Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 2109-2110 of 2004

K C Ninan **... Appellant**

versus

Kerala State Electricity Board & Ors. **…Respondents**

With

Civil Appeal No 2108 of 2004

With

Civil Appeal Nos 5312-5313 of 2005

With

Civil Appeal No 5314 of 2005

With

Civil Appeal No 6587 of 2005

With

Civil Appeal No 7303 of 2005

With

Civil Appeal No 6579 of 2022

With

Civil Appeal Nos 6593-6594 of 2022

With

Civil Appeal No 3018 of 2007

With

Civil Appeal No 7169 of 2022

With

Civil Appeal No 6591 of 2022

With

Civil Appeal No 6595 of 2022

With

Civil Appeal Nos 6879-6881 of 2022

With

Civil Appeal No 6592 of 2022

With

Civil Appeal Nos 7103-7104 of 2022

With

Civil Appeal No 6828 of 2022

With

Civil Appeal No 7064 of 2022

With

Civil Appeal No 6590 of 2022

And with

Civil Appeal No 3640 of 2022

J U D G M E N T

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Table of Contents

A. Overview 4

B. Regulatory Regime 5

C. The position in law 10

D. Issues 14

E. Submissions 15

F. Analysis 25

G. Application: Facts of Individual Cases 89

I. Kerala 90

II. Maharashtra 99

III. Gujarat 132

IV. Assam 166

V. West Bengal 170

H. Equity and Fairness 175

I. Conclusions 177

A. Overview

1. The nineteen cases in this batch of appeals follow a similar pattern of facts. 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 cases, the erstwhile owner went into liquidation. The premises were sold in auction sales generally on an "as is where is" basis. The new owners, who purchased the properties in 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 an electricity connection unless the auction purchaser paid the dues of the previous owner. This refusal was derived from powers conferred under subordinate legislations, notifications, electricity Supply Codes or state regulations. The denial of electricity supply resulted in the institution of petitions under Article 226 before the High Court, leading to the judgments which are in appeal.

2. In **Maharashtra State Electricity Board** v. **Super & Stainless Hi Alloy Ltd**[1], this Court by an order dated 24 August 2006 referred the Civil Appeals to a Bench of three Judges for dealing with the issue of the recovery of arrears of electricity. The order of reference referred the question of whether electricity dues constitute a charge on the property so far as the transferor and the transferee of the unit are concerned.

[1] Civil Appeal Nos 5312-5313 of 2005

3. The matters involving similar nature of dispute were tagged along with the above reference by an order dated 1 November 2007. The issue which is raised in these appeals is whether the arrears of unpaid electricity dues outstanding from the erstwhile owner can be claimed from the subsequent owner, who has acquired the property in proceedings initiated to enforce mortgages or to pay off the dues of creditors.

B. Regulatory Regime

4. Electricity is a concurrent subject under the Constitution of India. Prior to the enactment of the Electricity Act 2003[2], the Electricity Act 1910[3] governed the supply and use of electrical energy in India. The 1910 Act prescribed the legal framework for laying down cables and other works related to the supply of electricity. It also laid down a legal framework for supply of electrical energy and imposed certain responsibilities and obligations on persons licensed to supply electricity with a view to incentivise the growth of the electricity industry through private licensees.

5. Section 2(c) of the 1910 Act defined "consumer" as any person supplied with energy by a licensee or any other person engaged in the business of supplying energy to the public under the Act, and included any person whose premises were for the time being connected for the purposes of receiving energy. Section 21(2) empowered a licensee to make conditions to regulate their relations with persons who were or intend to become consumers. Section 22

[2] "2003 Act"
[3] "1910 Act"

obligated a licensee to supply electrical energy, on application, to every person within the area of supply on the same terms as those on which any other person in the same area was entitled. Section 24 empowered the licensee to disconnect the supply of electricity if any person neglected to pay any charge or sum for energy due to the licensee.

6. The 1910 Act was found inadequate for a coordinated development of electricity and a "grid-system" in India. Therefore, the Electricity (Supply) Act 1948[4] was enacted for the rationalisation of the production and supply of electricity and for taking measures conducive to the development of electricity. The 1948 Act mandated the state governments to constitute State Electricity Boards under Section 5 and entrusted them with the responsibility of administering the grid-system and arranging the supply of electricity in the state. Section 26 provided that, subject to the provisions of the Act, the Board shall have all the powers and the obligations of a licensee under the 1910 Act. Section 49 empowered the Boards to supply electricity to any person, not being a licensee, on such terms and conditions as laid down by the Board. In terms of Section 70(2), the provisions of the 1948 Act were in addition to, and not in derogation of the 1910 Act.

7. Parliament enacted the Electricity Regulatory Commissions Act 1998[5] with an aim to distance the government from determination of tariffs. The 1998 Act created the Central Electricity Regulatory Commission and enabled the state governments to create State Electricity Regulatory Commissions.

[4] "1948 Act"
[5] "1998 Act"

8. Parliament consolidated and harmonised the provisions of the 1910 Act, 1948 Act, and 1998 Act by enacting the 2003 Act. In the process, the 2003 Act repealed the aforesaid three legislations. The long title of the 2003 Act reads as follows:

> "An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interests of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto."

9. The 2003 Act has been enacted in pursuance of the policy of encouraging private sector participation in the generation, transmission, and distribution of electricity. Other objectives of the 2003 Act include vesting the regulatory responsibilities from government to the regulatory commissions, delicensing of electricity generation, promotion of captive generation, and encouraging open access transmission. Section 2(15) of the 2003 Act defines 'consumer' in terms similar to Section 2(c) of the 1910 Act. Part VI of the 2003 Act deals with distribution of electricity. Section 43 casts a Universal Service Obligation[6] on the distribution licensee to provide supply of electricity to the premises of an owner or occupier. The State Commission has been empowered under Section 50 to specify an Electricity Supply Code to provide among other things for the recovery of electricity charges, intervals for billing of electricity charges and disconnection

[6] "USO"

of supply of electricity for non-payment. Under Section 56, the generating company or distribution licensee, as the case may be, may disconnect electricity supply of any person who neglects to pay any charge or sum for electricity. Section 181(2)(x) provides that the State Commission may make regulations *inter alia* providing for, the Electricity Supply Code under Section 50.

