Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (L) NO. 14761 OF 2019

1. **Goradia Special Steels Ltd.,**
Village Savroli, Taluk Khalapur,
District Raigad, Khopoli 410 203 ... **Petitioner**

~ **versus** ~

1. **The State of Maharashtra,**
through it Directorate of Industries,
New Administrative, Opp.
Mantralaya, Mumbai 400 032.
2. **Principal Secretary of Energy Industries,**
Energy and Labour Department,
Government of Maharashtra,
Mantralaya, Mumbai 400 032.
3. **Maharashtra State Electricity Distribution Company Ltd.,**
through its Managing Director,
Prakashgad, Plot No. G-9, Bandra
(East), Mumbai 400 051. ... **Respondents**

Appearances

for the petitioner	**Mr Shrihari Aney, Senior Advocate**, *with Mr Adwait Sethna, i/b RR Thakker.*

FOR RESPONDENT NOS. 1 & 2-STATE	**Mr BV Samant, AGP.**
FOR RESPONDENT NOS. 3 & 4	**Mr Anuj Jaiswal**, *with Nirav Shah, i/b Little & Co.*

CORAM : S.C. Dharmadhikari & G.S. Patel, JJ.

DATED : 18th September 2019

ORAL JUDGMENT (*Per S.C. Dharmadhikari, J*):

1. By this Petition under Article 226 of the Constitution of India, the Petitioner before us has challenged the decision of 22nd March 2019, a copy of which is at Exhibit "A" to this Petition. This decision is a communication from the Department of Industry, Energy and Labour, Government of Maharashtra to the Chairman of the Maharashtra State Electricity Distribution Company Limited **("MSEDCL")**. It says that the Chairman should act in accordance with the Government's communication of 19th March 2019 and the order of this Court dated 25th January 2019. It says that the earlier letter of 7th February 2019 of the Government should be treated as non-est and cancelled.

2. The Petitioner appears to be aggrieved by this because following this, on 3rd May 2019, the MSEDCL came to disconnect its electricity supply. That is a communication dated 24th April 2019.

3. Since heavy reliance is placed upon certain previous legal proceedings, to appreciate the argument of Mr Aney, learned Senior Advocate appearing for the Petitioner, it would be advantageous to set out the complete facts.

4. The Petitioner before us is a company incorporated under the Companies Act 1956. It has its registered office at the address mentioned in the cause title and a manufacturing unit which manufactures steel ingots with a production capacity of 30,000 tonnes per annum. The Petitioner has set out as to how it has 360 workers, manufactures special steels catering to the needs of various ordnance factories and the nuclear fuel complex at Hyderabad, Bharat Heavy Electricals Limited, National Thermal Power Corporation etc. As such it is a heavy consumer of electricity.

5. The Petitioner says that it is a sick company registered with the Board of Industrial and Financial Reconstruction ("**BIFR**") under Case No. 274 of 1998 under the then Sick Industrial Companies (Special Provisions) Act 1985 ("**SICA**").

6. The Petitioner says that it filed Writ Petition No. 10147 of 2015 before this Court. This Writ Petition is admitted by order dated 11th April 2017. The Petition was filed *inter alia* seeking appropriate orders and directions to the Respondent No. 1, the State of Maharashtra, and the Respondent No. 2, the Principal Secretary of Department of Industries, Energy and Labour to enforce and implement a Government Resolution dated 29th March 2008 read with a 2006 policy so as to grant relief to the Petitioner as per a

'Special Amnesty Scheme'. That amnesty scheme grants complete waiver of interest and delayed payment charges. The Petitioner says it is entitled to the benefit under this Special Amnesty Scheme and the one-time settlement in terms of this Government Resolution.

7. The Writ Petitioner also filed Writ Petition No. 377 of 2019 in this Court with more or less identical prayers but essentially aggrieved by the communications from Respondents Nos. 3 and 4. They threatened to disconnect the electricity supply to the Petitioner's manufacturing unit located at village Savroli, Taluka Khalapur, District Raigad. In that Writ Petition, this Court passed an order dated 25th January 2019, a copy of which is at Exhibit "E" to this Petition, and which reads thus:

> "1. This writ petition was placed before us and on account of the extreme urgency pointed out, on 10th January 2019, the following order came to be passed.
>
> > 'Mentioned. Not on Board.
> >
> > 2. When this petition was placed before us and Mr. Godbole, learned counsel appearing for the petitioner, expressed an apprehension that the electricity supply would be disconnected on 11-1-2019 by the MSEDCL, District Raigad, we requested Mr. Godbole to serve a copy of this petition on M/s. Little & Co., particularly learned Advocate Mr. Kiran Gandhi.
> >
> > 2. We allowed Mr. Godbole to mention this matter after Court working hours. On being so mentioned in the presence of Mr. Gandhi and since he wanted to take detail

> instructions, we post this matter on 16-1-2019. It shall be listed on the supplementary board. Till 17-1-2019, the electricity supply to the petitioner's premises shall not be disconnected, if not already disconnected."

