

Vidya Amin

WRIT PETITION NO. 2734 OF 2025

1. Aeon Creations Pvt. Ltd.
 2. Mr. Rajendra Prasad Jain,
Shareholder of Petitioner No. 1
- Vs.
1. The State of Maharashtra, Industries, Energy &
Labour Department, Mantralaya, Mumbai.
 2. Maharashtra State Electricity Distribution Co. Ltd.,
through its Chief Engineer (Commercial)
 3. The Chief Engineer, (KZ), MSEDCL, Kalyan Zone
 4. The Superintendent Engineer, MSEDCL,
Palghar Small Circle
 5. Maharashtra Electricity Regulatory Commission,
a State Electricity Regulatory Commission

Mr. Jay Sanklecha a/s. Mr. Kunal Damle for the petitioners.
Ms. Deepa Chawan, Senior Advocate a/w. Mr. Kiran Gandhi, Ms. Ruchi Patil i/b.
Little and Company for respondent nos. 2 to 4.
Mr. M.M. Pabale, AGP for the State.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
RESERVED ON : 16 April 2025
PRONOUNCED ON : 6 June 2025

Judgment (Per G.S. Kulkarni, J.)

1. Rule, made returnable forthwith. Respondents waives service. By consent of the parties, heard finally.
2. This petition under Article 226 of the Constitution of India assails the communication dated 6 December, 2024 issued by respondent no. 2-Maharashtra

State Electricity Distribution Co. Ltd. (for short **“MSEDCL”**) whereby the petitioners (for short **“petitioner”**) have been called upon to pay an amount of Rs.2,07,24,237/- in relation to the charges for the electricity consumed being categorized as a theft case, failing which the petitioner’s online application dated 11 October 2024 under the “Mahavitaran Abhay Yojana, 2024” (for short **“Amnesty Scheme”**) shall not be considered for approval and will be rejected after 13 December 2024 without further intimation.

3. The impugned communication is issued on the basis of Circular no.7 of 2024 dated 3 December 2024, issued by MSEDCL titled as ‘Extension to Mahavitaran Abhay Yojana-2024’ whereby the Amnesty Scheme earlier floated was extended till 31 December 2024, with an additional provision, that in case of permanently disconnected (PD) consumers having theft cases, 100% interest will be waived off, on making payment of 100% theft assessment amount. The validity of the said circular has also been challenged by the petitioner on the ground that the impugned communication dated 6 December 2024 is issued to the petitioner on the basis of said circular. In these circumstances, the petitioner has prayed that a writ be issued to MSEDCL and its officers, who are arrayed as respondent nos. 2 to 4 to accept the petitioner’s application under the Amnesty Scheme and without insisting for compliance of the additional condition imposed in the impugned circular dated 3 December, 2024.

Facts

4. The relevant facts as averred in the petition needs to be noted: The

petitioner is *inter alia* engaged in the business of manufacturing of mild steel ingots. The petitioner was in need of a manufacturing unit to expand its existing business, when it came across a public notice dated 24 January, 2008, issued by a secured creditor qua industrial unit of one “Vishwas Steel Ltd.” being industrial unit at Plot No. J-79, Tarapur Industrial Area, MIDC Sarvali Palghar, District Thane, (for short “**said premises**”) inviting bids for the sale of the said premises under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “**SARFAESI Act**”) and the rules framed thereunder on “as is where is basis and whatever there is basis”. The petitioner participated in the auction and acquired the said premises. A sale certificate dated 12 May, 2008 was issued in favour of the petitioner. Consequent to the sale certificate, a registered agreement dated 5 January, 2010 was executed between the secured creditor and petitioner No.1 conveying the right, title and interest in the said premises in favour of the petitioner. The petitioner was also put in possession of the premises on 12 May, 2008.

5. Since the electricity connection at the said premises was permanently disconnected with effect from 1 April 2001 and in order to commence its business/manufacturing activity, the petitioner made an application to MSEDCL (erstwhile MSEB) requesting for a fresh electricity supply connection in the petitioner’s own name. As MSEDCL failed to process the petitioner’s application, the petitioner’s made a representation to the MSEDCL, which also did not find favour with the said authority. The petitioner was also informed by concerned

officers of MSEDCL that to avail a fresh connection, it would be subject to the petitioner clearing the arrears of electricity charges that were due and payable by the previous occupant/owner of the premises.

6. In the aforesaid circumstances, the petitioner approached this Court by filing Writ Petition No. 1686 of 2011 *inter alia* praying for a direction that MSEDCL be directed to provide a new electricity connection at the premises, as a circular, on the basis of which MSEDCL insisted that the petitioner-company clear the arrears of electricity charges payable by the previous occupant/owner of the premises, be quashed and set aside. The substantive prayers as made in the said petition are required to be noted which reads thus:

“a. that this Hon'ble Court be pleased to issued a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, order or direction under Articles 226 of the Constitution of India calling for the papers and proceedings with respect to the Impugned Condition 20.8 (Exhibit I-1 hereto), Impugned Regulation No.10.5 (Exhibit I-2 hereto) and Impugned Circular No.53 dated 7th May, 2007 (Exhibit I-3 hereto) and, after examining the legality and validity of the same, this Hon'ble Court be pleased to quash and set aside the same as void, being ultravires the Electricity Act, 2003 and in violation of Articles 14 and 19(1)(g) of the Constitution of India;

(b) that in the alternative and without prejudice to prayer clauses (a) above, this Hon'ble Court be pleased to declare that the Impugned Condition 20.8 (Exhibit I-1 hereto), Impugned Regulation No.10.5 (Exhibit I-2 hereto) and Impugned Circular No.53 dated 7th May, 2007, (Exhibit I-3 hereto) are inapplicable to the Petitioners' case;

(c) that this Hon'ble Court may be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order or direction under Articles 226 of the Constitution of India restraining the Respondent Nos. 2 to 4 from implementing and/or taking any steps in furtherance of and/or acting upon Impugned Condition 20.8 (Exhibit I-1 hereto), Impugned Regulation No. 10.5 (Exhibit I-2 hereto), and Impugned Circular No.53 (Exhibit I-3hereto) against the Petitioner No.1;

(d) that this Hon'ble Court may be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order or

direction under Articles 226 of the Constitution of India directing Respondent Nos. 2 to 4 to issue a fresh electricity connection to the Petitioners' premises, being the factory premises situated at leasehold Plot No. J-79, admeasuring 6151 sq. mtrs or thereabout, in Tarapur Industrial Area of MIDC, Tarapur, within the village limits of Sarvali and outside the limits of Municipal Council, in rural area, Taluka and Registration Sub-District Palghar, Registration District Thane, Maharashtra, as mentioned in the letter dated 16th July 2009 (Exhibit D-1 hereto) and the Application (Exhibit D-2) hereto;”.

7. The said Writ Petition came to be admitted by an order dated 15 June, 2011 passed by this Court. Insofar as interim relief was concerned, the Court considering the statutory regulations, namely, the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (for short “**Maharashtra Electricity Supply Code 2005**”) passed interim orders directing the MSEDCL to grant an electricity connection to the petitioner subject to the petitioner depositing unpaid dues of electricity in respect of the premises in question of a period of six months prior to the date on which electricity supply was disconnected, which were quantified by the petitioner in paragraph 6.8 of the memo of the writ petition at 3,35,54,866.94. The amount to be deposited by the First Petitioner with the Second Respondent shall be subject to due verification. As the petitioner’s case in this petition is based on this interim order, the same is required to be noted in its entirety which reads thus:

“1. The challenge in these proceedings under Article 226 of the Constitution is to (i) A condition (Condition 20.8) contained in the Conditions of Supply (ii) Regulation 10.5 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005; and (iii) A circular dated 7 May 2007.

2. The Fifth Respondent, IFCI Limited invited bids for the purchase of the immovable property of the Sixth Respondent under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement

of Security Interest Act, 2002. The First Petitioner submitted a bid and was declared as a successful bidder. The sale in favour of the First Petitioner was confirmed and a sale certificate was issued on 12 May 2008, following which a registered deed of sale was executed on 5 March 2010. The First Petitioner submitted an application on 16 July 2009 under the Regulations seeking a fresh electricity connection. The grievance of the Petitioners is that the application was not being disposed of. Following this, the Petitioners made an application under the Right to Information Act, 2005, which led to a disclosure that there were outstanding arrears of electricity charges amounting to Rs.3.35 crores for a period of six months prior to the disconnection of supply. These charges were due and payable by the Sixth Respondent, the original owner. The Petitioners have submitted in these proceedings that as auction purchasers, they are not liable to pay the outstanding dues of the Sixth Respondent as a condition precedent to obtaining a fresh electricity connection.