10. In light of the provisions contained in the 1910 Act, 1948 Act, and 2003 Act, various Electric Utilities such as State Electricity Regulatory Commissions, State Electricity Boards, and distribution licensees notified Conditions of Supply requiring the new owner of premises to clear the outstanding dues of the previous owner. The nineteen cases in the batch of appeals originate from the States of Kerala, Maharashtra, Gujarat, Assam, and West Bengal.

11. In Kerala, the Kerala State Electricity Board[7] notified the Conditions of Supply of Electrical Energy in 1990. Condition 15(e) of the Conditions of Supply provides that reconnection or a new connection shall not be given to any premises unless the arrears due to the Board are cleared.

12. In Maharashtra, the Maharashtra State Electricity Board[8] framed MSEB Conditions and Miscellaneous Charges for Supply of Electrical Energy, 1976[9] in exercise of power under the 1948 Act. Clause 23(b) of the MSEB Conditions of Supply allowed the Board to refuse to supply or give a new electricity connection to any person claiming to be an heir, legal representative, transferee, assignee or successor of the defaulting consumer. After the enactment of the 2003 Act, the

[7] "KSEB"
[8] "MSEB"
[9] "MSEB Conditions of Supply"

Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other Conditions of Supply) Regulations 2005[10] were framed. Regulation 10.5 provides that unpaid electricity dues constitute a charge on the property and can be recovered from the transferee (subject to a maximum of six months of unpaid charges for electricity supplied).

13. In Gujarat, the Gujarat Electricity Board inserted Condition 2(j) in the Conditions and Miscellaneous Charges for Supply of Electrical Energy in 2001.[11] This condition empowered the Board to insist that the new occupier of the premises clear the pending electricity dues of the previous consumer as a precondition to reconnection or release of a fresh connection. In 2005, the Gujarat Electricity Regulatory Board notified the Gujarat Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2005[12]. Clause 4.1.11 of Gujarat Electricity Supply Code, 2005 provided that only the dues of the applicant, if any, were required to be paid at the time of the application for a new connection. The said Clause was later amended in 2010 to provide that the distribution licensee need not entertain an application for reconnection or a new connection unless any dues relating to those premises are cleared.

[10] "Maharashtra Electricity Supply Code 2005"
[11] "Gujarat Conditions of Supply"
[12] "Gujarat Electricity Supply Code"

14. In Assam, the Assam Electricity Regulatory Commission[13] framed the Assam Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2004.[14] Clause 3.6 dealing with the requisition of electricity supply requires a person occupying a new premises to ensure that all the outstanding electricity dues are duly paid up and discharged.

15. In West Bengal, the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2012[15] have been notified under the 2003 Act. Clause 3.4.2 of the said regulations empowers the licensee to recover the dues of a previous consumer in respect of the premises from a new consumer only if there is a nexus between the previous consumer and the new consumer.

16. The subsequent owners or occupiers of the premises challenged the Conditions of Supply and Electricity Supply Codes enacted by the Electric Utilities before the respective High Courts when they were called upon to clear the arrears of the previous owners or dues relating to the premises.

C. The position in law

17. Prior to the enactment of the 2003 Act, in **Isha Marbles** v. **Bihar State Electricity Board**,[16] a three-judge Bench of this Court held that in the absence of a charge being created over the premises by a statutory regulation, an auction purchaser cannot be asked to clear the past arrears of electricity dues as a condition precedent to the grant of electricity. This Court elucidated the position in the context of Section 24 of the 1910 Act to emphasise that the contract for

[13] "AERC"
[14] "AERC Supply Code"
[15] "WB Electricity Supply Code"
[16] 1995 SCC (2) 648

supply was only between the Electricity Board and the previous consumer, and the subsequent purchaser was neither a consumer within the meaning of the 1910 Act nor had any contractual relationship with the Electricity Board. This Court noted that though electricity is public property which the law must protect, yet the law, as it stood at that time, was inadequate to enforce the liability of unpaid electricity charges of a previous consumer against a subsequent purchaser of the premises. In **Isha Marbles** (supra)**,** this Court did not have to deal with any statutory rule, regulation or conditions of supply dealing with the imposition of liability for the payment of electricity dues on a subsequent purchaser.

18. Thereafter, another Bench of three judges in **Ahmedabad Electricity Co. Ltd.** v. **Gujarat Inns (P) Ltd**,[17] held that in a case of a fresh connection, though the premises are the same, the auction purchasers cannot be held liable to clear the arrears incurred by the previous owners in respect of power supplied to the premises in the absence of a specific statutory provision in that regard. However, this Court opined that there was a need for reconsideration of the "wide propositions of law" laid down in **Isha Marbles** (supra).

19. In **Hyderabad Vanaspathi Ltd** v**. Andhra Pradesh State Electricity Board**,[18] a three-judge Bench of this Court observed that the terms and conditions of supply notified by the Electricity Boards are statutory in character as they have been framed in exercise of statutory power under Section 49 of the

[17] (2004) 3 SCC 587
[18] (1998) 4 SCC 470

1948 Act. The mere fact that individual agreements were entered into with every consumer did not make the agreement contractual in nature.

20. In a series of subsequent decisions of this Court, various two-judge Bench decisions have taken note of specific statutory regulations enabling recovery of dues from subsequent purchasers. In the process, this Court distinguished **Isha Marbles** (supra), where the Court had no occasion to consider similar provisions. In **Dakshin Haryana Bijli Vitran Nigam Ltd** v**. M/s Paramount Polymers Pvt Ltd**,[19] this Court was dealing with Clause 21A of the relevant Conditions of Supply, which entitled a licensee to demand payment of outstanding dues from a transferee if they desired a service connection. It was held that **Isha Marbles** (supra) cannot be applied to strike down Clause 21A as the Court in that case had no occasion to consider the effect of a similar clause. The matter was remitted back to the High Court for a fresh decision since it had not adjudicated on the implication of Clause 21A of the Conditions of Supply.