2 Now an affidavit in reply has been filed on behalf of respondent Nos. 3 and 4 and an additional affidavit has been filed on behalf of the petitioner.

3 In the affidavit in reply it is urged, inter alia, that there is no Special Amnesty Scheme in force and the fact that such a Scheme has outlived its life or expired was communicated to the petitioner by letter dated 7th January, 2019.

4 It is stated that the petitioner is a live consumer with an average monthly electricity billing of approximately Rs.One Crore and using approximately twelve lakhs units per month.

5 To our mind, after such an affidavit in reply is filed, copy of which is served on the petitioner's advocate, the ad-interim protection granted by this Court cannot continue much less unconditionally.

6 After hearing both sides at some length, we are of the view that presently the ad-interim order can be continued, with following directions :-

> (a) On the petitioner's depositing a sum of Rs. Five Crores with the Maharashtra State Electricity Distribution Company Limited on or before 26th March, 2019, the writ petition shall be listed for "Admission" on 28th March, 2019 under the "Urgent Category".

> (b) In default, the writ petition would then stand dismissed without any further reference to the Court and the ad-interim order passed on 10th January, 2019 then be taken as vacated forthwith.
>
> (c) In the event the amount is deposited, the protection shall continue till this Court hears the matter for admission as directed above.
>
> (d) The deposit by the petitioner as also the acceptance by the Maharashtra State Electricity Distribution Company Limited shall be without prejudice to their respective rights and contentions in this petition and otherwise.
>
> (e) All concerned to act on authenticated copy of this order.
>
> (f) To enable the petitioner to deposit the sum, the electricity supply shall not be disconnected in terms of the ad-interim order till 26th March, 2019.
>
> 7 The matter shall be listed on 28th March, 2019, on compliance."

8. The Petitioner says that in terms of the orders and directions of this Court, it was to make payment of Rs. 5 crores. However, that was not made within the time stipulated by this Court. The Petitioner's Civil Application No. 797 of 2019 for extension of time was rejected on 26th March 2019.

9. The Petitioner then moved for modification of the order passed on 26th March 2019 in this Civil Application by filing another Civil Application No. 1002 of 2019. In the memo of that Civil Application, the Petitioner stated that it had deposited a sum of Rs. 2 crores directly in the account of Respondents Nos. 3 and 4. It further undertook to pay an amount of Rs. 1 crore by way of a Demand Draft payable in favour of Respondents Nos. 3 and 4, which the Petitioner was ready and willing to deposit immediately. The Petitioner prayed that additional time be granted as these amounts would be paid on 2nd and 16th May 2019. That Civil Application also prayed for restoration of Writ Petition No. 377 of 2019 to the file of this Court.

10. This Civil Application was placed before a Division Bench of this Court on 16th April 2019 when this Court passed the following order thereon:

> "1. Not on Board. Taken on Board.
>
> 2. Perused clauses (a) and (b) of paragraph 6 of the order dated 25th January 2019. Unless the applicant deposits a sum of Rs. 5 crores, the prayer for extension of time and for restoration of the Petitioner cannot be considered.
>
> 3. Liberty to move the Civil Application after the entire amount of Rs. 5 crores is paid."

11. After this order the Petitioner says it made desperate efforts and arranged to make the payment of entire amount of Rs. 5 crores. It filed an Affidavit setting out the details of the payment of this amount and annexed proof. Exhibit "H" is a copy of the Affidavit filed in those proceedings. The Petitioner, therefore, expected that the electricity supply to its factory would be restored. However, that was not restored and once again another application was made to this Court, which directed the Petitioner to file an Affidavit on or before 6th May 2019 and gave liberty to the Petitioner to approach the Vacation Bench. The Petitioner says that the present Writ Petition had to be filed because this Court was of the view that the subsequent developments demand that disposed of matters could not be revived in the manner suggested and requested by the Petitioner to this Court. Instead the remedy lay in filing a fresh Petition. That is how this fresh Petition has been filed by the Petitioner on 7th May 2019.