3. The terms and conditions on which the petitioners purchased the property are set out in Clauses 2.4 and 2.5 of the tender document which reads as follows:-

“2.4 All the assets offered for sale are on AS IS WHERE IS AND WHATEVER THERE IS BASIS’ as composite unit. The quantity indicated, if any, are purely indicative and without any guarantee and IFCI Ltd. shall not entertain any claim/complaint from the buyer for any deficiency in quantity/size/number etc. for recovery of whole or any part of the bid/ purchase money, loss of profit/ interest, damages etc.

2.5 The unit(s) may have certain outstanding liabilities which are to be met by the purchaser and which will be over and above the sale consideration. The prospective purchaser may carry out due-diligence in respect of likely liabilities pertaining to the unit(s) before submitting the tender. It may be noted that the purchaser will be responsible for meeting these liabilities, if arise, and IFCI Ltd. will not be liable to meet any such liabilities whatsoever.”

4. These conditions clearly provide that the Petitioners had purchased the secured asset on an “as is where is basis” and were placed on notice that there may be outstanding liabilities which would have to be met by the auction purchaser over and above the sale consideration. But, the submission of the Petitioners is that conditions 2.4 and 2.5 constitute a contractual agreement between the Petitioners and the Fifth Respondent to the sale of the property as a secured asset. Hence it has been urged that this would not preclude the Petitioners from challenging the power of the Second Respondent to demand the arrears of electricity charges as a condition for the grant of a new electricity connection.

5. Now in this regard, the question before the Court is whether the Second Respondent has either a statutory power or a contractual power to demand the payment of arrears from the Petitioners as a condition for the grant of an electric connection. The Second Respondent is governed by

statutory regulations, namely, the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005. Regulation 10.1 postulates that a connection may be transferred in the name of another person inter alia in case of transfer of ownership or occupancy of the premises, upon an application for the change of name by the new owner or the occupier. Regulation 10.5 is however, material and provides as follows:-

“10.5 Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased consumer or the erstwhile owner/ occupier of any premises, as a case may be, shall be a charge on the premises transmitted to the legal representatives/ successors-in-law or transferred to the new owner/occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises, as the case may be:

Provided that, except in the case of transfer of connection to a legal heir, the liabilities transferred under this Regulation 10.5 shall be restricted to a maximum period of six months of the unpaid charges for electricity supplied to such premises.”

6. Similarly, clause 20 of the Conditions of Supply deals with a change of name or a change in the ownership of the installation and Clause 20.8 provides as follows:-

“20.8 Any charge of electricity or any sum other than the charge of electricity due to the MSEDCL, which remains unpaid by a deceased consumer or the previous owner/ occupier of any premises, as the case may be, shall be a charge on the premises transmitted to the legal representatives / successors- in-law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the MSEDCL as due from such legal representatives or successors-in-law or new owner/ occupier of the premises, as the case may be; except in the case of transfer of connection to a legal heir, the liabilities transferred shall be restricted to a maximum period of six months of the unpaid charges for electricity supplied to such premises.”

7. Analysing Clause 10.5, it is evident that charges for electricity which have remained unpaid by an erstwhile owner or occupier, constitute a charge on premises transmitted to the successors-in-law or to the new owner or occupier of the premises. Consequently, by and as a result of a statutory regulation, a charge has created upon the premises in respect of the unpaid electricity dues of a previous owner. Regulation 10.5 brings within its hold, not merely a case of a voluntary transfer but, it is evident at least prima facie that the use of the words “successors-in-law” would involve a case such as the present. The second important aspect about Regulation 10.5 is that the unpaid dues of the previous owner are

recoverable by the distribution licensee from the new owner or, as the case may be, the successor-in-law. This is subject to the condition that the electricity dues can be recovered for a maximum period of six months of the unpaid charges for electricity supplied to the premises. Consequently, by and as a result of the statutory regulation, a charge has been created and a provision has been incorporated by which the dues can be recovered from the successor-in-law or new owner subject to the maximum period that is stipulated therein.

8. This provision assumes significance in view of the Judgment of the Supreme Court in **Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. M/s. Paramount Polymers Pvt. Ltd.** The judgment of the Supreme Court involved a case where a sale had taken place of an asset, which had been mortgaged to the State Financial Corporation in exercise of powers under Section 29 of the State Financial Corporations Act, 1951. The sale there, as in the present case, was on an “as is where is basis”. The Supreme Court adverted to an earlier decision in **M/s. Isha Marbles Vs. Bihar State Electricity Board**, where the Court had held that in the absence of there being a charge over the property and the premises come to be owned or occupied by an auction purchaser who seeks a fresh connection, the purchaser cannot be called upon to clear the past arrears as a condition precedent for the grant of a fresh connection. In the decision in **Dakshin Haryana Bijli Vitran Nigam Ltd. (Supra)**, the Supreme Court after adverting to the judgment in **Isha Marbles (Supra)** made a reference to the conditions contained in clause 21-A of the Conditions of Supply. Those Conditions of Supply had stipulated an entitlement in the licensee to demand the arrears of electricity charges from the purchaser for the grant of a re-connection or a fresh connection. The Supreme Court held that the terms and conditions of supply were applicable to the First Respondent when it sought a fresh connection for the grant of electric supply. The Supreme Court also noted that the earlier decision in **Isha Marbles** had no occasion to consider provision in the nature of clause 21-A of the Conditions of Supply.

9. A Division Bench of this Court consisting of Palshikar and Munshi, JJ delivered a Judgment on 19 December 2002 in **Super and Stainless Hi-Alloys Ltd. Vs. State of Maharashtra & Ors.** by which it struck down a commercial circular issued by MSEB on 19 December 1998 (Circular 607). By the circular that was challenged before the Division Bench, MSEB had modified an earlier circular dated 18 June 1993 under which a purchaser of an undertaking under Section 29 of the State Financial Corporations Act, 1951 had been granted an option of either getting a reconnection by paying the arrears of the outgoing consumer or to get a fresh supply of electricity without clearing the arrears of the outgoing consumer. By circular 607 the said provision was withdrawn and it was stipulated that re-connection or a fresh supply would be released only after the arrears of the Board were cleared. This circular was struck down by the Division Bench, following the Judgment of the Supreme Court in **Isha Marbles**. An Appeal against the judgment of the Division Bench has been admitted by the Supreme Court and is pending. The point to be noted at this stage however, is that the Judgment of the Division Bench was to the enforcement of the statutory regulations of 2005. As already noted earlier, the Judgment of the Division Bench was delivered on 19 December 2002

which was before the statutory regulations were enforced. Once the regulations have been enforced, a prospective applicant for electric supply would be governed by those regulations. The Petitioners before the Court have also challenged the circular dated 7 May 2007. The circular inter alia makes interim arrangements for the grant of electric connections during the pendency of the proceedings before the Supreme Court. For the reasons, which have been indicated earlier, prima facie, it would not be possible to accede to the contention of the Petitioners that they would be entitled to the grant of an electric connection without clearing the unpaid dues. The Petitioners are subject to Regulation 10.5. However, in terms of the provisions of Regulation 10.5, the Petitioners would be liable only to the extent of a maximum period of six months of the unpaid charges in respect of electricity supplied to the premises.

10. The attention of the Court has been drawn to the fact that a Division Bench of this Court presided over by the learned Chief Justice has admitted a Petition (M/s. Namco Corporation Limited Vs. State of Maharashtra & Ors. W.P. 8654 of 2010) on 16 November, 2010. The Division Bench while granting Rule, had directed the distribution licensee to supply electricity, subject to the Petitioner filing an undertaking that in the event that the Petitioner there, was held liable to pay any amount to the electricity company, the Petitioner would pay the amount as may be directed by the Court at the final hearing. The conditions on which the property was sold in that case have been adverted to in the order of the Division Bench. Condition 13 in that case stipulated that the purchaser would be liable to pay cess, charges, fees and outgoings only from the date of the confirmation of sale and that all earlier taxes, charges, fees and out going would be paid out of the sale proceeds. Condition 13 in that case must be contrasted with conditions 2.4 and 2.5 in the present case governing the tender sale. That apart, having regard to the provisions contained in Regulation 10.5 and condition 20.8 of the Conditions of Supply, it would not be possible for the Court to direct the grant of interim relief of electric supply being restored without an order of deposit. Hence, the following order is passed:-

(i) Rule;

(ii) The Second Respondent shall grant an electric connection to the First Petitioner subject to the deposit by the Petitioners of the unpaid dues of electricity in respect of the premises in question of a period of six months, prior to the date on which electric supply was disconnected. In paragraph 6.8 of the Petition these dues have been quantified at 3,35,54,866.94. The amount to be deposited by the First Petitioner with the Second Respondent shall be subject to due verification;

(iii) In the event that the Petitioners succeed, the Second Respondent shall refund and/or adjust the amount which has been paid by the First Petitioner together with such interest as may be awarded by the Court at the final hearing.”