21. In **Paschimanchal Vidyut Vitran Nigam Limited** v**. DVS Steels and Alloys Private Limited**,[20] this Court observed that a licensee or an electricity distributor can insist upon fulfilment of statutory rules, regulations or the conditions of supply so long as they are not arbitrary and unreasonable. It was further held that the conditions of supply mandating the clearance of electricity dues of a previous owner by a new purchaser before electricity supply is restored or a new connection is given to the premises cannot be termed as unreasonable or arbitrary.

[19] AIR 2007 SC 2
[20] (2009) 1 SCC 210

22. The position of law as formulated in **Paramount Polymers** (supra) and **Paschimanchal Vidyut Vitaran Nigam Limited** (supra) has been consistently followed by this Court in ensuing decisions. Recently, in **Telangana State Southern Power Distribution Co. Ltd.** v. **Srigdhaa Beverages**,[21] this Court reiterated the judicial thinking on the liability of subsequent owners with regard to the electricity dues of the past owners. This Court observed:

> "16.1. That electricity dues, where they are statutory in character under the Electricity Act and as per the terms & conditions of supply, cannot be waived in view of the provisions of the Act itself more specifically Section 56 of the Electricity Act, 2003 (in pari materia with Section 24 of the Electricity Act, 1910), and cannot partake the character of dues of purely contractual nature
>
> 16.2. Where, as in cases of the E-auction notice in question, the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on "AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS", there can be no doubt that the liability to pay electricity dues exists on the respondent (purchaser)
>
> 16.3. The debate over connection or reconnection would not exist in cases like the present one where both aspects are covered as per clause 8.4 of the General Terms & Conditions of Supply."

Having set the stage of the legal and decisional framework, we have been tasked to decide the present batch of appeals.

[21] (2020) 6 SCC 404

D. Issues

23. 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 the premises?

E. Submissions

24. To put the above-mentioned issues in their proper context, we refer to the broad legal submission adduced before us by the parties.

I. Electric Utilities

25. Sarvashri M G Ramachandran, Mr Ranjit Kumar, Mr Vijay Hansaria, Mr. Ajit Bhasme, learned senior counsel appearing for Electric Utilities have made the following submissions:

a. USO is not absolute

i. (i) The duty of the licensee to supply electricity under Section 43 of the 2003 Act is not absolute. Section 43 provides that an applicant has to fulfil the corresponding obligations to become entitled to the supply of electricity;

ii. (ii) Section 43(1) opens with the words “save as otherwise provided in the Act”, which brings in compliance with other provisions of the 2003 Act including Section 50 which empowers the State Commission to specify the Electricity Supply Code;

iii. (iii) The Explanation to Section 43(1) requires the applicant to submit an application complete in all respects along with documents showing payment of necessary charges and other compliances. This payment not only includes application fees, but also includes the charges related to supply of electricity; The other compliances would include due discharge of any pending or outstanding dues, if so demanded by the licensee; and

iv. (iv) Section 43(2) specifically provides that the applicant has to fulfil the obligation to pay the price as determined by the State Commission to demand the supply of electricity. The term "price" used in Section 43 is the consideration for the supply of electricity.

b. Supply of electricity is with respect to premises

i. The supply of electricity is with reference to the "premises" according to Sections 2(15), 43, 45, and 50 of the 2003 Act. Similar provisions existed in the 1910 Act and 1948 Act. Further, the disconnection dealt in Section 56 of the 2003 Act and Section 24 of the 1910 Act necessarily relate to identified premises;

ii. The definition of consumer under Section 2(15) of the 2003 Act includes *"any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee…"* Hence the expression "premises" is the continued

identified place for supply of electricity, irrespective of any change in the owner or occupier; and

iii. The Electric Utilities are required to have an infrastructure in place for the purposes of supplying electricity to consumers. They have to incur operation and maintenance costs to be in readiness to supply electricity. Therefore, if liability is not fastened to the premises, such charges would ultimately be borne by the general consumers since this would be factored in the fixation of tariff.

c. Regulatory regime to recover arrears of electricity dues

i. Section 49 of the 1948 Act empowers the Electricity Board to supply electricity upon such terms and conditions as the Board thinks fit. Under Section 79 of the 1948 Act, the Board can make regulations not inconsistent with the Act and the Rules made thereunder. In **Hyderabad Vanaspathi** (supra) this Court held that terms and conditions of supply framed by the Electricity Board under Section 49 of the 1948 Act are statutory in character;

ii. The terms and conditions of supply under the 2003 Act are framed by independent regulators in terms of Section 50 read with Section 181(2)(x) of the 2003 Act after following a detailed procedure. Therefore, the Electricity Supply Code framed by the State Commission is a subordinate legislation and has a statutory character. This statutory authority enables the Supply Code to

provide for recovery of dues of the previous owner from the subsequent owner; and

iii. The condition of payment of outstanding dues is not a compulsory extraction of money and does not require a primary legislation by Parliament or state legislature. Such a condition can be prescribed by a subordinate legislation.

d. Electricity arrears as charge over the premises

i. i. It is not the case of the Electric Utilities that there is any mortgage or charge over the property in the form that the licensee is a secured creditor. The licensee has the right to insist on clearance of outstanding dues of the premises before giving a new connection.

e. Civil and Statutory remedies to recover electricity arrears of the Utilities

(i) Section 56(2) of the 2003 Act does not bar the recovery of electricity arrears through other avenues of recovery in accordance with law;

(ii) The limitation of two years under Section 56(2) of the 2003 Act is with reference to bar on disconnection by the licensee. There is no limitation under Section 56 after the electricity is discontinued for non-payment of dues. A Condition of Supply to recover electricity arrears is not barred by limitation under Section 56(2) of the 2003 Act; and

(iii) The right of a distribution licensee to deny electricity connection till outstanding dues are cleared is a continuing right and cannot be said to be extinguished. It can be exercised when the new owner or occupier approaches the licensee for connection.

f. Implication of an auction-sale of premises on "as is where is" basis

I. i. The auction purchasers were put to notice of the requirement of clearing the dues as the public auction-sale of the premises on "as is where is" basis would include a condition of acknowledging all liabilities in respect of the said premises, with or without specific reference to the payment of electricity dues;

i. ii. There is an obligation on persons acquiring the premises to verify and obtain a no dues certificate from the licensee or otherwise factor the dues while quoting the bid price in the auction; and

ii. iii. The purchaser cannot deny knowledge of the requirement to clear outstanding dues of the premises when these are provided for in the conditions of supply or Supply Code.