12. The Petitioner is also aggrieved by a letter of the Respondents Nos. 3 and 4 dated 3rd May 2019 informing the Petitioner that it is disconnecting the electricity supply permanently with effect from 3rd May 2019.

13. When this Petition was presented, it appeared before a Division Bench of this Court in the vacation. On 15th May 2019, the Vacation Bench passed the following order:

> "1] Mr Aney, the learned Senior Counsel appearing for the applicant on instructions submitted that, in pursuance of order dated 16th April 2019 the applicant has deposited Rs. 5.00 crores with the respondent No. 3 Maharashtra State Electricity Distribution Company Ltd.
>
> 2] In view thereof, we direct the respondent No.3 to restore the electricity supply to the applicant immediately upon the applicant paying necessary restoration charges to the electricity provider company. The said supply of electricity will remain in force upto 20th June 2019. It is further made clear that, the respondent No.3 shall not insist upon the applicant to deposit the balance disputed amount

> involved in the present petition. The Registry to accept affidavit of the respondents.
>
> 3] Place this application before the regular Bench for admission on 17th June 2019."

14. Then this Writ Petition appeared before the regular bench on 19th June 2019, and after hearing both sides, this Bench passed the following order:

> "1. Having heard this matter at great length, we are informed by Mr Aney, learned Senior Advocate appearing for the Petitioners that save and except the amount for the electricity consumed in the month of April 2019, all other amounts have been paid and in terms of an Amnesty Scheme of the State Government operated by the Directorate or the Department of Industries and Energy, Government of Maharashtra.
>
> 2. Mr Aney states that this Amnesty Scheme has been abruptly withdrawn and even that is an aspect under consideration.
>
> 3. For the month of April 2019 the charges billed can be paid and there is still some time to pay them, but the Petitioners would make arrangements and clear that bill is the statement of Mr Aney.
>
> 4. We only want to know from the Government as to whether this Amnesty Scheme is still in force or not and if it is can the Petitioners avail the benefits thereunder.
>
> 5. Since we have no affidavits on record, we direct the Secretary in the Department of Industries and Energy, Government of Maharashtra to remain present in this court on the next date with all original records.

> 6. The writ petitions have been pending in this Court for a considerable time. This was enough to place the affidavits on record. This was also enough to give instructions to at least two Assistant Government Pleaders present before us. That having not been done, we are compelled to summon the Secretary to remain present in this Court.
>
> 7. We place this petition for admission / under the same caption on the Supplementary Board on 4th July 2019.
>
> 8. The request to continue the ad-interim order is also considered by us but we do not think that when the Petitioners are in arrears, they can claim absolute protection. They will have to pay the amount currently billed or the charges for the consumption month to month and that according to Mr Aney is approximately Rs.84 lakhs. That would be paid before the next date. On this condition, we continue the ad-interim order up to 8th July 2019."

15. The matter was again placed before this Court on 4th July 2019 and we were informed that the State Government has not continued the Amnesty Scheme. It is no longer in force. The Petitioner cannot avail the benefit of the earlier Amnesty Scheme either. That is the reason why this Court demanded an Affidavit from the State annexing therewith the complete list of dates and events and the amount remaining unpaid at the end of the Petitioner. In pursuance of this direction, the Affidavit has been filed by the State Government. In that Affidavit, the Deponent has made following pertinent statements:

> "2. I say that M/s. Goradia Special Steel Ltd, having factory at Survey No. 33/5, Village-Niphan, Savroli Kharpada Road, Taluka-Khalapur, District-Raigad (Maharashtra) had applied for Special Amnesty Scheme on 30th April 2008 to this office. Upon fulfilling the eligibility criteria of Special Amnesty scheme as per Government Resolution dated 29th March 2008, the Directorate of Industries, Mumbai had issued Eligibility Certificate to Unit of the Petitioner vide letter No. DI/BIFR/VC/516/2007/B-29195, dated 24.07.2008. Copy of the letter dated 24.07.2008 is annexed hereto and marked as **EXHIBIT-1**. The Petitioner did not avail benefit of the said scheme during the applicable period upto 31.03.2009.
>
> 3. According to the provisions of the Special Amnesty Scheme the closed sick unit and non-revivable units were given the OTS (One Time Settlement) facility under which it the Management of the Closed Sick Unit pays principal amount of the Government over dues then the interest and penalty amount will be waived off.
>
> 4. As per the Industries, Energy & Labour Department, Government Resolution dated 06.05.2016 the Special Amnesty Scheme was extended up to 31.03.2017. Copy of the Government Resolution dated 06.05.2016 is annexed hereto and marked as **EXHIBIT-2**."