(emphasis supplied)

8. It is submitted that this order does not deal with the issue of the theft charges. Further, the petitioner although was granted the aforesaid interim relief by this Court, the petitioner did not take benefit of such order i.e. the petitioners never deposited the said amount till date i.e. (period of 14 years).

9. On such backdrop, the petitioner has contended that the petitioner learnt about the Amnesty Scheme which was introduced by MSEDCL by issuing Circular dated 29 August, 2024 in pursuance of the directions of the Supreme Court in the case of **K.C. Ninan vs. Kerala State Electricity Board & Ors.**¹. One the conditions of the Amnesty Scheme for an applicant to be eligible for participation was to the effect that the applicant would be required to unconditionally withdraw any petition/case/suit filed against MSEDCL. Although the petitioner had obtained an interim order (supra) [albeit the benefit of which was never taken by the petitioner], the petitioner has stated that the petitioner took necessary steps to withdraw the said pending Writ Petition which was allowed to be withdrawn by this Court by an order dated 11 October, 2024.

10. It is the petitioner's contention that the petitioner had become eligible to participate in the amnesty scheme and entitled to the benefit of delayed payment charges and interest being waived off, under the amnesty scheme, and the waiver was to take effect from the date of permanent disconnection till the date of application. The petitioner thus contends that the petitioner was under an impression, as gathered from the amnesty scheme, that upon payment of the

1 2023 SCC OnLine SC 663

principal arrears due on 31 March 2024, all interest and delayed payment charges would be waived and petitioner No. 1 would be provided with a fresh electricity connection.

11. On such backdrop, on 11 October 2024, the petitioner made an online application under the Amnesty Scheme. While filling up the said online application, which was in the name of the previous owner of the premises, the petitioner opted to pay the principal arrears as on 31 March 2024, which was auto calculated to Rs.3,35,55,255.43 in six installments. Also as earlier legal proceedings were pending, the Competent Authority of MSEDCL was required to approve the Application submitted by petitioner No.1 before the petitioner could make the necessary payment, which the petitioner was ready and willing to make, however, the system did not allow the petitioner to make such payment until its application was approved by the Competent Authority.

12. As the amnesty scheme was to expire on 30 November 2024 (the period of the scheme as notified was 1 September 2024 to 30 November 2024), the petitioner addressed a letter dated 25 November 2024 to the MSEDCL regarding that the petitioner had not received any response on its application and reiterated its readiness and willingness to make the payment. Further, another letter dated 28 November 2024 was addressed by the petitioner, however, no action was taken. Thus, insofar as the petitioner's application was concerned, the scheme stood lapsed on 30 November 2024.

13. The amnesty scheme was however extended by the impugned circular dated 3 December 2024, whereunder MSEDCL informed the consumers, that many industries/consumers were facing financial crisis and were willing to participate in the scheme, it was hence proposed for extension of the Amnesty Scheme, as approved by the Competent Authority, however, with an additional provision that in case of PD (Permanent Disconnection) consumers having theft cases, 100% interest will be waived off on making payment of 100% “theft assessment amount”. The impugned circular is required to be noted, which reads thus:

“Ref: CE (B&R)/Extn.MAY-2024/Circular/No.037449 Date: 03.12.2024

B&R Circular No.07/2024

Extension to Mahavitaran Abhay Yojana-2024

Sub: Extension to Mahavitaran Abhay Yojana: 2024 for HT/LT PD consumers.

- Ref: 1. Circular No. 06/2024; CE (B&R)/PD Amnesty/Circular/No. 26407 dated 29.08.2024.
2. Approval from competent authority vide ON No. F-2024012522/2024 Dt. 25.09.2024.
3. Board Resolution No. 2947 Dt. 29.11.2024

MSEDCL has launched Mahavitaran Abhay Yojana 2024 to boost the recovery of PD arrears for 03 Months (from 1st Sept+2024 to 30th Nov-2024). There are many industries and other consumers facing the financial crisis and willing to participate in the scheme, approaching to Corporate office as well as field offices.

Accordingly proposal for extension to Mahavitaran Abhay Yojana 2024 was submitted for approval. Competent authority has accorded approval for extension till 3 December, 2024 with additional provision as below:

In case of PD consumers having theft cases, 100% interest will be waived off on making payment of 100% theft assessment amount.
All other terms & conditions of B&R Circular No. 06/2024 shall remain unaltered.
This circular is available on www.mahadiscom.in.

Executive Director”

14. Applying the aforesaid Circular in regard to the petitioner's application, the impugned communication dated 6 December 2024 was received by the petitioner informing the petitioner that in regard to the previous owner M/s. Vishwas Steel Ltd., a supplementary energy bill of Rs. 2,07,24,237/- regarding theft of energy for the period of April 1991 to July 1994 was payable, in respect of which Special Civil Suit No. 876 of 1996 was filed by MSEDCL, which was decreed in favor of MSEDCL by judgment and order dated 23 September 2003. It was recorded that the said amount was due and payable along with interest @18%. The petitioner was informed that the petitioner can take benefit of the extension of the Amnesty Scheme 2024, which was upto 31 December 2024, however, with the additional provision that the petitioner/consumer has to pay the 100% theft assessment amount and 100% interest will be waived off only after the payment of principal electricity charges.

15. As the communication dated 6 December 2024 refers to the decree in the Special Civil Suit No. 876/96 which was decreed in favour of MSEDCL, the operative part of the judgment and decree is required to be noted, which reads thus:

“ORDER

1. The suit is decreed with costs.
2. The defendant is hereby ordered to pay Rs.2,07,24,237.16 ps.
3. The defendant do pay further interest upon a due amount of Rs.2,07,24,237.16 ps. at the rate of 18% p.a. from the date of suit till realisation.”

16. The petitioner being aggrieved by the impugned letter dated 6 December 2024 addressed a representation dated 12 December 2024, contesting the additional levy of Rs.2,07,24,237/-, to contend that an additional condition ought not to have been applied to the petitioner's case, as the petitioner had made its application within the extended period or prior thereto and which was not processed. However, the petitioner's representation was not considered and it is in these circumstances, the present petition has been filed praying for the following reliefs:

“(a) That this Hon’ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for the records and papers pertaining to the impugned letter dated 6 December, 2024 [Ex. R] and after going into the legality, validity and propriety thereof, quash or set the said the same.

(b) That this Hon’ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for the records and papers pertaining to the impugned circular dated 3 December, 2024 [Ex. S] and after going into the legality, validity and propriety thereof, quash or set the said the same.

(c) That this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature or mandamus or any other appropriate writ, order or direction:

i) directing Respondent Nos. 2 to 4 to forthwith process and/or approve the Petitioner No. 1's Application dated 11 October, 2024 as on the terms and conditions of the Amnesty Scheme prevailing on such date without instating for compliance of the additional condition imposed vide circular dated 3 December, 2024; and

ii) directing Respondent Nos. 2 to 4 to forthwith take all necessary steps to issue a fresh connection for the supply of electricity in the name of Petitioner No. 1 in respect of the Subject Premises.

(d) That pending the hearing& and final disposal of the present petition, direct the Respondent Nos. 2 to 4 to provide a temporary

electricity supply connection to the Subject Premises subject to the Petitioners making necessary deposits of the principal arrears in installment as contemplated under the circular dated 29 August, 2024 or on such other terms and conditions as this Hon'ble Court deems fit."

Submissions on behalf of the Petitioners

17. Mr. Sanklecha, learned counsel for the petitioners has made the following submissions:

(i) The principal arrears which were due and payable by the petitioner and as set out in the petitioner's application filed under the Amnesty Scheme was an amount of Rs.3.35 crores, being the amount payable by the petitioner, as recognized by the Division Bench of this Court in the order dated 15 June 2011 passed in Writ Petition No. 1686 of 2011. The petitioner had withdrawn the said petition so as to be eligible to participate in the amnesty scheme, being one of the requirements of the amnesty scheme.

(ii) The petitioner's application under the amnesty scheme was made on 11 October 2024, which was prior to the impugned circular dated 3 December 2024 issued by the MSEDCL, whereby the additional condition in relation to the recovery of theft charges was imposed, hence, it was incumbent on the MSEDCL to grant a benefit of amnesty scheme to the petitioner by accepting the amount of Rs.3.35 crores and not by demanding any other amount.

