05.02.2025
Court No.13
Item No. 11+12
sp/pk

AST 15 of 2014
With
ASTA 1 of 2014 (Old No: ASTA 8 of 2014)
CESC Limited
Vs.
Shamim Akhter & Anr.
With
WPA 681 of 2014
Shamim Akhter
Vs.
CESC Limited & Ors.

Mr. Om Narayan Rai,
Mr. Debanjan Mukherjee
…. For the CESC Ltd.

Mr. Bidyut Kr. Halder,
Mr. Indranil Halder
…. For the respondent.

1. Challenge in the instant appeal is to an order dated 15th January, 2014 passed by a Single Bench of this Court in WP 681 (W) of 2014 (Shamim Akhter Vs. CESC Ltd. & Ors.).

2. This is the third round of litigation instituted by said Shamim Akhter before this Court.

3. On 26th May, 2012 for unauthorized use of electricity by a "Hotel Biman Private Limited", a sum of Rs. 16,39,385/- was provisionally assessed on 23rd June, 2012. The said amount was confirmed in the final order of assessment. The Hotel "Biman Private Limited" did not pay the said amount and its electricity

connection remained disconnected. The assessment remains unchallenged and unpaid.

4. The first writ petition was filed against a demand of Rs. 13,843/- dated 9th June, 2012, against the respondent. It was found that against meter no. 2325867 in the name of the respondent/writ petitioner, unauthorized supply was being made to the said hotel owned and controlled by the writ petitioner.

5. The demand under the notice dated 9th June, 2012, a sum of Rs. 13,843/- was found constituted theft within the meaning of Section 135(1A) of the Electricity Act, 2003 and supply to the petitioner was disconnected. The writ petitioner filed WP 14176 (W) of 2012 (first writ petition) that was disposed of by order dated 6th July, 2012, directing the petitioner to pay the assessed amount for restoration of supply of electricity.

6. The petitioner applied thereafter for additional load of 12.0 KW which was provided under meter no. 4706289.

7. On inspection conducted on 23rd August, 2003 by the licensee, it was once again found that the petitioner was supplying electricity to the said Hotel through the said additional load from meter no. 4706289 and a sum of Rs. 3,34,355/- was found as amount payable for such theft. Invoking the provisions of Section 135(1A) of

the Electricity Act, 2023 once again supply was disconnected.

8. The writ petitioner thereafter filed the second writ petition being WP 26609 (W) of 2013, challenging the demand and order of disconnection. By an order dated 11th September, 2013 passed by a Single Bench of this Court, the writ petition was disposed of directing payment of Rs. 1.5 lakhs and supply of electricity was directed to be restored.

9. On 24th September, 2013, pursuant to final order of assessment under the provisions of Section 127 of the Electricity Act, the amount assessed was confirmed at Rs. 3,34,355/-.

10. A demand was raised for the said sum after deducting Rs. 1.5 lakhs from the payment made by the petitioner together with a sum of Rs. 16,39,385/- being the dues of the "Hotel Biman Private Limited" The consolidated demand dated 27th December, 2013 was the subject matter of the writ petition before the Single Bench wherein the impugned order dated 15th January, 2014 was passed. On further investigation by the appellant it was found from the Memorandum and Articles of Association of the said "Hotel Biman Private Limited", that the writ petitioner/respondent was a promoter director and a subscriber shareholder thereof.

The said “Hotel Biman Private Limited” was accustomed to act as per the dictate and instructions of the writ petitioner Shamim Akhter.

11. It transpires from the facts as narrated hereinabove and the recording the case;

(a) The writ petitioner is the alter ego of the said Hotel “Biman Private Limited” and its Promoter-Director.

(b) The writ petitioner appears to have adopted a dubious method of avoiding paying electricity dues of the hotel in question and supply power to it from his own meters. The writ petitioner, firstly, on 9th June, 2012 made unauthorized supply from his meter to the hotel in question which constitutes a theft of electricity under Section 135(1A) of the Electricity Act, 2003.

(c) Upon detection of the unauthorized use and theft of electricity and against notices of disconnection issued by the licensee, the writ petitioner filed three several writ petitions. After obtaining orders from this Court in the said writ petitions, the petitioner only paid the value of unauthorized aforesaid supply, through meter in his name while keeping the amount dues of the hotel, to the tune of Rs. 16,39,385/- continuously unpaid.

(d) The writ petitioner succeeded in misleading the three Single Benches of this Court in the process.

(e) The last of such misleading, was in obtaining the impugned order in question dated 15th January, 2014.

12. The modus operandi of the writ petitioner is fraudulent to say the least.

13. Against the demand raised against the hotel in question, and in proceedings challenging the same it is the writ petitioner himself who appeared in person as a Director of the said hotel.

14. The same is recorded in the impugned order dated 27.12.2013 at paragraph 1 and the second last paragraph at page 2 thereof.

15. One of the circumstance where the principle of "lifting of corporate veil" is applied by courts is where a person hiding under a cloak of corporate veil attempts to defraud people at large and particularly government and autonomous bodies. Fraud is, therefore, one of the principal ground for applying the principles for "lifting corporate veil" as held by the Hon'ble Supreme Court at paragraph 28 in the case of **DDA Vs. Skipper Construction** reported in ***(1996) 4 SCC 622.***

16. The impugned notice is clear and explicit. Unless the writ petitioner/respondent pays the entire demands as contained in the order dated 27.12.2013 together with further applicable interest, the question of restoration of any electricity supply to him does not and cannot arise.

17. In the impugned order dated 15.01.2014 the learned Single Bench has inadvertently put a judicial stamp over fraud and deceit of the writ petitioner/respondent in unauthorisedly stealing electricity from the meter meant to supply to him and passing it on to the hotel. The said hotel "Biman Private Limited" runs under stolen electricity. The Single bench has also inadvertently ignored the demand of Rs. 16,39,385/- imposed on the petitioner as dues of the hotel in the impugned order.

18. Having regard to the observations made herein above, this Court is of the view that the impugned order dated 15.01.2014 cannot be sustained in law and is, therefore, set aside.

19. The writ petitioner would be liable to pay the entire demand raised in the order dated 27.12.2013 together with simple interest at the rate of 14 per cent per annum being close to the rate of interest charged by public sector banks otherwise called the bank PLR.

20. This Court deems it fit to impose the aforesaid rate of interest since the writ petitioner by, keeping the outstanding demand of the licensee in the name of the hotel, may have deprived the public at large of a share and supply of the electricity.

21. Non-payment of interest and keeping outstanding of dues of well over 16 lacks would defeat the object and purpose of the Electricity Act, 2003 as a whole.

22. It is submitted by counsel for the parties that since after the instant writ petition and the appeal, the supply to the writ petitioner once again disconnected for unauthorized theft of electricity and supply, the same to be hotel in question.

23. With the aforesaid observations, the appeal is allowed and disposed of.

24. In view of the above, connected applications, if any, shall stand disposed of.

25. There shall be no order as to costs.

26. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)