16. In terms of this Affidavit, on 8th August 2019, the Bench heard this Petition again and it had before it a Rejoinder Affidavit of the Petitioners as well. In the Rejoinder Affidavit the stand of the Petitioner as set out in the memo of this Petition is reiterated. On 8th August 2019 on perusal of these materials the Bench made the following order:

“1. Writ Petition No. 377 of 2019 already stood dismissed for default. There is a Civil Application for restoration along with other Civil Applications. In view of the fact that there is a separate substantive Writ Petition (Stamp) No. 14761 of 2019, all the Civil Applications stand disposed of as infructuous.

<u>WRIT PETITION (STAMP) NO. 14761 OF 2019:</u>

2. We have heard Mr Aney, learned Senior Advocate for the Petitioners as also Mr Samant for Respondent No.1-State and Mr Jaiswal for Respondents Nos. 3 and 4 in regard to the Amnesty Scheme relating to the arrears payable by the Petitioners and their claim in that regard. We had on 31st July 2019 made a detailed order setting out the salient portions of the reply filed by the State Government.

3. It is not in dispute that as on 30th June 2019 an amount of Rs.42,30,77,304.00 was due from the Petitioner. This was in relation to a past period. It was in two parts. The principal amount was Rs.6,19,26,300.00. The remaining amount of Rs.34,93,06,444.00 was towards interest and penalty.

4. It is Mr Aney’s submission that the amnesty which the Petitioner claims was granted was subject to payment of the principal. The issue for decision is whether the Petitioner is entitled to an Amnesty in respect of the interest and penalty amount of Rs.34,93,06,444.00. In other words the Petitioner does not dispute this liability to pay Rs.6,19,26,300.00.

5. Mr Aney submits that of this amount an amount of Rs.5 crores has been paid though late by April 2019. Mr Samant disagrees, and says that this was in part payment of a much larger amount but we will leave that aside for the present. We do so because Mr Aney also submits that the

Petitioner is entitled to certain adjustments, reductions or rebate even from the Rs.6,19,26,300 principal amount and, therefore, according to him, if these are also taken into account and the amount of Rs.5 crores is reckoned then an amount of only about Rs.34 lakhs is yet due. On the other hand, Mr Samant and Mr Jaiswal would contend that a much higher amount is yet due.

6. We have after some discussion been able to ascertain that current electricity consumption dues from May to June 2019 have been paid (though perhaps with some delay).

7. We do not propose in this order today to examine the question of whether or not the Petitioner is entitled to any adjustments, rebate or other deductions from the principal amount of Rs.6,19,26,300.00. Since interim relief is sought from disconnection we will grant that relief conditionally i.e. subject to the following two conditions:

(a) that the Petitioner will within four weeks from today deposit an amount of Rs.1.2 crores in this Court. On deposit, that amount is to be invested until further orders of this Court. In default, the Petition will stand summarily dismissed and will not be restored thereafter under any circumstances. The payment is to be made on or before 9th September 2019.

(b) the Petitioner undertakes to make payments of monthly or periodic bills for ongoing consumption on or before their respective due dates. In the event of any one default in payment of any such monthly/periodic bill, the same result will follow i.e. the Petition will stand dismissed without further reference to the Court and will not be restored thereafter. In the event that there is a default in the monthly/periodic bill after the deposit of Rs.1.2 crores is made, then the amount of Rs.1.2 crores will be allowed to be withdrawn by the Respondents Nos. 3 and 4 and adjusted

> towards the interest and penalty accrued due on the claim against the Petitioner.
>
> 8. With his usual fairness, Mr Aney, on instructions states that his client accepts these two conditions.
>
> 9. At this stage we are clarifying that all contentions of both sides are expressly left open. In particular we leave open the question of whether the Petitioner is entitled to the continuance of the Amnesty or whether this right has been forfeited on account of some default on the part of the Petitioner; whether the Petitioner is entitled to any adjustment, reduction or rebate against its electricity consumption dues, the principal required to be paid or the accumulated penalty and interest; and the contentions of Respondents that a much larger amount is even now due and payable by the Petitioners.
>
> 10. We put parties to notice that we propose to dispose of the Petition at the stage of admission.
>
> 11. List the matter for hearing and final disposal on 18th September 2019 at 3.00 pm. No further Affidavits are to be filed without leave of the Court."