(iii) The aforesaid contentions of the petitioner are required to be

accepted for the reason that at the relevant time, when this Court passed an interim order (supra) on the earlier writ petition of the petitioner, the Maharashtra Electricity Supply Code 2005 was in operation, and it is on such basis the High Court had passed interim orders on the said writ petition filed by the petitioner permitting the petitioner to deposit Rs. 3.35 crores. This position was required to be accepted by the MSEDCL, even for the amnesty scheme.

(iv) It is next submitted that in the present case, on 7 June 2000, electricity connection to the premises, which at the relevant time were held by the previous owner M/s. Vishwas Steel Ltd., was temporarily disconnected and subsequent thereto, on 1 April 2001, electricity was permanently disconnected. It is thus submitted that MSEDCL for such reason should not have demanded theft charges of Rs.2,07,24,237/-, which would also be contrary to the view taken by the Division Bench of this Court in its order dated 15 June 2011 (supra).

(v) In any event, the petitioner had purchased the premises in auction sale under the SARFAESI Act, which was on “as is where basis”, and accordingly had made an application on 16 July 2009 to MSEDCL for fresh electricity connection in the petitioner’s name. In view of the failure to process the application, the petitioner had approached this Court in its previous Writ Petition no. 1686 of 2011 assailing the powers of MSEDCL to insist upon payment of arrears of electricity charges due from the

previous owner, as a condition to grant a new electricity connection and it is in such context, interim order dated 15 June 2011 passed by this Court became relevant and the amounts which were directed to be paid by the petitioner would entail to the benefit of the petitioner, namely, an amount of Rs.3,35,54,866.94.

(vi) On the petitioner's application under the Amnesty Scheme, the principal arrears were auto calculated to approximately Rs.3.35 crores, which the petitioner was ready and willing to pay, however, the MSEDCL failed to process the application despite the petitioner's reminders and hence the petitioner's application could not be outside the purview of amnesty scheme as originally notified so as to be categorized as an application falling under the extended scheme, which was *per se* not applicable insofar as the petitioner's case was concerned.

(vii) Insofar as the decree dated 23 September 2023 passed in the MSEDCL's suit is concerned, the same stood crystallized against the previous owner and not against the petitioner. The execution against the decree was also dismissed on account of non-prosecution and accordingly, the amounts/arrears under the decree could not have been foisted on the petitioner.

(viii) It is submitted that the decision of the Supreme Court in **K.C. Ninan** (supra) needs to be given effect to, more particularly

in the context of the observations in relation to Maharashtra as made in paragraph nos. 171 to 231.

(ix) It is submitted that even the MSEDCL in its reply affidavit, which was filed in the petitioner's earlier Writ Petition, accepted the position that it is Regulation 10.5 of the Maharashtra Electricity Supply Code 2005 which would become applicable and it is on overall consideration of these issues, this Court in the order dated 15 June 2011 had observed that for grant of electricity connection to the petitioner, the dues quantified by the petitioner in paragraph 6.8 of the said petition are Rs.3,35,54,866.94 which were to be taken into consideration. All such amounts were subject to due verification of the MSEDCL. These conditions could not have been different even if the previous owner M/s. Vishwas Steel Ltd. was to come forward and make payment of the electricity charges as due. It is hence submitted that on such submissions, the Writ Petition needs to be allowed. In support of the submissions reliance is placed on the following decisions:- **Namco Industries Vs. State of Maharashtra², K. C. Ninan (supra), Kamlesh Vasudeva Vs. Municipal Corporation of Delhi³ & TNEB Vs. Sabasthi Ammal⁴.**

2 Writ Petition No.9906 of 2010 dated 16/09/2011 & decision of Supreme Court in SLP NO.38269-38270-2012 dated 05-09-2023

3 2010 SCC Online Del.1625

4 2015 SCC Online Mad 1299

Submissions on behalf of the Respondents

18. On the other hand, Ms. Deepa Chavan, learned senior counsel for the MSEDCL has made the following submissions:-

i. At the outset, it is submitted that it is erroneous on the part of the petitioners to assume that the amount due and payable by the petitioners as arrears of electricity charges was an amount of Rs.3,35,54,866.94 merely relying on the order dated 15 June 2011 passed by this Court on Writ Petition No. 1686 of 2011. Such stance of the petitioner for two fold reasons is untenable: **firstly** the said order passed by the Division Bench does not take into consideration anything in regard to the liability of the previous owner M/s. Vishwas Steel Ltd. on the theft charges which stood crystallized in view of the judgment and decree passed by the Court of Civil Judge, Senior Division, Thane dated 23 September 2003 in Special Civil Suit No. 876/96 being an amount of Rs.2,07,24,237.16. **Secondly**, the petitioners purchased the premises in question on “as is where is” and “whatever there is” basis meaning thereby that the petitioners were liable to discharge all the liabilities, which had stood attached to the said premises. It is submitted that on the petitioners own showing as also held by the Division Bench of this Court in petitioners’ previous writ petition, the Court observed that Regulation 10.5 of the Maharashtra Electricity Supply Code 2005 provided that charges for electricity which had remained unpaid by erstwhile owner or occupier constitute a ‘charge’ on the premises transmitted to the legal representatives/successors-in-law or transferred to

the new owner/occupier of the premises. Hence, such liability was an independent liability, which was in fact, taken over by the petitioners when the petitioners purchased the premises in an auction undertaken under the SARFAESI Act. In such context, reliance is also placed on the decision of the Supreme Court in **K.C. Ninan** (supra) in regard to the position in law when a person purchases a property on “as is where is basis”.

(ii) It is next submitted that the amnesty scheme 2024 as introduced by the MSEDCL under Circular dated 03 December 2024 had categorically incorporated, that for the consumers to be eligible to take the benefit of waiver of delayed payment charges as also the interest, in cases of theft, 100% of the principal amount is required to be paid under the provisions of original amnesty scheme. Hence, there was no provision for exemption or waiver of the principal amount of such electricity dues in regard to the theft cases.

(iii) It is submitted that in the present case, the amounts payable had stood crystallized by virtue of a decree passed by the competent court against M/s. Vishwas Steel Ltd. and such charges were certainly relatable to the electricity connection provided to the premises in question which were a charge on the premises, as also payable under a binding decree of the Civil Court although qua M/s. Vishwas Steel Ltd. Hence, it cannot be said that the petitioner was not aware of such decree as the case of the MSEDCL in regard to an amount of Rs.2,07,24,237.16 payable under the decree was

well to the knowledge of the petitioner, as pointed out by the MSEDCL in the reply affidavit of Shri. S. M. Rathod, Superintending Engineer dated 30 March 2011.

(vi) It is submitted that once such amounts as payable to the MSEDCL stood crystallized under the decree of the Court, it was an amount due and payable to MSEDCL, considering that the petitioner purchased the said premises in an auction on “as is where is basis” and such liability was a charge on the premises.

(v) It is submitted that the petitioner’s contention that the amount of Rs.3,35,54,866.94 as referred in the interim order dated 15 June 2011 passed by the Division Bench of this Court in the petitioner’s earlier Writ Petition No. 1686 of 2011 ought to enure to the benefit of the petitioner to which the petitioner has expressed its willingness to pay, is untenable, inasmuch as the Court had categorically observed that the amount which would be deposited by the petitioners with the MSEDCL shall be subject to due verification. It is submitted that at no point of time the petitioner had approached the MSEDCL for due verification of the said amount. Even otherwise the petitioners would not be entitled to rely on the interim orders dated 15 June 2011 passed by this Court inasmuch as such interim orders passed by this Court could have entailed to the benefit of the petitioner, for obtaining an electricity connection in the manner as considered and directed. Admittedly for a period of 13 years, the petitioner had not taken the benefit of the said order and/or not complied and

thereafter the petitioners withdrew the Writ Petition No. 1686 of 2011. By withdrawing the said writ petition, the petitioners waived their rights to take any benefit of the said order, even assuming while not admitting, that at the relevant time the petitioners were required to pay an amount of Rs.3,35,54,866.94 although it was subject to further verification of the MSEDCL. Thus, the petitioner is estopped from asserting any rights under the said order much less to contend, as to what was mandated under the said order was a pre-deposit of principal amount of Rs.3,35,54,866.94. It is submitted that considering the principles of law as laid down by the Supreme Court in **K.C. Ninan** (supra), the petitioner is not entitled for the reliefs as prayed for. It is, hence, submitted that the petition does not need to be entertained and it deserves to be dismissed.