II. Auction Purchasers

26. Sarvashri Shekhar Naphade, Mr. V Giri, Mr. PS Patwalia, Mr. S Ganesh, senior counsel, and Mr. Puneet Jain, Mr. Amar Dave, Mr. EMS Anam, Mr. DN Ray, Mr. T Srinavasa Murthy, Mr. Bharat Patel, Mr. Ram Lal Roy, Mr. Purvish

Jitendra Malkan, and Mr. MY Deshmukh learned counsel on behalf of the auction purchasers have urged the following submissions:

a. USO is absolute

i. (i) Electricity constitutes goods within the meaning of Entries 53, 54, and 56 of List II of the Seventh Schedule of the Constitution and under the Sale of Goods Act 1930;

ii. (ii) The obligation to provide electricity to consumers under Section 43 of the 2003 Act is not hedged by a condition to discharge the arrears incurred by the previous consumer;

iii. (iii) The phrase "price as determined by the appropriate commission" in Section 43(2) of the 2003 Act could only be the price at which electricity is supplied to the distribution licensee. Thus, 'price' under Section 43 cannot include the arrears of the previous consumer;

(iv) The payment of necessary "charges" and "other compliances" contemplated under Section 43 relates to the application fees, and cannot be stretched to include a power to require the payment of third-party arrears;

(v) The statutory duty of a licensee to supply power on an application by the owner or occupier of any premises within one month is contained in Section 43(1) of the 2003 Act. The only exception to this statutory obligation is provided by Section 44 where the licensee

is prevented from giving supply due to cyclone, floods, storms or other circumstances beyond his control; and

(vi) The legislature has consciously inserted all the substantive requirements which the person making an application for supply of electricity is required to meet, which has been primarily captured under Sections 43(2), 45, 46, 47, and 48 of the 2003 Act. Therefore, no power has been endowed upon the State Commission to impose any other substantive condition in the form of providing a precondition of clearance of a previous owners' dues on a subsequent owner who seeks a fresh connection. Any such condition would be in conflict with Section 43.

b. Supply of electricity is with respect to consumer

(i) The reference to "premises" in the definition of "consumer" under Section 2(15) as well as under Section 43 of the 2003 Act is only to fix a situs, that is, to identify a licensee operating in the area *vis-à-vis* the property. The emphasis under Section 2(15) is therefore on the "person" who is the owner or occupier of the premises; and

(ii) Sections 2(15), 43, and 44 refer to "premises" because while an ordinary manufacturer or distributor may insist on the consumer to come to this factory or warehouse to take the supply of goods, the distribution licensee is obliged to take the supply to the consumer's premises. Therefore, the premises where the supply is to be made had to be necessarily identified.

c. Regulatory regime to recover arrears of electricity dues

a. The provisions of the 1910 Act and 1948 Act do not empower the Electricity Board to recover the electricity dues of the previous owner or occupier from the new owner or occupier of such premises. The liability to pay electricity dues is only on the person to whom the supply of electricity is made. It is a contractual liability;

b. Section 49 of the 1948 Act only enables the Board to prescribe the conditions of supply in a contract to be entered into with the prospective consumer. Such conditions of supply cannot be termed as rules or regulations as they are not published in the official gazette and therefore, cannot have the character of regulations and are not statutory in character; and

i. c. A condition requiring an applicant to clear the past dues of a previous consumer before the application for a fresh connection is considered is manifestly unfair. The arrears are due to a default committed by a previous consumer and the negligence of the Electric Utilities which continued to supply electricity despite default, without resorting to its power of disconnection.

d. Subordinate Legislation

a. The liability of one person, whether statutory or contractual, cannot be enforced against another person unless there is a substantive provision in law to do so. Such enforcement of liability cannot be provided by a piece of delegated legislation;

b. Even if it is assumed that such liability can be enforced by a delegated legislation, the parent law must clearly prescribe the power of framing such a piece of legislation. Neither the 1910 Act nor the 1948 Act provides any specific provision empowering the Electricity Board to recover the electricity dues of the previous owner or occupier of the premises from the new owner or occupier of premises in question;

c. The scheme of the 2003 Act, from Sections 43 to 49, makes it evident that no specific power has been conferred upon the State Commission under Section 50 read with Section 181 of the 2003 Act or with the State under Section 180 of the 2003 Act to add further substantive conditions like clearance of past dues of another consumer; and

d. It is a settled principle of law that for framing any rule or regulation, a specific source of power must be provided in the parent legislation.

e. Electricity arrears do not constitute a charge over the premises

a. Electricity dues do not constitute a charge over property as they do not run with the land. Only a fiscal levy by way of statutory exaction could be fastened on land or any other immovable property. The State Commission under Section 50 of the 2003 Act can only frame regulations for supply of electricity and has no power to provide for any fiscal exaction. Only a state legislation

can provide for a charge on a property by providing for levy of a duty on consumption or sale of electricity, under Entry 53 of List II of the Seventh Schedule;

b. There is no provision under the 2003 Act for creating charge on the premises and a charge cannot be introduced by way of Regulations as the subject matter is not covered under Section 50 of the 2003 Act;

c. The Conditions of Supply are contractual and therefore do not constitute a charge under Section 100 of the Transfer of Property Act 1882. The Conditions of Supply are contained in a contract and to constitute a charge, it must be registered under Section 17 of the Indian Registration Act 1908; and

d. Enforcement of a charge against the property in the hands of the transferee for consideration without notice of the charge does not arise. Electricity dues are simply an unsecured debt.