17. In terms of the above order, the writ petition was placed today and with the understanding that it will be disposed of finally.

18. Since a formal order of admission was not passed, we proceed to do so now.

19. **Rule.** Respondents waive service. Since no further Affidavits are sought to be filed, or rather no leave is sought to file them, by consent of both sides, this Writ Petition is disposed of finally.

20. Mr Aney, learned Senior Advocate appearing in support of this Petition invited our attention to the averments in the Writ Petition and the annexures thereto. His argument is based on the applicability on the principle of promissory estoppel, doctrine of legitimate expectation, and fairness and non-arbitrariness demanded in State action in terms of Article 14 of the Constitution of India. He would elaborate his argument by inviting our attention to the primary document dated 9th March 2008. This is a Government Resolution of the Ministry concerned on the subject of sick small, medium and large scale industries which are otherwise viable and capable of revival. The Government refers to its policies and a final one of 17th October 2007 and says that in terms of the Maharashtra Industries, Investment and Infrastructural Facilities Policy 2006, the Government has extended a helping hand to these sick industries who are keen on revival. The Government's help comes in the form of concessions. These concessions are extensively set out in the Government Resolution dated 17th October 2007. Referring to paragraph 6 of that Government Resolution, the subject Government Resolution dated 29th March 2008 says that for such of the viable industries whose operations can be revived, an opportunity can be extended to them to overcome the sickness by providing a Special Amnesty Scheme. This is a scheme under which a one-time payment would result in a settlement of pending or accumulated Government dues. However, this one-time payment must be of the stipulated principal amount. If that principal mount is paid within the time stipulated in the Government Resolution, then the interest component and the penalty would be waived. However, the 17th October 2007 Government Resolution itself says that the amount has to be paid by 31st March 2008. The

Government Resolution relied upon by Mr Aney, a copy of which is at Exhibit “D” dated 29th March 2008 merely extends this date to 31st March 2009. If the extended time schedule is adhered to, the benefit under the Special Amnesty Scheme is available, and not otherwise.

21. However, Mr Aney would argue that there is a specific order or direction required from the Government to avail of the special Amnesty Scheme. So long as that order or direction is not issued, there is no question of making any payment at all. The payment itself would be made only after such formal order and direction and then alone could the competent authorities accept it. The Petitioner could not have gone on its own to make any payment absent such a formal order and direction. Mr Aney would submit that this argument finds support in an order passed by this Court, a copy of which is annexed to the Petition. He says that in terms of that order, the Petitioner was permitted to avail of this benefit only when the Government makes an order to that effect. This Court understood the scheme accordingly is the submission of Mr Aney. That is how the further communications came to be addressed.

22. Our attention is invited to that order of 11th April 2017 by Mr Aney. Our attention is also invited to the communication from the Department concerned, namely Respondents Nos. 1 and 2 to the Respondents Nos. 3 and 4, a copy of which is at Exhibit “L page 61 of the paper-book. The Petitioner’s contention is that this was followed by a further communication of 22nd June 2017. The said communication deals with the complaint made by the Petitioner of discrimination. Finally Mr Aney would rely on the communication of 6th October 2017 from the Respondents Nos. 3 and 4, a copy of which is at page 71 of the paper book and would urge that even the Respondents Nos. 3 and 4 were of the view that the benefit of the Special Amnesty Scheme was available and that Scheme could have been availed of if payment of Rs. 9,70,59,945.01 was made within one year from the date of receipt of the communication dated 6th October 2017. Mr Aney then relied upon the communication of 7th February 2019 and following it the stand of the parties before this Court wherein they did not dispute that a Government direction is necessary to avail of benefits, else on its own the Petitioner was unable to do so.