(vi) It is next submitted that in passing the interim order dated 22 June 2015 (supra) this Court had proceeded on the premise that Regulation 10.5 of the 2005 Regulation was applicable as the relevant time, however, in so far as the petitioner's amnesty application is concerned, the same was governed by 2021 Regulations which does not provide the proviso to clause 10.5 hence, the benefit of the proviso is not available to the petitioner. It is hence submitted that the Writ Petition does not deserve interference and needs to be rejected.

The question

19. Whether in the facts and circumstances of the case, the petitioners are entitled to maintain its application under the amnesty scheme without accepting

the liability to pay the theft charges of Rs.2,07,24,237.16.

Analysis:-

20. We have heard learned counsel for the parties. We have perused the record. The primary submission as made on behalf of the petitioner is to disown the liability to discharge the theft charges being called upon by the MSEDCL to be paid by the petitioner. The petitioner contends that by applying Regulation 10.5 of the Maharashtra Electricity Supply Code 2005 (now repealed) and more particularly the proviso thereunder, the petitioner is not liable to pay the theft charges. Regulation 10.5 although is noted in the interim order passed by this Court in the previous writ petition for convenience, we extract the same hereunder:-

“10.5: Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased consumer or the erstwhile owner / occupier of any premises, as a case may be, shall be a charge on the premises transmitted to the legal representatives / successors-in-law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises, as the case may be.

Provided that, except in the case of transfer of connection to a legal heir, the liabilities transferred under this Regulation 10.5 shall be restricted to a maximum period of six months of the unpaid charges for electricity supplied to such premises”

21. The contention of the petitioner in regard to the applicability of Regulation 10.5 (supra) is on the basis that the petitioner had made an application for supply of electricity on 16 July 2009, at which point of time the said Regulation was prevalent. The second contention in this regard is that the petitioner had approached this Court in the proceedings of Writ Petition No. 1686 of 2011 wherein a Division Bench of this Court passed an interim order

dated 15 June 2011 directing that the petitioner has quantified the electricity dues at Rs.3,35,54,866.94 in paragraph 6.8 of the said writ petition, which shall be deposited by the petitioner for the electricity supply to be reconnected. Thus, the petitioner's contention is that on these two basic reasons, the MSEDCL addressing the impugned letter is not correct and the petitioners' application under the amnesty scheme is required to be held to be eligible. We examine these contentions.

22. Insofar as the first contention is concerned, we may observe that the Maharashtra Electricity Supply Code 2005 now stands repealed by the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 (for short "**2021 Regulations**") which were brought into force with effect from 24 February 2021. Regulation 10.5 of the Maharashtra Electricity Supply Code 2005 now stands substituted by Clause 12.5 of the 2021 Regulations which reads thus:-

12. Change of Name

12.5 Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased Consumer or the erstwhile owner / occupier of any premises, as a case may be, shall be a charge on the premises transmitted to the legal representatives / successors-in-law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises, as the case may be.

23. On a plain reading of Clause 12.5 (supra) it is clearly seen that under the

regime of the 2021 Regulations, the proviso as it stood below Regulation 10.5 of the Maharashtra Electricity Supply Code 2005 stands deleted. The consequence being the benefit if at all was available to the petitioner at the relevant time under the proviso below Regulation 10.5, the same is no more available to the petitioner in the present regime under the 2021 Regulations.

24. It is not in dispute that on the date of the amnesty scheme the 2021 Regulations held the field, hence petitioner's contention of the applicability of the Maharashtra Electricity Supply Code 2005 is not well founded when the said Regulations had stood repealed. Such submission if accepted would amount to reviving the repealed Regulation 10.5 and that too retrospectively. This can neither be done or accepted. Further when to this extent the Maharashtra Electricity Supply Code 2005 was repealed, there is nothing in the 2021 Regulations to indicate that the new regulation saves the effect of any right which if at all had accrued under Regulation 10.5, much less in so far as the terms and conditions of the amnesty scheme are concerned.

25. In such context, we may refer to a decision of the Constitution Bench of the Supreme Court in **Kolhapur Canesugar Works Ltd. Vs. Union of India**⁵. The question which had arisen for consideration of the Constitution Bench was whether after the omission of old Rules 10 and 10-A of the Central Excise Rules and their substitution by new Rule 10, the proceedings initiated under the old Rules would be continued in law. The Constitution Bench held that once the rules are repealed and are substituted by new rules, in such event the court is to

5 (2000) 2 SCC 536

look to the provisions which has been newly introduced to examine whether pending proceedings will continue or lapse. If there is a provision in the new rules that pending proceedings shall continue and be disposed of under the old rule, as if the rule has not been deleted or omitted then such proceedings will continue. In the absence of any such provision in the statute or in the rule the pending proceedings would lapse on the rule under which the notice was issued or proceedings were initiated being deleted/omitted. The following observations as made by the Supreme Court are required to be noted which reads thus:

“34.It is not correct to say that in considering the question of maintainability of pending proceedings initiated under a particular provision of the rule after the said provision was omitted the court is not to look for a provision in the newly-added rule for continuing the pending proceedings. It is also not correct to say that the test is whether there is any provision in the rules to the effect that pending proceedings will lapse on omission of the rule under which the notice was issued. It is our considered view that in such a case the court is to look to the provision in the rule which has been introduced after omission of the previous rule to determine whether pending proceedings will continue or lapse. If there is a provision therein that pending proceedings shall continue and be disposed of under the old rule as if the rule has not been deleted or omitted then such proceedings will continue. If the case is covered by Section 6 of the General Clauses Act or there is a *pari materia* provision in the statute under which the rule has been framed, in that case also the pending proceedings will not be affected by omission of the rule. In the absence of any such provision in the statute or in the rule the pending proceedings would lapse on the rule under which the notice was issued or proceedings were initiated being deleted/omitted. It is relevant to note here that in the present case the question of divesting the Revenue of a vested right does not arise since no order directing refund of the amount had been passed on the date when Rule 10 was omitted.

37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular

provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision.

38. In the present case, as noted earlier, Section 6 of the General Clauses Act has no application. There is no saving provision in favour of pending proceedings. Therefore action for realisation of the amount refunded can only be taken under the new provision in accordance with the terms thereof.”

(emphasis supplied)

26. We are thus of the clear opinion that Regulation 10.5 of the Maharashtra Electricity Supply Code 2005 having stood repealed, there is no question of the petitioner asserting any right, inasmuch as the provision which is brought into force post-repeal i.e. the 2021 Regulations, do not in any manner contemplate any retrospective applicability of Regulation 10.5. Also, the applicability of Regulation 10.5 post repeal in juxtaposition to the amended Clause 12.5 of the Regulation 2021, would bring about an integral conflict. Even otherwise, we cannot hold that after its repeal, Regulation 10.5 would continue to operate, considering the settled principles of law including on the applicability of Section 6 of the General Clauses Act. Thus, the petitioner certainly cannot raise a contention that any legal right has accrued in its favour under the Regulation 10.5 of the 2005 Regulation.

27. In regard to the petitioner’s contention that no liability can be fastened on the petitioner to discharge the debts of Vishwas Steel Ltd. to pay the theft charges or even under the decree as obtained by the MSEDCL against Vishwas Steel Ltd. for the reason that the petitioner has acquired rights qua the premises under the

SARFAESI sale, is also wholly untenable. In our opinion, such issue is no more *res integra* in view of the principles of law as laid down by the Supreme Court in **K.C. Ninan v. Kerala State Electricity Board** (supra).