f. Civil and Statutory remedies to recover electricity arrears of the Utilities

a. Under Section 56 of the 2003 Act, the right to disconnect the supply in default of payment is relatable to the default committed by the defaulting consumer. Electric Utilities cannot recover dues over and above what is provided for in the Section 56 (2) of the 2003 Act; and

b. To the extent that the monies realised from sale of the company in liquidation were insufficient to clear the unsecured debts such as

electricity dues, they would abate. The Electric Utilities allowed the dues to mount up instead of taking effective steps to recover the dues. Conditions of Supply cannot be used to resurrect a time-barred debt.

g. Implication of an auction-sale of premises on "as is where is" basis

(i) A condition such as "as is where is and whatever there is" is a feature of physical properties and does not extend to claims that are not charges, mortgages, or other encumbrances running with the land; and

(ii) There was no obligation on the applicants to ascertain the electricity dues and more so in view of the judgement in **Isha Marbles** (supra), which held the field then, and which continues to hold the field in all cases where there is no statutory imposition of liability for past dues of previous owners on subsequent purchasers.

F. Analysis

I. Universal Service Obligation is not absolute

27. The Electric Utilities have argued that the duty to supply electricity under Section 43 of the 2003 Act is not absolute. It has been submitted that under Section 43, an applicant has to fulfil the obligation to pay the 'price' as determined by the State Commission to become entitled to receive supply of electricity. The 'price', it is urged, includes application fees as well as arrears of unpaid electricity dues of the previous owner or occupier. The Electric Utilities argue that in case there are outstanding dues of the previous owner they are

entitled to refuse a new connection or decline to commence the supply of electricity until the dues owed by the previous owner are cleared. On the contrary, the auction purchasers have urged that Section 43 obligates the distribution licensees to supply electricity when demanded by the auction purchaser. It is further urged that the 'price' in Section 43 can only mean the price at which electricity is supplied to the distribution licensee, and cannot include the arrears of the previous owner or occupier of the premises.

28. To contextualise the submissions of counsel, it is appropriate to refer to the relevant provisions of the 1910 and 2003 enactments. Under Section 3 of the 1910 Act, the State Government could grant a licence to any person to supply energy in any specified area. By virtue of Section 3(2)(f), the provisions contained in the Schedule stood incorporated in the licence. Under Section 22 read with Section 3(2)(f) and Clause VI of the first Schedule, there was an obligation to supply electricity on the distribution licensees. Section 22 of the 1910 Act obligated the licensee to supply energy to every person within the area of supply on the same terms as those on which any other person in the same area was entitled. Clause VI provided that the licensee shall supply energy within one month of a requisition by the owner or occupier of any premises situated within the area of supply.

29. Section 43 of the 2003 Act is similar to Section 22 of 1910 Act read with Clause VI of Schedule I of the latter Act. Part VI of the 2003 Act contains provisions dealing with distribution of electricity by distribution licensees. Section 2(17) defines a 'distribution licensee' as a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumer in their

area of supply. Section 43 of the 2003 Act casts a duty on every distribution licensee to supply electricity to the premises on an application made by the owner or occupier of such premises. The provision requires the distribution licensee to lay down its network in a particular area to supply electricity to a consumer, who demands supply.

30. The relevant portion of Section 43 reads as follows:

> "43. Duty to supply on request – (1) Save as otherwise provided in this Act, **every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply**:
>
> ***
>
> Explanation – **For the purposes of this sub-section, "application" means application complete in all respects in the appropriate form, as required by the distribution licensee, along with the documents showing payment of necessary charges and other compliances.**
>
> (2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):
>
> Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission."
>
> (emphasis supplied)

31. According to Section 43, the distribution licensee is obligated to supply electricity to the premises of an owner or occupier within a month of the receipt of an application requiring such supply. The provision casts a duty on the distribution licensee to supply electricity to the owner or occupier's premises.

Correspondingly, the owner or occupier of the premises has a right to apply for and obtain electric supply from the distribution licensee.[22] Both the right and the corresponding duty are imposed by the statute. The owner or occupier of the premises has to submit an application to avail of the supply of electricity.

32. In **Brihanmumbai Electric Supply & Transport Undertaking** v. **Maharashtra Electricity Regulatory Commission**,[23] a two-judge Bench of this Court observed that the obligation of the distribution licensee to supply electricity to premises will begin after the owner or occupier of such premises submits a completed application. The explanation to Section 43 clarifies that the application must be complete in all respects along with the necessary documents showing payment of "necessary charges" and other compliances, as required by the distribution licensee. Thus, under Section 43, the distribution licensee is obligated to supply electricity to the premises of an owner or occupier, provided that the owner or occupier pays all charges and complies with all conditions stipulated by the distribution licensee. Section 43 begins with the words "Save as otherwise provided in this Act". Hence, the operation of Section 43 will also be subject to compliance with the other provisions of the 2003 Act.

33. Section 45 lays down the manner of computation of the price to be charged by the distribution licensee for supply of electricity under Section 43. It provides that a distribution licensee may fix charges for supply of electricity in accordance with the tariffs fixed from time to time in accordance with the methods and principles specified by the concerned State Commission. Under Section 46, a distribution licensee is empowered to charge from any person who seeks

[22] Chandu Khamaru v. Nayan Malik, (2011) 12 SCC 314
[23] (2015) 2 SCC 438

supply of electricity any expenses reasonably incurred in providing any electric line or electric plant used for the purpose of giving electricity. Section 47 empowers the distribution licensee to seek a reasonable security from any person who requires supply under Section 43. It further provides that the distribution licensee can refuse to supply electricity to any person who fails to give the security deposit. The provision is extracted below:

> "**47. Power to require security** – (1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him –
>
> (a) in respect of the electricity supplied to such person; or
>
> (b) where any electricity line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter,
>
> **And if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.**"
>
> (emphasis supplied)

34. Section 47 indicates that a distribution licensee can refuse to supply electricity under Section 43 if the applicant fails to furnish the requisite security. Under Section 48, a distribution licensee may require the applicant, who requires a supply of electricity in pursuance of Section 43, to accept (i) any restrictions which may be imposed for the purpose of enabling the distribution licensee to comply with the regulations made under Section 53; and (ii) any terms restricting any liability of the distribution licensee for economic loss resulting from

negligence of the person to whom electricity is supplied. Thus, it is implicit that the distribution licensee may refuse electricity supply to the applicant until they accept such terms and restrictions reasonably imposed by the distribution licensee incidental to the statute.

