16.09.2021
Ct. No.13
Sl. No.157
akd

W.P.A. 13875 of 2021 ***[via video conference]***

[Impex Ferro Tech Limited & Anr. -Vs- Damodar Valley Corporation & Ors.]

Mr. Sagar Bandyopadhyay
Mr. Tapas Saha
Mr. S. Dewangi
Mr. D. Deb
… … for the petitioners

Mr. Jaydip Kar
Mr. Prasun Mukherjee
… … for the State

The writ petitioner no.1 is aggrieved by communication dated 18th August, 2021 of the Damodar Valley Corporation-licensee agreeing to grant instalments insofar as the outstanding electricity dues of the writ petitioner no.1 is concerned but refusing to allow the petitioner no.1 to pay security deposit by instalments.

It appears from the said communication that a sum of Rs.21,46,50,000/- is the required deposit to be maintained by the writ petitioner no.1 for resumption of electricity supply. Admittedly, the dues in excess of 51 crores and odd have been run by the writ petitioner no.1 with the DVC.

Learned counsel for the writ petitioners has relied upon Regulation 4.2.1 of the West Bengal Electricity Regulatory Commission dated 2nd April 2013 stating that even security deposit can be allowed to be paid by a consumer in instalments. The writ petitioner no.1 submits that a large number of employees would be affected by reason of refusal of the DVC in allowing such instalments.

It is also argued that the petitioner no.1 would have otherwise availed the facility of prepaid meter which would not have called for a security deposit at all. In absence of such facility from the DVC, the writ petitioner no.1 claims that the licensee has acted unreasonably in refusing instalments towards the security deposit required to be replenished by the writ petitioner no.1.

This Court has carefully considered the arguments advanced on behalf of the petitioners as well as the licensee.

A plain reading of Regulation 4.2.1 above indicate that the same is not mandatory or binding on the DVC. The DVC is not bound or obliged to grant instalments towards replenishment of security deposit to the writ petitioner no.1. There is force in the argument Mr. Mukherjee, learned counsel for the DVC, that a consumer, who has defaulted to the extent of Rs.51 crores in electricity dues even otherwise should not be allowed any instalments towards security deposit.

This Court is of the view that the matters essentially falling within the commercial decision of the licensee should be left with the exclusive discretion of such licensee. Instrumentalities of State engaged in commercial business are required to compete with a large number of private resourceful sound organisations who are generally otherwise not bound by the constraints that an authority of State is under.

In those circumstances, it would be extremely unfair, if not grossly improper, for a writ court to sit appeal on any commercial decision of the licensee under a private contract. Insofar as the submission of the writ petitioner no.1 that the DVC does not have a prepaid meter facility, the Court is unable to brush aside the argument of the licensee that prepaid meters are generally meant for domestic consumers.

This court has no way of verifying the submission and the statements made by the learned counsel for the petitioners that private licensees in other states like TATA Power provide such prepaid meters also to commercial entities. The writ petitioner no.1 cannot be put in the same class as a licensee of other states having different financial status and functioning under different financial environment.

In that view of the matter, no relief can be granted to the writ petitioners in the instant proceeding.

With the aforesaid observations, the writ petition is disposed of.

However, the aforesaid order may not prevent the licensee from taking appropriate steps towards any request made by the writ petitioner no.1.

There shall be no order as to costs.

All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)