28. In K. C. Ninan's case (supra), the Supreme Court was dealing with a batch of appeals on similar facts, when the supply of electricity was discontinued due to the failure of the previous owners to pay the dues for consumption of electricity on the premises. The previous owners had borrowed money or raised loans on the security of their premises. In some of the cases, the erstwhile owners had gone into liquidation. The premises were sold in auction sale generally on "as is where is" basis. The new owners, who purchased the properties at auction, applied for new electricity connections for the premises to which electricity had been disconnected for failure to pay the dues. The Electric Utilities refused to provide electricity connection unless the auction purchaser paid the dues of the previous owner. This refusal was derived from the powers conferred under the subordinate legislations, the notifications, Electricity Supply Codes, or State regulations. The denial of electricity supply resulted in the institution of the petitions under Article 226 of the Constitution before the High Courts, leading to the judgments which were subject matter of appeal before the Supreme Court. It is in the context of an order passed under the **Maharashtra State Electricity Board vs. Super and Stainless Hi Alloy Ltd.**⁶ the Court referred the civil appeals to a Bench of three Judges for dealing with the issue of the recovery of arrears of the electricity charges. In the

6 Civil Appeal Nos.5312-5313 of 2005

reference order, the questions which were posed to be answered by the Larger Bench were *inter alia* whether electricity dues constitute a charge on the property vis-a-vis the rights of the transferor and the transferee of the unit are concerned. It is in such context, the Supreme Court considering the regulatory regime and the position in law, framed the following issues for determination:-

“24. Based on the submissions of the parties, the specific issues which arise for determination are:

- a. Whether the Universal Service Obligation under Section 43 of the 2003 Act is linked to premises to which the connection is sought;
- b. Whether a connection of electricity supply sought by an auction- purchaser comprises a reconnection or a fresh connection;**
- c. Whether the power to recover arrears of a previous owner or occupier from an auction-purchaser of the premises falls within the regulatory regime of the 2003 Act;**
- d. Whether the power to enable the recovery of arrears of the previous owner or occupier from an auction-purchaser can be provided through subordinate legislation by the State Commissions;
- e. Whether the 1910 Act, 1948 Act, and the 2003 Act have express provisions enabling the creation of a charge or encumbrance over the premises;**
- f. Whether the statutory bar on recovery of electricity dues after the limitation of two years provided under Section 56(2) of the 2003 Act, will have an implication on civil remedies of the Electric Utilities to recover such arrears; and**
- g. What is the implication of an auction-sale of premises on “as is where is” basis, with or without reference to electricity arrears of premises?**
(emphasis supplied)

29. Insofar as the present proceedings are concerned, issue nos.(b), (c), (e), (f) and (g) are relevant. Before we advert to the relevant observations as made by the Supreme Court, we note the conclusion as rendered by the Supreme Court in answering the aforesaid issues as set out in paragraph 342 of the report, which reads thus:-

“342. The conclusions are summarised below:

342.1. The duty to supply electricity under Section 43 of the 2003 Act is not absolute, and is subject to the such charges and compliances stipulated by the Electric Utilities as part of the application for supply of electricity;

342.2. The duty to supply electricity under Section 43 is with respect to the owner or occupier of the premises. The 2003 Act contemplates a synergy between the consumer and premises. Under Section 43, when electricity is supplied, the owner or occupier becomes a consumer only with respect to those particular premises for which electricity is sought and provided by the Electric Utilities;

342.3. For an application to be considered as a ‘reconnection’, the applicant has to seek supply of electricity with respect to the same premises for which electricity was already provided. Even if the consumer is the same, but the PART I premises are different, it will be considered as a fresh connection and not a reconnection;

342.4. A condition of supply enacted under Section 49 of the 1948 Act requiring the new owner of the premises to clear the electricity arrears of the previous owner as a precondition to availing electricity supply will have a statutory character;

342.5. The scope of the regulatory powers of the State Commission under Section 50 of the 2003 Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners;

342.6. The Electricity Supply Code providing for recoupment of electricity dues of a previous consumer from a new owner have a reasonable nexus with the objects of the 2003 Act;

342.7. The rule making power contained under Section 181 read with Section 50 of the 2003 Act is wide enough to enable the regulatory commission to provide for a statutory charge in the absence of a provision in the plenary statute providing for creation of such a charge;

342.8. The power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery under Section 56 of the 2003 Act;

342.9. The implication of the expression “as is where is” basis is that every intending bidder is put on notice that the seller does not undertake responsibility in respect of the property offered for sale with regard to any liability for the payment of dues, like service charges, electricity dues for power connection, and taxes of the local authorities; and

342.10. In the exercise of the jurisdiction under Article 142 of the Constitution, the Electric Utilities have been directed in the facts of cases before us to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction purchasers.”

(emphasis supplied)

30. Thus, in answering the above questions, the Supreme Court has categorically held that the duty to supply electricity under Section 43 of the Electricity Act, 2003, is not absolute and is subject to such charges and compliances as stipulated by the distribution licensees (MSEDCL) as part of the application. It was held that the scope of the regulatory powers of the State Commission under Section 50 of the 2003 Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners. It was further held that the Electricity Supply Code providing for recoupment of electricity dues of a previous consumer from a new owner have a reasonable nexus with the objects of the 2003 Act. It was also held that the implication of the expression “as is where is basis”, is that every intending bidder is put on notice that the seller does not undertake responsibility in respect of the property offered for sale with regard to any liability for the payment of dues, like service charges, electricity dues for power connection, and taxes of the local authorities.

31. In K. C. Ninan (*supra*) the Supreme Court also considered the Conditions of Supply and Electricity Supply Code, when it observed that the provisions therein require the payment of electricity dues of the previous owner as a condition for the grant of an electricity connection have a clear nexus to the scheme of the parent legislation and the objectives sought to be achieved. It was observed that it is just and reasonable for distribution licensees to specify

conditions of supply requiring the subsequent owner or occupier of the premises to pay the arrears of electricity dues of the previous owner or occupier as a pre-condition for grant of electricity connection to protect their commercial interests, as well as the welfare of consumers of electricity. Analyzing the provisions of the Section 100 of the Transfer of Property Act, 1882 which contemplates two types of charges, namely, charges created by act of parties and charges arising by operation of law, the Court made the following significant observations:

“99. An encumbrance means a burden or charge upon property or a claim or lien upon an estate or on the land. Encumbrance must be a charge on the property, which must run with the property. In terms of the first paragraph of Section 100, when an immovable property of one party is pledged as security for the payment of money to another, and the transaction does not constitute a mortgage, the latter would acquire a charge over the property. All provisions that apply to a simple mortgage are applicable to a charge. A charge is neither a sale nor a mortgage because it creates no interest in or over an immovable property but it is only a security for the payment of money. In other words, a charge only results in the creation of a right of payment out of the property towards the satisfaction of the debt or obligation in question.”

32. Also, taking into consideration the Regulation 10.5 of the Maharashtra Electricity Supply Code 2005, on which reliance is placed on behalf of the petitioner, the Supreme Court in K. C. Ninan made the following observations:

“113. In exercise of such power, Regulation 10.5 of the Maharashtra Electricity Supply Code 2005 provides that any charge for electricity or any other sum which remains unpaid by an erstwhile owner constitutes a charge on the property and can be recovered from the transferee subject to the permitted period specified therein. This provision spelt out in the present judgment is a mere illustration of a subordinate rule wherein unpaid electricity dues constitute a charge on property and can be recovered from a subsequent transferee.

.....

116. The provisions of the statute and statutory conditions of supply need to be examined to determine whether the conditions of supply provide for

the creation of a charge in terms of Section 100 of the Transfer of Property Act, 1882. Once it is established that a statutory charge is created and required notice was given, the charge attaches to the property and the licensee is entitled to recover the unpaid electricity dues by proceeding against the premises. Consequent to the charge created, Article 62 of the Indian Limitation Act, 1963 would come into play. Article 62 of the Limitation Act relates to enforcing the payment of money procured by mortgaged or otherwise charged upon the immovable property. The electricity utilities would get a period of twelve years to recover the dues charged on the immovable property from the date when the money payable became due.

117. In light of the above discussion, we are of the opinion that the electricity utilities can create a charge by framing subordinate legislation or statutory conditions of supply enabling recovery of electricity arrears from a subsequent transferee. Such a condition is rooted in the importance of protecting electricity which is a public good. Public utilities invest huge amounts of capital and infrastructure in providing electricity supply. The failure or inability to recover outstanding electricity dues of the premises would negatively impact the functioning of such public utilities and licensees. In the larger public interest, conditions are incorporated in subordinate legislation whereby Electric Utilities can recoup electricity arrears. Recoupment of electricity arrears is necessary to provide funding and investment in laying down new infrastructure and maintaining the existing infrastructure. In the absence of such a provision, Electric Utilities would be left without any recourse and would be compelled to grant a fresh electricity connection, even when huge arrears of electricity are outstanding. Besides impacting on the financial health of the Utilities, this would impact the wider body of consumers.

VI. Implication of Section 56(2) on recovery of electricity dues by Electric Utilities

.....

130. Before we deal with the implication of Section 56(2) on the civil remedies available to a licensee, it is important to clarify that when the liability incurred by a consumer is prior to the period when the 2003 Act came into force, then the bar of limitation under Section 56(2) is not applicable. In *Kusumam Hotels Pvt Ltd v. Kerala State Electricity Board*,⁵⁹ this Court has held that Section 56(2) applies after the 2003 Act came into force and the bar of limitation under Section 56(2) would not apply to a liability incurred by the consumer prior to the enforcement of the Act. In terms of Section 6 of the General Clauses Act 1897, the liability incurred under the previous enactment would continue and the claim of the licensee to recover electricity would be governed by the regulatory framework which was in existence prior to the enforcement of the 2003 Act.