35. Further, Section 50 empowers the State Commission to specify an Electricity Supply Code providing for recovery of electricity charges, among other things. The Electric Utilities have urged that the duty to supply electricity is subject to the Electricity Supply Code specified under Section 50. As mentioned in the preceding paragraphs, an applicant is required to submit a completed application along with documents showing the payment of necessary charges and other compliances. The Electricity Supply Code can stipulate such other compliances that an applicant has to observe for getting the supply of electricity under Section 43. Therefore, reading Section 43 along with Sections 45, 46, 47, 48, and 50, it becomes evident that the right of an applicant to seek supply of electricity under Section 43 is not absolute. The right is subject to the payment of charges, security deposit, as well as terms and restrictions imposed by the distribution licensee.

36. The distribution licensee can stipulate such terms and conditions as it deems necessary when an owner or occupier of the premises approaches it seeking the supply of electricity. A two-judge Bench of this Court in **Paschimanchal Vidyut Vitran Nigam** (supra) held that a distribution licensee can stipulate terms and conditions subject to which it will supply electricity to the applicant which are not arbitrary and unreasonable.

37. The auction purchasers have urged that the "charges" levied by the distribution licensee are explicitly dealt with by Section 45. It was further urged that Section 45 does not provide that charges should include the arrears of the previous owner or occupier of the premises. On the contrary, the distribution licensees have argued that the term 'price' used in Section 43 is the consideration for the supply of electricity as determined by the State Commission. It has been argued that the arrears of the previous owner or occupier of the premises is also a 'price' determined by the State Commission and payable at the time of making an application for the supply of electricity.

38. The words "price", "tariff", or "charges" have not been defined in the 1910 Act or the 2003 Act. In **AP TRANSCO** v. **Sai Renewable Power (P) Ltd**,[24] this Court observed that the term "tariff" has neither been defined nor explained in the 2003 Act. The Court held that in the absence of any specific definition in the legislation, recourse has to be taken to the *"meaning attached to these expressions under the general law or in common parlance."*[25]

39. In **BSES Ltd. v. Tata Power Co. Ltd**.,[26] a two-judge Bench of this Court interpreted 'tariff' in the context of the Electricity Regulatory Commissions Act, 1998. It observed:

> **"16.** The word "tariff" has not been defined in the Act. "Tariff" is a cartel of commerce and normally it is a book of rates. It will mean a schedule of standard prices or charges provided to the category or categories of customers specified in the tariff."

[24] (2011) 11 SCC 34
[25] (2011) 11 SCC 34
[26] (2004) 1 SCC 195

40. The proviso to Section 43(2) further refers to the "price" payable by an applicant to demand or to continue to receive the supply of electricity from a distribution licensee. The "price" is to be determined by the appropriate commission. This "price" is the consideration, as determined by the State Commission, that an applicant pays for receiving a supply of electricity.

41. The term "price" has to be given a broad meaning to include all the 'tariffs' and 'charges' that may be determined by the appropriate commission. This includes the 'charges' fixed under Section 45 by the appropriate commission from time to time and the 'charges' that a distribution licensee may impose under Section 46 to recover any reasonable expenditure. The ambit of the term 'price' is wide enough to also include the statutory dues that the State Commission decides to enact by way of regulations under Section 50.

42. Thus, the duty to supply electricity under Section 43 is not absolute, and is subject to the such charges and compliances stipulated by the distribution licensees as part of the application.

II. Duty to supply electricity is with respect to consumer

43. The Electric Utilities urge that the duty to supply electricity is with respect to the premises and not to an individual. They refer to the definition of 'consumer' under Section 2(15) and to Section 43 of the 2003 Act. Further, it was urged that Section 50 and Section 181(2)(x) of the 2003 Act enable the distribution licensee to provide for payment of dues of electricity supplied to the premises if a reconnection or new connection is sought for the same premises. Contrariwise, the auction purchasers have submitted that the consumption of electricity is

always by the owner or occupier of the premises through appliances and apparatus installed within the premises. The reference to premises in the definition of 'consumer' under Section 2(15) as well as Section 43 of the 2003 Act is, it is urged, only to fix a situs for the supply of electricity to the owner or occupier of the premises.

44. Electricity is a movable good because it can be transmitted, transferred, delivered, and possessed like any other movable property.[27] This position of law was established by a Constitution Bench of this Court in **State of AP** v. **National Thermal Power Corporation Ltd**.[28] In **Paschimanchal Vidyut Vitaran Nigam** (supra) a two-judge bench of this Court held that the supply of electricity to a consumer is a sale of goods. The charges paid by the consumer to the distribution licensee is essentially the price paid for goods supplied and consumed. The consumption of electricity by a consumer is always effected through equipment or appliances installed within the premises.

45. Section 2(15) of the 2003 Act defines the expression 'consumer' as follows:

> "(15) "consumer" means **any person who is supplied with electricity for his own use** by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and **includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be**;"
>
> (emphasis supplied)

[27] Commissioner of Sales Tax, Madhya Pradesh, Indore v. Madhya Pradesh Electricity Board, Jabalpur (1969) 1 SCC 200
[28] (2002) 5 SCC 203, paragraph 20.

46. The definition of "consumer" under Section 2(15) of the 2003 Act is similar to the definition of "consumer" in the 1910 Act. The definition consists of two limbs:

(i) any person who is supplied with electricity for their own use; and

(ii) any person whose premises are for the time being connected for the purposes of receiving electricity, irrespective of whether or not such person is supplied with electricity for his own use.[29]

The first limb of the definition is prefaced with "means" while the second limb is prefaced with "includes". The definition is thus exhaustive of the ambit of the expression defined. The inclusive part is intended to expand the ambit of the initial limb of the definition.