23. On the other hand Mr B.V. Samant, learned AGP would submit that there is no merit in any of the contentions of Mr Aney. He would submit that the Respondents cannot be held to be bound by a scheme which itself ceased to be operative after 31st March 2009. The repeated petitions of the Petitioner are but an attempt to wriggle out of its commitment to make payment of the running electricity bills from time to time. The Petitioner is a defaulter. It could not pay the electricity dues after it was termed as a sick industrial company. It sought special concessions in that regard. After it sought these concessions, the Government informed and made it aware of the conditional Special Amnesty Scheme of October 2007. The benefit of that Amnesty Scheme could have been availed of within the extended period and not later than 31st March 2009. The dues were crystallized as on 31st March 2009. The dues comprised of principal amount, interest because the principal was not paid within the specified time and penalty, so also delayed payment charges in terms of the applicable Statute and the

Rules. Mr Samant would submit that for availing the amnesty benefit or concession the amount styled as principal amount should have been paid no later than by 31st March 2009 at least. Absent that payment, there is no question of extension of amnesty endlessly. After a period of 10 years from that Government Resolution, it is only now that the Petitioner says that it is ready and willing to pay the principal amount, and this is but one component of the dues crystallized as on 31st March 2009. This is the factual position according to both Respondents. Therefore, the Counsel would submit that anything contrary to the Government Resolution and its express terms and conditions cannot be said to be binding on the Government or the MSEDCL. The Petitioner cannot take derive benefit from the wording of any of the subsequent communications. Once placing an interpretation on the Government Resolutions contrary to its express terms and conditions would contravene a larger public interest, then no amount of persuasion should result in the Writ Petition being accepted and allowed. When the facts are so clear, neither principles or doctrines are of any application. Hence, they would submit that the Writ Petition be dismissed.

24. On a careful perusal of the materials produced before us, we are of the opinion that the Writ Petition deserves to be dismissed.

25. The Resolution passed by the Government and heavily relied upon must be noted. It is clear from the terms of the said Resolution that it is but an extension of time to avail of the Special Amnesty Scheme. The Scheme itself is traceable to the Government Resolution of 17th October 2007. Paragraph 6 of the Government

Resolution says that such of these industries who are viable and interested in coming out of sickness have to as a part and parcel of a revival amnesty scheme make a one-time payment or settlement of the principal amount, and that had to be paid by 31st March 2008. If that had been paid by that date, then the component of interest and penalty would stand waived. Since there were requests made to extend the time to avail of the benefits of the Amnesty Scheme, the Government Resolution, a copy of which is at Exhibit "D" dated 29th March 2008, was issued to extend the time by one year from 31st March 2008 to 31st March 2009.

26. The Petitioner admittedly defaulted in making payment of this principal amount by 31st March 2009. Instead, it filed Writ Petition No. 377 of 2019, but prior to that it had filed Writ Petition No. 10147 of 2015 in this Court on which an order came to be passed on 11th April 2017. In that Writ Petition, two Civil Applications bearing No. 281 of 2017 and 875 of 2017 were taken out because this Petition was admitted. This Petition was kept pending with an ad-interim order operating. The assertion was that the Government had not taken any decision whether to allow the Petitioner to avail of the benefit of the Special Amnesty Scheme and such an order or direction of the Government was required. However, Mr Aney does not read the order of 11th April 2017 in totality and as a whole. That order of this Court in paragraph 1 says that the Petitioner is relying upon the Government Resolution dated 29th March 2008. The Government has not taken any final decision on the question, whether the Petitioner is entitled to the benefit of Special Amnesty Scheme. The Petitioner has had not deposited the amount payable in terms of the communication dated 18th February 2014. The

Petitioner had placed before this Court a schedule of payment on 30th November 2016 in that Petition. The Petitioner did not comply with that schedule by depositing the requisite amount. Therefore, the ad-interim order in this Writ Petition stood vacated. The electric supply of the Petitioner was disconnected on 9th February 2017. Therefore, a formal plea was raised seeking to restore the electricity supply and this Court although issued rule on the Petition and admitted it gave a direction to the Government to decide whether the Petitioner can avail of the benefit of this Special Amnesty Scheme dated 29th March 2008. The decision was to be taken within two months. The Court did not pass any order restoring the electric supply.

27. On 24th April 2017, the Government of Maharashtra issued a communication to the Respondents Nos. 3 and 4 which was heavily relied upon before us by Mr Aney. We think that even that has not been read in its proper perspective. That communication says that the Petitioner was already issued a certificate by the Directorate of Industries dated 24th July 2008. This certificate enabled the Petitioner to avail of the Special Amnesty Scheme contained in the Government Resolution of 17th October 2007 within its extended period i.e. by 31st March 2009. The Petitioner did not avail of it. Once the Petitioner did not avail of it, did not make payment and instead filed a Writ Petition in this Court aggrieved by a communication of February 2014, it hardly lies in its mouth now to say that the Government was to take a decision in terms of this Court's order of 11th April 2017 and this communication must be read as taking that decision in terms of this Court's order. Far from it, this communication only records that despite the Certificate of the Directorate of Industries the Scheme was not availed of. If the Scheme has to be availed of then this communication says that one year's time be given.