.....

134. The period of limitation under Section 56(2) is relatable to the sum due under Section 56. The sum due under Section 56 relates to the sum

due on account of the negligence of a person to pay for electricity. Section 56(2) provides that such sum due would not be recoverable after the period of two years from when such sum became first due. The means of recovery provided under Section 56 relate to the remedy of disconnection of electric supply. The right to recover still subsists.

.....

136. We therefore, reject the submission of the auction purchasers that the recovery of outstanding electricity arrears either by instituting a civil suit against the erstwhile consumer or from a subsequent transferee in exercise of statutory power under the relevant conditions of supply is barred on the ground of limitation under Section 56(2) of the 2003 Act. Accordingly, while the bar of limitation under Section 56(2) restricts the remedy of disconnection under Section 56, the licensee is entitled to recover electricity arrears through civil remedies or in exercise of its statutory power under the conditions of supply.

.....

143. Thus, the implication of the expression “as is where is” or “as is what is basis” or “as is where is, whatever there is and without recourse basis” is not limited to the physical condition of the property, but extends to the condition of the title of the property and the extent and state of whatever claims, rights and dues affect the property, unless stated otherwise in the contract. The implication of the expression is that every intending bidder is put on notice that the seller does not undertake any responsibility to procure permission in respect of the property offered for sale or any liability for the payment of dues, like water/service charges, electricity dues for power connection and taxes of the local authorities, among others.

.....

146. To conclude, all prospective auction purchasers are put on notice of the liability to pay the pending dues when an appropriate “as is where is” clause is incorporated in the auction sale agreement. It is for the intending auction purchaser to satisfy themselves in all respects about circumstances such as title, encumbrances and pending statutory dues in respect of the property they propose to purchase. In a public auction sale, auction purchasers have the opportunity to inspect the premises and ascertain the facilities available, including whether electricity is supplied to the premises. Information about the disconnection of power is easily discoverable with due diligence, which puts a prudent auction purchaser on a reasonable enquiry about the reasons for the disconnection. When electricity supply to a premises has been disconnected, it would be implausible for the purchaser to assert that they were oblivious of the existence of outstanding electricity dues.

147. In terms of the legal doctrine of caveat emptor, it becomes the duty of the buyer to exercise due diligence. A seller is not under an obligation to disclose patent defects of which a buyer has actual or constructive notice in terms of Section 3 of the Transfer of Property act, 1882. However, in terms of Section 55(1)(a), in the absence of a contract to the contrary, the seller

is under an obligation to disclose material defects in the property or in the seller's title thereto of which he is aware and which a buyer could not with ordinary care discover for himself.

148. While examining the effect of an "as is where is" clause, the facts and circumstances of each case individually, along with the terminology of the clauses governing the auction sales must be taken into consideration, to arrive at an equitable decision."

33. Further in dealing with the position in so far as Maharashtra is concerned, the following significant observations were made, considering the applicable statutory regime which is relevant in the context in hand.

171. In the state of Maharashtra, the terms and conditions under which the MSEB supplied electrical energy were provided in the MSEB Conditions of Supply. The MSEB Conditions of Supply were made effective from 1 January 1976. The MSEB Conditions of Supply laid down a detailed procedure in respect of the application for supply of electrical energy, payment of bills, procedure to be adopted in case of prejudicial use of electrical energy and the terms on which the supply of electrical energy is released to a consumer. Condition 23 of MSEB Conditions of Supply provides for assignment and transfer of agreement.

.....

174. After the enactment of the 2003 Act, the Maharashtra Electricity Supply Code, 2005 was framed under Section 50 of the 2003 Act. The regulations came into effect from 20 January 2005, and apply prospectively. Regulation 10.5 of the Maharashtra Electricity Supply Code provides that dues owed to the distribution licensee are charge on the property and as a statutory effect, the liability for the payment of electricity dues is passed on to the new owner/ occupier of the premises, albeit to a certain time restriction. Regulation 10.5 provides as follows:

"10.5: Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased consumer or the erstwhile owner / occupier of any premises, as a case may be, shall be a charge on the premises transmitted to the legal representatives / successors-in-law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises, as the case may be. Provided that, except in the case of transfer of connection to a legal heir, the liabilities transferred under this Regulation 10.5 shall be restricted to a maximum period of six months of the unpaid charges for electricity supplied to such premises"

175. Presently, the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other Standards of Performance of Distribution Licensees including Power Quality) Regulations 2021⁷⁶ have been enacted repealing the Maharashtra Electricity Supply Code 2005. Clause 12.5 of the 2021 Regulations reiterates that any unpaid charges for electricity shall be a charge on the premises.

.....

178. In Maharashtra, the right of the Electric Utilities to demand outstanding dues is traceable to provisions across different time periods:

178.1. Up to enactment of the 2003 Act on 10 June 2003: The governing laws are the 1910 Act and the 1948 Act. The MSEB Conditions of Supply were framed under Section 49 of the 1948 Act. The MSEB Conditions of Supply which were made effective from 1 January 1976 would apply;

178.2. From 10 June 2003 to 20 January 2005: The provisions of the 2003 Act were brought into force with effect from 10 June 2003. The 1910 Act and 1948 stood repealed after the enactment of the 2003 Act. The Maharashtra Electricity Supply Code 2005 came into force from 20 January 2005. In the interregnum, the MSEB Conditions of Supply would continue to apply, so far as they are not inconsistent with the provisions of the 2003 Act. This is due to the following reasons:

i. **By virtue of Section 185(2)(a) of the 2003 Act, notwithstanding such repeal anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made etc. under the repealed law shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act. Section 185(2)(5) further provides that Section 6 of the General Clauses Act 1897 would be applicable in relation to matters prescribed in Section 185(2) with regard to the effect of repeals;**

ii. Regulation 19(1) of the Electricity Supply Code 2005, provides that any terms and conditions of supply which are inconsistent with the provisions of the Maharashtra Electricity Supply Code 2005 shall be deemed to be invalid from the date on which these regulations come into force; and

178.3. From 20 January 2005 till the enactment of the 2021 Regulations: The Maharashtra Electricity Supply Code 2005, which came into force from 20 January 2005, would apply. To determine whether the Maharashtra Electricity Supply Code 2005 would govern the facts of a particular case, the relevant date would be when the auction purchaser had requested the Electricity Board to supply electricity.

179. In the six cases originating from Maharashtra, the respondents were successful auction purchasers who purchased the premises in court auction sales. The appellant-Board relied on Condition 23 of the MSEB

Conditions of Supply to impose a precondition of clearing electricity arrears of the erstwhile consumer, before a new electricity connection could be provided. The High Court in all the cases directed the appellant-Board to provide reconnection or fresh connection to the respondents, without insisting on payment of arrears.

180. These impugned judgments raise a common question on the applicability and the scope of Condition 23. This Court would first deal with the overall argument on the applicability of Condition 23 of the MSEB Conditions of Supply, and its interpretation, before delving into the specific factual matrix of the cases.

181. In Maharashtra State Electricity Board v. Super & Stainless Hi Alloys Ltd., the Bombay High Court relied on the decision of this Court in Isha Marbles (supra) to quash the impugned circular dated 19 December 1998 for lack of jurisdiction as it was held to be beyond the powers of the Electricity Board under Section 24 of the 1910 Act. The High Court concluded that the contract of supply was only between the Electricity Board and the previous consumer, and since the subsequent purchaser was a third party, it cannot be made liable for the past liabilities of the erstwhile consumer.

185. The Electricity Board can demand arrears due by an erstwhile defaulting consumer in regard to supply of electricity to premises from the purchaser of a property seeking reconnection or fresh connection of electricity when either of two conditions are met:

185.1 An express provision exists in law providing that electricity arrears constitute a charge over the property. For the statutory charge to be enforced against the property in the hands of a person to whom such property has been transferred for consideration, the transferee must have notice, either actual or constructive, of the charge; and

185.2. The statutory regulations or terms and conditions of supply which are statutory in character, authorise the supplier of electricity to make such a demand.

186. In general law, electricity arrears do not constitute a charge over the property. Under the provisions of the 1910 Act read with the 1948 Act, electricity arrears do not create a charge over the property. In the cases before us governed by the 1910 Act read with 1948 Act, no charge was created on the property in favour of the Electricity Board for the payment of electricity dues. The arrears of electricity dues were not levied against the premises, but were levied against the erstwhile consumer.

