

September 9, 2024
Sl. No.A 19
Court No.9
s.biswas

WPA 22018 of 2024

M/s. Machfin Business Solution IMF Private Ltd.
vs.
The West Bengal State Electricity Distribution
Company Limited and others

Mr. Raja Saha
Mr. Amit Kr. Ghosh
Mr. Sanjay Mukherjee
Ms. Bahnidipa Roy

... for the petitioner

Ms. Susmita Chatterjee

... for the WBSEDCL

1. The petitioner is a public limited company. The land with building, shed and structure, formerly known as Unit-I of Sree Maa Sarada Ores & Forgings India Private Limited, Dakhin Jhapardaha, ONGC Road, Domjur, Howrah-771405, West Bengal, was sold to the petitioner by the State Bank of India, in a public auction. The sale certificate is at page 18. The property had been mortgaged to the State Bank of India by Sree Maa Sarada Ores & Forgings India Private Limited. The mortgage was created by deposit of title deeds. The petitioner applied for electricity. The electricity distribution company refused to grant such connection to the petitioner on the ground that there were unpaid dues of the erstwhile owner.
2. The learned advocate for the WBSEDCL submits that there is an outstanding due of Rs.2,86,112.68/- without late payment

surcharge. The late payment surcharge as calculated as on September 4, 2024, amounts to Rs.6,63,684.00/-.

3. Ms. Susmita Chatterjee, learned advocate for the WBSEDCL, submits that Regulation 46 entitled the distribution company to recover the outstanding dues from the subsequent consumer, on a prorate basis.
4. It is further contended that Regulation 55 also provides that new connection to the premises in respect of which the supply was disconnected for non-payment of outstanding dues, shall not be granted.
5. This court finds that recovery of dues from the subsequent purchaser of the property is permissible only when the distribution company can establish a nexus between the proposed consumer/petitioner herein and the erstwhile consumer.
6. The records clearly indicate that the petitioner purchased the property in an auction sale held by the State Bank of India in accordance with the provision of the SARFAESI Act. There does not appear to be any nexus. The petitioner participated in a public auction. Put in his bid. Being the successful bidder, the property was

sold to the petitioner and certificate of sale was issued to the petitioner.

7. The Hon'ble Division Bench in the matter of **Damodar Valley Corporation & Anr. vs. Saluja Steel and Power Private Limited & Ors.** in MAT 611 of 2023 held as follows:

“34. This Court finds that Clause 6.10 of the 2015 Regulations states that if the erstwhile consumer defaulted in payment of dues and left the premises for good and the concerned premises has come in legal possession of a new occupant through transfer or a decree/order of the Court/authority and who has no nexus with the previous owner/occupant in any manner, applies for connection of the electricity line in the same disconnected premises, then the distribution licensee shall provide electrical connection without realization of the arrears/dues of the premises payable by the erstwhile consumer, from the subsequent transferee of the premise and he shall not be held liable to pay/discharge the liability of the previous consumer for securing a fresh connection.

35. This Court, therefore, holds that Clause 6.10 of the 2015 Regulations creates a charge and permits recovery of arrear electricity dues of the previous owner/occupier from the subsequent transferee only if the subsequent purchaser has nexus with the previous owner/occupant in any manner or if he was associated either as a partner, director or managing director in respect of earlier agreement executed in his name or in the name of a firm or a company. In other words, if the nexus is not established, the subsequent transferee cannot be fastened with the liability of the previous owner/erstwhile consumer in respect of arrear electricity dues.

36. The learned Single Judge rightly observed that the mere fact that the writ petitioners/respondents acquired the property by direct purchase through four

sale deeds from the erstwhile consumer does not establish nexus of the purchaser and it is for the licensee to plead and prove such nexus, if any. It is not the case of the licensee that there is/was a nexus between the erstwhile consumer and the present owner in order to attract Clause 6.10.

37. This Court, therefore, holds that only if the nexus as contemplated under Clause 6.10 of the 2015 Regulations is established the distribution licensee can recover arrear electricity dues of the erstwhile consumer from the subsequent transferee.

38. Our view is also supported by the decision of the Hon'ble Division Bench of the Jharkhand High Court in Om Prakash Garg (supra) wherein it was observed that fresh connection could be denied to a purchaser on the ground of nexus.

39. Therefore, DVC can recover arrear electricity dues of the erstwhile consumer from the purchaser of the premises, if nexus is established. The issue is answered accordingly.”

8. Under such circumstances, refusal to grant connection, on account of existing outstanding dues, is unlawful and not supported either by any statutory provision or by Regulations. Thus, connection shall be granted to the petitioner, by the distribution company, without giving up their claim over the outstanding dues, from the person liable to pay such amount. The distribution company shall grant such connection, upon compliance of all other formalities, if any, within a period of one month from date.
9. It is contended by the petitioner that formalities have been complied with. The distribution

company may avail of other remedies in accordance with law, for recovery of money from the consumer, who left the same unpaid.

10. The writ petition is accordingly disposed of.

11. All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)