, the appellant informed the first respondent that such connection will be provided only if the electricity dues are paid pro rata. They were justified in making the demand. Therefore, it cannot be said that the collection of Rs.8,63,451 from the first respondent was illegal or unauthorised. It is relevant to note that when the said amount was demanded and paid, there was no injunction or stay restraining the appellant from demanding or receiving the due

32. In the light of the above decision in Paschimanchal Vidyut Vitaran Nigam Limited the legal position that emerges is that where there are statutory rules governing the conditions relating to sanction of a connection for

supply of electricity, the distribution company can insist upon prior fulfilment of the requirement of such rules and regulations before granting a fresh connection. Even if the rules are silent, it can stipulate such terms and conditions as it deems fit and proper to regulate its transaction and dealings. So long as such rules and regulations or terms and conditions are not arbitrary and unreasonable, the Courts will not interfere with them.

22. From the above, it is noted, the full bench had primarily relied on the judgment of the Supreme Court in Paschimanchal Vidyut Vitran Nigam Ltd. (supra) to conclude that where there are statutory rules governing the conditions relating to sanction of a connection for supply of electricity the distribution company can resist upon prior fulfillment of the requirement of such rules. I may state here, Paschimanchal Vidyut Vitran Nigam Ltd. (supra) the Supreme Court relied on clause 4.3 (g) & (h) to hold that the purchaser / occupant has to satisfy itself that there are no dues before purchasing the property.

23. Having noted the position of law as relied upon by Mr. Srivastava, at the outset, I may state here that the respondent had bought the property in auction and applied for a new connection in the year 2015 when the DERC Supply Code, 2007 was in place, which included Regulations 15 and 20. In **BSES Rajdhani Power Ltd (supra)** the request for resumption of supply was in the year 2002; and in **NDPL v. Jagiri Lal (supra)** the request for resumption of supply was in September 2008. That apart in BSES Rajdhani Power Ltd. (supra) **NDPL vs. Jagiri Lal (supra)** and **Madhu Garg (supra)** this Court was concerned with clause 2.1 (iv) of General Conditions of Supply, which it appears were non existent, when the

respondent herein had applied for connection having been superseded by the Code of 2007 which included Regulations 15 and 20. Additionally in *Madhu Garg (supra)*, it appears, Madhu Garg had purchased the property in question by way of a Sale Deed and not through public auction. Similarly, in *BSES Rajdhani Power Limited (supra)*, it is seen that even the respondent No.1 purchased the property from its original owner Dev Arora directly and not through auction. Similar in the position in *NDPL vs. Jagiri Lal (supra)*. The Regulations 15 and 20 have already been reproduced above. In other words, the judgments can be distinguished on the ground that the Regulations under interpretation by the Division Bench/Full Bench and the Coordinate Bench were different from one, which falls for consideration in this case.

24. Further even the judgment of the Supreme Court in *Paschimanchal Vidyut Nigam Ltd. and Ors (supra)* is distinguishable. No doubt in para 10 as reproduced above, it was held in view of statutory Rules governing conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations but an important fact is the property was not purchased in auction. In the case in hand, no doubt, Regulations 15, put an obligation on the purchaser to carry out due diligence before purchasing a property but in the fact situation, that is, the respondent having purchased the property in an auction that obligation cannot be put on her as it is a common knowledge, an auction purchaser, buy's a property on "as is where is basis", which

is the ratio of the judgment of the Supreme Court in the case of *Special Officer, Commerce, North eastern Electricity Company of Orissa (NESCO) and Anr. (supra)*, wherein the Supreme Court has held that the respondent No.1 therein had purchased a unit in auction/sale conducted by the Official Liquidator on “as is where is” and “whatever there is” basis. In other words, such a purchaser of a property is distinct / different from a person, who purchase a property from the previous owner directly through Sale Deed. Assuming, the conclusion of the Supreme Court in *Special Officer, Commerce, North eastern Electricity Company of Orissa (NESCO) (supra)* is in view of the proviso clause to sub clause (10) of Regulation 13, still the Supreme Court in *Isha Marbles (supra)*, has held as under:-

“57. In all the present cases the supply of electricity to a particular premises which had the benefit of enjoying electricity had been disconnected under Section 24 of the Electricity Act. The auction purchasers want reconnection. The Board says no; unless and until the consumption charges in relation to that property which came to be incurred during the ownership of the previous incumbent are cleared off. Is the stand of the Board correct? The High Court, in the main judgment in Suman Packaging (C.W.J.C. No. 5358 of 1972) gives the following reasons for answering the question against the Board:

1. Section 24 stipulates discontinuance of supply of electrical energy to the consumer in respect of a sum due from him. We are afraid the High Court had not read Section 24 in conjunction with other statutory provisions though they had been noted, namely, Section 26 of the Supply Act; Section 22 of the Electricity Act and Clause VI of Schedule of the Electricity Act. They clearly postulate the obligation to supply energy for such premises. At the risk of repetition we hold the premises had enjoyed

the benefit of electricity. The owner of the premises or even the occupier of the premises, as stated under Rule 2(af) of the Indian Electricity Rules, becomes liable to pay the consumption charges together with other dues, in other words, the liability is in respect of the dues of electricity which came to be supplied pursuant to the contract with the former owner. The discharge of such Liability will be on such owner or occupier.”

58. 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 erstwhile 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.” (emphasized supplied)

25. Further, **Ahmedabad Electricity Company Ltd. (supra)**, the Supreme Court in para 3 has held as under:-

“In our opinion, the present two cases are the cases of fresh connection. The learned counsel for the respondents (auction purchasers) have stated that they have taken fresh connections and they have no objection if their connections are treated as fresh connection given on the dates on which the supply of electricity was restored to the premises. We are clearly of the opinion that in case of a fresh connection though the premises are the same, the auction purchasers cannot be held liable to clear the arrears incurred by the previous owners in respect of power supply to the premises in the absence of there being a specific statutory provision in that regard. (emphasis supplied) Though we find some merit in the submission of the learned counsel for the appellant, calling for reconsideration of the wide propositions of law laid down in Isha marbles’ case (supra), we think the present one is not a case for such exercise. We

leave the plea open for consideration in an appropriate case.”

26. Hence, the reliance placed by Mr. Srivastava on Regulation 15(ii) is without merit. It cannot be invoked in a case where the applicant for a connection had purchased the existing property through auction.

27. Similarly, Regulation 20 (2) is also not applicable as on a reading of the same, it is clear that the same relates to transfer of connection i.e change of consumer's name due to change in ownership/occupancy of property and transfer of consumer's name to legal heir, which is not the case herein as the respondent had applied for a new connection. This answers question No.2 above.

28. Further, it is not the case of the petitioner that a provision exists, which provides that all dues to the petitioner from a consumer shall be charged on the property.

29. In view of my above discussion, in the facts of this case, the consumer forum was justified in its conclusion and the impugned order needs no interference. The petition is dismissed. No costs.

CM No. 23085/2015 (for stay)

In view of the orders passed in the writ petition, the application is dismissed as infructuous.

V. KAMESWAR RAO, J

JANUARY 22, 2018/ak