187. We are of the opinion that the Bombay High Court's interpretation of the ratio in Isha Marbles (supra) in Super & Stainless Hi Alloys Ltd and M/s Umang Enterprises is incorrect due to the reason that the High Court failed to enquire into whether any statutory regulation or statutory terms and conditions of supply existed which pertained to the liability of a third person who acquires the property of the erstwhile consumer.

188. In the cases pertaining to Maharashtra, MSEB or its successor the Maharashtra State Electricity Distribution Co. Ltd. placed specific reliance on Condition 23 of the statutory Conditions of Supply. Condition 23 is the only clause in the statutory provisions which pertains to the liability of a person who acquires the property of the erstwhile consumer in circumstances specified thereunder. Circular 607 dated 19 December 1998 is stated to emanate from Condition 23(b) of the Conditions of Supply. The Bihar State Electricity Board in Isha Marbles (supra) did not have a specific condition having a similar effect as Condition 23.

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224. The first respondent applied for a fresh electricity connection for the premises. The appellant-MSEDC refused the request of the first respondent by a letter dated 9 September 2005 on the ground that the arrears of electricity charges of the earlier owner were pending, and the first respondent was liable to clear them in light of Condition 23 of MSEB Conditions of Supply. The Bombay High Court by its impugned judgment dated 12 December 2005 held that Condition 23 was inapplicable and directed the appellant to grant a fresh connection to the first respondent, if otherwise eligible. The High Court observed that Condition 23 intended to apply to voluntary acts of the original consumer by which he transfers the benefit of his agreement with the Board.

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226. The High Court in the impugned judgment has based its decision on the MSEB Conditions of Supply 1976. What is the effect of the respondent applying for a fresh electricity connection after the enactment of the Maharashtra Electricity Supply Code on 20 January 2005 was not considered. The relevant date to determine the applicability of the statutory provisions governing conditions of supply of electricity is the date on which the auction purchaser applies for an electricity connection.

227. The application by the respondent in which it sought a fresh electricity connection has not been placed on record. At the same time, from the deed of assignment and sale placed on record, it emerges that the sale of the premises and possession was given after 20 January 2005. The permission to sell was granted to the bank only on 23 February 2005. The physical possession of the premises was given to the respondent only on 21 March 2005. A fresh connection of electricity supply could not have been requested even before the sale was confirmed in favour of the respondent. Accordingly, the relevant statutory provision governing this case is the Maharashtra Electricity Supply Code 2005.

228. In terms of Regulation 10.5, any charge for electricity or any sum other than a charge for electricity due to the distribution licensee which remains unpaid by a deceased consumer or the erstwhile occupier/owner of any premises shall be a charge on the premises transmitted to the legal representatives / successors-in-law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the

premises. However, the proviso lays down that except in the case of a transfer of a connection to a legal heir, the liabilities which are transferred under Regulation 10.5 are restricted to a maximum period of six months of the unpaid charges for electricity supplied to the premises. Accordingly, the dues owed by M/s Sumit Re-Rolling Mills Pvt. Ltd, Nagpur are charged on the property purchased by the first respondent in a public auction.

229. The sale was conducted on “as is where is” basis and the respondent accordingly had adequate notice of the charge. Hence, the distribution licensee is entitled to recover the unpaid dues from the first respondent subject to the permitted period specified in the proviso to Regulation 10.5.”

(emphasis supplied)

34. Adverting to the aforesaid principles of law, we have no manner of doubt that when the petitioner applied under the amnesty scheme on 11 October 2024, to avail the benefit under the said scheme, the same brought about a situation of the petitioner making an application for grant of a electricity connection so as to pave its way to clear the outstanding electricity charges. There is no dispute on this. Although, the petitioner could have taken the benefit of the order dated 15 June 2011 passed by the Division Bench of this Court (supra) which permitted the petitioner to deposit an amount of Rs. 3,35,54,866.94, the petitioner did not avail of the benefit of the said order, as also the petitioner never approached the Court for seeking extension of time to take the benefit of the said order rendering the said orders passed by this Court to be of no utility to the petitioner by virtue of the petitioner’s own conduct. Petitioner never showed a clear intention to take benefit of the said order. As noted hereinabove, the said order of the Division Bench in the petitioner’s earlier writ petition was passed on 15 June 2011. This writ petition was filed on 27 January 2025, thus for the period of 14 years, the petitioner did not take benefit of the said order and/or it had abandoned its rights

under the said order. In the event, the petitioner was to comply with the said order at the relevant time i.e. 2011 the petitioner would have parted with the amount of Rs.3,35,54,866.94. It appears to be a commercial decision of the petitioner not to part with such amount, inasmuch as the said amount if was to be kept in a fixed deposit at the relevant time (now being offered under the amnesty scheme), itself would have earned huge interest component until the same is being deposited under the amnesty scheme. Having taken such position to earn such interests, the petitioner now intends to even disown the liability to pay the theft charges. Considering the principles of law as discussed hereinabove, it is wholly untenable for the petitioner to assert such contentions as urged in the present petition.

35. The aforesaid discussion also goes to show that the 2021 Regulations clearly applied in the facts of the present case, as also the principles of law as laid down by the Supreme Court in **K.C. Ninan** (supra) clearly brings about a consequence that the subsequent purchaser, who purchased the property on “as is where is” basis would become liable to discharge all the liabilities of the seller and if that be so, insofar as the electricity charges which were due and payable by the erstwhile owner, in regard to the theft of electricity, the petitioner cannot turn around and take a position that the petitioner was not liable to pay such amount and would still be governed by the provisions of Regulation 10.5 of the the Maharashtra Electricity Supply Code 2005 and the proviso thereunder.

36. Insofar as the reliance of the petitioner in **Namco Industries v. State of**

Maharashtra (supra) is concerned, the same is misplaced and would not assist the petitioner. In **Namco Industries**, the Court's direction to the petitioner therein to pay six months of unpaid charges for electricity supplied to such premises, for grant of fresh electricity supply, was rendered in the context of the 2005 Regulations and the proviso to Clause 10.5 of the 2005 Regulations, was not in force at the relevant time. However, in the present case, the Amnesty Scheme was introduced on 29 August 2024 under which the petitioner submitted its online application on 11 October 2024. Accordingly, the Regulation applicable and in force as on the date of the application were the 2021 Regulations, which would govern the petitioner's claim.

37. In any event, once an amnesty scheme was floated, the respondent is bound by the terms and conditions of the amnesty scheme and as to what is provided by the amnesty scheme. An amnesty scheme is in the nature of an offer made to a person, who intends to avail of the benefits of the scheme. It is of a nature intended to bring about a settlement between the licensee (MSEDCL) and the consumer. The parties are thus strictly bound by the terms and conditions of the scheme. The Court cannot alter the terms of such settlement which are sacrosanct, except when the legality of the scheme on any of its clauses itself is in question. Thus, accepting of an offer under the Amnesty Scheme is akin to a settlement of a dispute between the parties, if any, which is being settled on the terms and conditions of what has been provided in the amnesty scheme. The court would not interfere in any settlement terms. It is for the parties to choose or

not to choose the settlement terms. The result is either have a settlement or not have a settlement or refuse the settlement. The sequel being, if such settlement is not convenient, to invoke the jurisdiction of the Court under Article 226 of the Constitution is certainly misconceived.

38. The petitioner cannot take a position that the terms and conditions of the amnesty scheme as notified by the impugned circular dated 3 December 2024 requiring theft charges to be deposited in cases of applicants whose electricity connection has been permanently disconnected, be not applied or that such condition is erroneous and illegal. Certainly such a writ cannot be issued and more so in the present case when the law itself does not provide for recovery of such charges, in the position as the petitioner's stand, so as to be a condition for a fresh electricity connection to be installed at the petitioner's premises. Thus, considering the clear position in law, in such context, we do not countenance that there is any alternative or way-out to the petitioner, to stand outside/ *de hors* the terms and conditions of the amnesty scheme. This would amount to reading something into the amnesty scheme, what is not been explicitly set out and/or avoided to be incorporated. Thus, if the contentions as urged by the petitioner are accepted, it would amount to the Court reading into the provisions of amnesty scheme something which has not been provided for or by a judicial fiat incorporating something alien to the Amnesty Scheme. This is not certainly the jurisdiction of the Court, that by an interpretative process the Court would add a category of applicants in the amnesty scheme, so as to grant a benefit to such

applicant which is otherwise directly not provided by the amnesty scheme, and which was not the intention and object of the authority in framing the specific terms and conditions of the Amnesty Scheme.

39. In the light of the above discussion, the petition is devoid of merits. It is accordingly rejected. No costs.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)