47. In **Jivendra Nath Kaul** v. **Collector/District Magistrate**[30], a two judge Bench of this Court held that the meaning of the phrase "for the time being" means at the moment or the existing position. The reference to premises in the second limb connotes that the demand for guaranteed charges or dues will incur even if the owner or occupier has stopped consuming power for the time being, but the premises remain connected. The second limb clarifies that a consumer who commences receiving power at the premises will continue to remain a consumer even if they stop consuming power for the time being, so long as the premises are connected to the power system. The second limb encompasses a variety of foreseeable and practical situations. For example, the consumer may have rented out the premises to a tenant. In this situation, the consumer

[29] Uttar Pradesh Power Corporation Limited v. Anis Ahmad, (2013) 8 SCC 491
[30] (1992) 3 SCC 576

continues to remain a consumer as the premises are connected for the time being for the purposes of receiving the supply of electricity, though the consumer may not themselves be consuming electricity (the consumption being by the tenant). Here, the distribution licensee demands charges incurred from the consumer, even though the electricity is being consumed by the tenant. Another situation contemplated under the second limb is where the consumer is unable to consume electricity due to circumstances such as accident or strike. In this case, as long as the premises of the consumer are connected to the power system, they will have to pay the demand charges and minimum guaranteed charges stipulated by the distribution licensee.

48. We are unable to accept the submission of Electric Utilities that the second limb of Section 2(15) connotes a supply of electricity to premises, irrespective of a change in the owner or occupier. The 2003 Act provides an inclusive definition of 'premises' under Section 2(51). According to the definition, premises include land, building, or structure. The second limb goes only so far as to say that when electricity is supplied to any person at a particular land, building, or structure, such person will continue to remain a consumer, even though they are not consuming electricity, so long as the electricity connection exists. The expression 'premises' used in the second limb identifies the place where the supply of electricity has to be made.

49. It would be material to refer to some other definitions under the 2003 Act which emphasise that supply of electricity is with respect to consumer:

> "2. Definitions.- In this Act, unless the context otherwise requires,- ***

> (17) "distribution licensee" means a licensee authorised to operate and maintain a distribution system for **supplying electricity to the consumers in his area of supply**;
>
> ***
>
> (19) "distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or generating station connection and the point of connection **to the installation of the consumers**;
>
> ***
>
> (61) "service line" means any electric supply line through which electricity is, or is intended to be, **supplied** -
>
> (a) t**o a single consumer** either from a distributing main or immediately from the Distribution Licensee's premises; or
> (b) from a distributing main **to a group of consumers** on the same premises or on contiguous premises supplied from the same point of the distribution main;
>
> ***
>
> (70) "supply", in relation to electricity, **means the sale of electricity to a licensee or consumer**;"
>
> (emphasis supplied)

50. The definition of 'supply' specifically states that supply means the sale of electricity to a consumer. The said definition does not indicate that supply of electricity is *vis-a-vis* the premises of the consumer. Considering the overall scheme of the 2003 Act, the supply of electricity is to the consumer and not the premises.

51. Section 43 of the 2003 Act obligates a distribution licensee to supply electricity "on an application by the owner or occupier of any premises". Under the provision, the right to obtain a supply of electricity is vested with the owner or occupier of the premises. Invariably, such owner or occupier means the consumer under Section 2(15). As held in **Brihanmumbai Electric Supply & Transport Undertaking** (supra)**,** the duty to supply electricity comes into play only on an application made by the owner or occupier of the premises. Hence,

the term “premises” has to be contextualised and understood with respect to the preceding portion, that is, the owner or occupier of the premises.

52. The duty to supply electricity under Section 43 is only with respect to the owner or occupier of the premises, and not the premises, as it is the owner or occupier who has the statutory right to “demand” electricity for the premises under their use or occupation. Further, it is the applicant who has to fulfil all the statutory conditions laid down under the 2003 Act to become entitled to get supply of electricity to their premises. The applicant has to pay the necessary charges and comply with all terms and conditions as determined by the appropriate commission for the supply of electricity.

53. It is true that Sections 43 and 44 of the 2003 Act talk about supply of electricity to premises. However, the use of such phrases is borne out of the practical consideration of supply of electricity. Unlike other goods, a distribution licensee cannot insist that the consumer come to their factory or warehouse to receive the supply of electricity. The distribution licensee necessarily has to lay down special infrastructure such as electricity lines and transformers to transmit electricity and supply it directly to the consumer, at their premises. On an application, the distribution licensee is statutorily obliged to supply electricity to the consumer. Consequently, the place where the supply of electricity is to be made has to be necessarily identified. Thus, Section 43 and 44 refer to the consumer’s premises to fix the situs for the purpose of supplying electricity.

54. Section 56 provides that it is the liability of the consumer to pay the charge for electricity in respect of the supply of electricity. Under Section 56 the duty of effecting the payment of charges for electricity is on a person, that is, the

consumer. Further, Section 56(2) specifically contains the expression "no sum due from any consumer". Section 126 also uses the words "the electricity charges payable by such person or any other person benefited by such use." Thus, the overall scheme of the 2003 Act makes it evident that only a consumer can be held liable for default in payment of electricity dues or charges.

55. Under the 2003 Act, the Central government has enacted various rules and regulations for carrying out the provisions of the Act. The government notified the Electricity (Rights of Consumers) Rules, 2020[31] laying down the rights of the consumers of electricity. The Rules detail the rights of consumers and obligations of distribution licensees; release of new connections; metering arrangements; billing and payment; disconnection and reconnection; grievance redressal mechanism, among others. The Rules define an 'applicant' as an owner or occupier of any premises who files an application form with a distribution licensee for supply of electricity. The Rules defines 'point of supply' to mean the point, as may be specified by the State Commission, at which a consumer is supplied electricity. The Rules make it evident that electricity is supplied to the consumer.

56. Thus, it is always the consumer who is supplied electricity and is held liable for defaulting on payment of dues or charges for supply of electricity. Perforce, the premises cannot be held to be a defaulter and no dues can be attached to the premises of the consumer.