28. Pertinently, by this communication the Government Resolution could not have been extended. All that this Court directed the Government is to take a decision whether the benefit of the Special Amnesty Scheme can be availed of. If the Scheme itself was not in force beyond 31st March 2009, no question arises of its extension and that is not extended by this communication of 24th April 2017. There may have been a meeting convened in the Chambers of the Hon'ble Chief Minister of the State and presided over by the Additional Chief Secretary but that was only on the issue or point of reconnection or restoration of the electric supply to the factory of the Petitioner. That was to be restored provided the Petitioner paid Rs.1 crores in part satisfaction of the running bills raised on it. The Petitioner continued to avail of the electricity supply and it had made payment of monthly bills but it cannot say that the past dues of Respondents Nos. 3 and 4 stand totally waived. The dues is not waived and no amount of reliance on Government's communications including the one at Exhibit "M" is of any assistance. There, the Petitioner made a grievance that the Petitioner was permitted to avail of the benefits of the Special Amnesty Scheme. If that was permitted to be availed of by another company, Universal Ferro and Allied Chemicals, Bhandara, then, the same facility or concession be extended to the Petitioner. All that the communication dated 22nd June 2017 says is that the Respondents Nos. 3 and 4 should inform the State as to what it has done pursuant to the earlier communication of 24th April 2017. We are, therefore, not in agreement with Mr Aney that the Amnesty Scheme 'stood extended' and only for the Petitioner and to enable it to avail of the benefits underlying it. That cannot be said to be continued beyond the stipulated period and no amount of reliance on even the communications from Respondents Nos. 3 and 4 can be of any assistance. The later Scheme of the State Government contained in the Government Resolution dated 6th May 2016 is not the applicable one. This fact is not disputed at all. It is a distinct Scheme. It is the Scheme of 2007 which is relied upon. That is not absolute but conditional. Its terms are not questioned ever.

29. Mr Aney does not dispute that for any such scheme to be extended by the State requires the State to exercise its powers under the Articles 162 to 166 of the Constitution of India. These Articles reserve the executive powers of the State. The executive powers can be utilised to issue such orders and directions as are permissible in terms and on par with a law made by the State. The authority to make laws on the subject equally carries with it by these Articles the authority to issue appropriate executive directions and orders. In the State of Maharashtra such Government orders and directions are issued in the form of a Government Resolution. A Government Resolution has to be issued by the Secretary as the executive functionary of the State in terms of the orders and directions of the Hon'ble Governor of the State. No such Government Resolution is on file after 29th March 2008. The executive functionaries may enter into correspondence, address communications or inter-departmental letters but none of that stands on the footing of a Government Resolution, and none of it would assist the Petitioner when the Government itself cannot extend its policy except by taking resort to above referred Articles of the Constitution of India.

30. We, therefore, do not think that the Petitioner can successfully contend that the Amnesty Scheme was operative, functional and the benefits thereunder could have been availed of by them beyond its stipulated cut-off date. It is not the sweet will and choice of either the petitioner or secretaries or bureaucrats in Government. When the Government makes a promise and that is traceable to Section 115 of the Indian Evidence Act 1872, then alone the doctrine of promissory estoppel comes into play. There is no such promise or representation to the Petitioners at all.

31. Further, there is no estoppel against a stature. The MSEDCL cannot be estopped from exercising its powers under the Electricity Act 2003 by such indefinite extension of the Amnesty Scheme as sought. This principle is succinctly summarised in a decision of the Hon'ble Supreme Court in *State of Uttar Pradesh & Anr v Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti & Ors*.[1] In paragraph 44, the Hon'ble Court held as under:

> "44. It is settled law that there can be no estoppel against a statute. If the field was occupied by statutory rules, the employees could get right only under those rules. The High Court was equally bound to consider those rules and to come to the conclusion whether under the statutory rules, the retrenched employees were entitled to absorption either in government department or in any other public sector undertaking. Statement, assurance or even undertaking of

1 (2008) 12 SCC 675.

> any officer or a counsel of the respondent Corporation or of the Government Pleader of the State is irrelevant. The High Court, in our view, ought to have considered the prayer of the Corporation and decided the question if it wanted to dispose of the matter on merits in spite of availability of alternative remedy to the employees."

32. The Petitioners cannot avail of the doctrine of legitimate expectation either, for there is a over-riding public interest. For one who defaults in making payment of electricity dues and crystallized as far as back on 31st March 2009 says that ten years later in 2019 it had made payment only of the principal amount crystallized as on date but that payment is ten years after the operational date of the scheme. There is no question of allowing such a defaulter to escape the consequence flowing from such delayed payment. The interest component including penalty and delayed payment charges would, therefore, have to be recovered from such a defaulter and can be recovered in accordance with law.

33. We do not think that the Petitioner deserves any equitable and discretionary relief under Article 226 of the Constitution of India. This jurisdiction is not only extraordinary but discretionary and equitable as well. The High Court can refuse to interfere if it finds that the Justice of the case does not require its interference.[2] This jurisdiction is to promote justice. To put it succinctly: by 2008, the Petitioner already had accumulated and unpaid arrears, delayed payment charges and interest due for the electricity it had consumed. It was sick company registered with BIFR under SICA. It sought revival. It sought the benefit of an amnesty scheme. That

2 *A.M. Allison & Anr v B.L. Sen & Ors.*, reported in AIR 1957 SC 227.

envisaged the forgiving or waiving of arrears of principal in lieu of a stipulated one-time payment, and the foregoing of penalty and interest. The one-time payment had to be paid by a cut-off date, which was finally extended to 31st March 2009. On its own showing, the Petitioner did not pay the amount by that date. It continued to draw electricity in vast volumes, racking up bills of Rs. One crore *monthly*. Even these were delayed. It then filed a slew of writ petitions and civil applications to stave off recovery and disconnection. It continued to draw electricity all this time. It is only now, a full decade later, that it claims, invoking Article 14, promissory estoppel and legitimate expectation, the benefit of an expired scheme, as if to suggest that its own repeated defaults and failures to pay its power bills count for nothing. It claims that this invocation is just and equitable. In fact, it is neither. It is a wholly unacceptable imposition on a government-provided service for private self-serving benefit. It is no use saying that the Petitioner employs many workers. It does not do so out of any sense of charity. It does so for profit and for business. We fail to see how any entity can be entitled to carry on business (and whether or not it actually makes a profit is irrelevant) at a public cost by not paying for a service that it continues to draw month on month. There is no fundamental right to free electricity for business or commercial purposes. The waivers were intended for one purpose only: to enable a revival. Those waivers were not unconditional or open-ended. The scheme of those waivers required, first, payment of a one-time amount, which was known to all, and, second, it required payment of that amount by a cut-off date of 31st March 2009. Otherwise, the amnesty was unavailable. A later correspondence cannot be read (or misread) to suggest that a scheme that terminated by 31st March 2009 is, by mere correspondence at the hand of some functionary, and without the backing of a properly framed Government Resolution, extended or even extendable a full ten years later.

34. We do not think that we or the Government can extend these facilities in terms of the earlier orders and directions of this Court indefinitely. We must allow the Respondents Nos. 3 and 4 to recover their legitimate dues. More so, when none of the running bills and the quantum demanded under the same are under challenge. There is no dispute in so far as the liability to pay the amounts demanded. All the more, therefore, the Petition deserves to be dismissed.

35. Needless to state that it will be open for the Respondents Nos. 3 and 4 to withdraw the sums/amounts deposited in this Court with accrued interest and appropriate and adjust the same towards its outstanding due in terms of its policies and conditions imposed on all consumers like the Petitioner.

36. All earlier proceedings including Writ Petition No. 10147 of 2015 stand disposed of.

37. Needless to further clarify that since the Writ Petitions are disposed of, all Miscellaneous Applications therein also stands disposed of.

38. At this stage, Mr Sethna appearing for the Petitioner says that some protective order be granted in favour of the Petitioner. At least the electricity supply to the running factory of the Petitioner should not be disconnected. We do not think that such a request can be accepted from a chronic and persistent defaulter like the Petitioner. One who is not ready and willing to pay the amounts crystallized as on 31st March 2009 cannot be heard to say that the supply of electricity to continue uninterruptedly. That would amount to a mockery of the rule of law. We therefore do not grant this request and it is refused.

(S. C. DHARMADHIKARI, J.)

(G.S. PATEL, J.)