[31] "Rules"

III. Whether electricity connection sought by a subsequent owner constitutes a reconnection or fresh connection

57. Another issue before us, as argued by the counsel, is whether the connection sought by a subsequent owner constitutes a reconnection or fresh connection. In **Isha Marbles** (supra), the Electricity Board had disconnected electricity supplied to the erstwhile owner pursuant to its power under Section 24 of the 1910 Act. The Electricity Board insisted upon the auction purchaser paying the arrears owed by the erstwhile owner as a condition precedent to provide an electricity connection. The Board did not place reliance on any statutory conditions of supply. This Court observed that the law, as it stood then, was inadequate to enforce such a liability. The Court further held that a connection sought by a subsequent purchaser should be regarded as a reconnection:

> "**49. It is important to note that though the purchasers asked for electricity connection as a new connection it cannot be regarded as a new connection. It is only a reconnection since the premises had already been supplied with electrical energy. Such a supply had been disconnected owing to the default of the consumer.** That consumer had bound himself to the Board to pay the dues. He also agreed to abide by the condition as stipulated in the Act and the Rules including the payment of the dues."
>
> (emphasis supplied)

58. This Court further went on to hold that a distribution licensee cannot make the auction-purchaser liable when seeking reconnection of electricity supply for the same premises. According to the Court, this was not feasible considering the fact that *"with change of every ownership new connections have to be issued [which] does not appear to be the correct line of approach as such situation is*

brought by the inaction of the Electricity Board in not recovering the arrears as and when they fall due or not providing itself by adequate deposits." However, this Court also conceded that liability of previous owners could be fastened on auction-purchasers if the law so prescribed.

59. In **Gujarat Inns** (supra), another three-judge Bench of this Court held that the connection sought by auction-purchasers of properties would constitute a fresh connection. The Court held that in case of a fresh connection, the auction purchasers cannot be held liable to clear the arrears incurred by the previous owners in the absence of any specific statutory provision. It was observed:

> **"3.** In our opinion, the present two cases are cases of fresh connection. The learned counsel for the respondents (auction-purchasers) have stated that they have taken fresh connections and they have no objection if their connections are treated as fresh connections given on the dates on which the supply of electricity was restored to the premises. **We are clearly of the opinion that in case of a fresh connection though the premises are the same, the auction-purchasers cannot be held liable to clear the arrears incurred by the previous owners in respect of power supply to the premises in the absence of there being a specific statutory provision in that regard**. Though we find some merit in the submission of the learned counsel for the appellant calling for reconsideration of the wide propositions of law laid down in Isha Marbles case [(1995) 2 SCC 648] we think the present one is not a case for such exercise. We leave the plea open for consideration in an appropriate case."
>
> (emphasis supplied)

60. In **Isha Marbles** (supra), a three-judge Bench of this Court held that an application for supply of electricity to the same premises is to be regarded as a reconnection. This Court, while interpreting the provisions of the 1910 Act, gave its reasoning on the assumption that the supply of electricity is with respect to

premises and not the consumer. However, the 2003 Act has statutorily clarified the position that supply of electricity is with respect to the consumer. It necessarily follows that when a new owner or occupier of the premises applies for supply of electricity in terms of Section 43 of the 2003 Act, it will constitute a fresh connection, regardless of the fact that the premises for which the electricity is sought was being supplied with electricity previously. An application for supply of electricity can be categorised as reconnection only when the same owner or occupier of the premises, who was already a consumer, applies for supply of electricity with respect to the same premises in case the electricity supply is disconnected.

61. We need to highlight that the 2003 Act contemplates a synergy between the consumer and premises. Under Section 43 of the 2003 Act, the owner or occupier of premises can seek a supply of electricity for particular premises. Perforce, 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. For example, when a person owning an apartment in a residential complex applies for supply of electricity to such an apartment, they become a consumer only with respect to the apartment for which the application is made and to which electricity is supplied. Such a person may own another apartment to which electricity may already be supplied, but they will be considered a separate consumer with respect to the second apartment. 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 premises are different, it will be considered as a fresh connection and not a reconnection.

62. In **Gujarat Inns**. (supra), this Court held that an application for electricity by an auction-purchaser will constitute fresh connection even though the premises are the same. The reasoning is based on the correct assumption that supply of electricity is with respect to the consumer, and not the premises. Therefore, even if the premises may be the same to which electricity had already been supplied, it will be considered as a fresh connection in the situation where a different applicant, in that case an auction-purchaser, applies for supply of electricity.

IV. Regulatory power of the Electricity Boards/ State Commissions

63. The Electric Utilities have submitted that: (i) Section 49 of the 1948 Act empowered the Board to supply electricity upon such terms and conditions as it thinks fit; (ii) the phrase “regulate” in Section 79 of the 1948 Act has a wider implication allowing the State Commission to do everything necessary to prescribe the principles governing the supply of electricity; (iii) the Electricity Supply Code notified under Section 50 read with Section 181(2)(x) of the 2003 Act governs all matters relating to the supply of electricity to premises; and (iv) the Conditions of Supply which provide for payment of outstanding dues of the previous consumer have a clear nexus to the scheme of the 2003 Act and the objectives sought to be achieved.

64. From the other side, the auction purchasers have urged that: (i) the provisions of the 1910 Act, 1948 Act, and the 2003 Act do not empower the

Electricity Board or, as the case may be the distribution licencee to recover the arrears of electricity of the previous consumer from the new owner or occupier of the premises; and (ii) the conditions of supply prescribed under the 1948 Act do not have the character of regulations and are not statutory.

65. Section 2(h) of the 1910 Act defined "licensee" as any person licensed under Part II to supply energy. Section 21 provided that a distribution licensee shall not interfere with the use of energy by any person. Section 21(2) empowered the licensee to make conditions for the purpose of regulating its relations with the consumer with the previous sanction of the State Government.

66. The 1910 Act did not include the State Electricity Board within the definition of "licensee". Section 26 of the 1948 Act states that the Board shall, in respect of the whole State, have all the powers and obligations of a licensee under the 1910 Act. The first proviso specified that certain provisions of the 1910 Act relating to the duties and obligations of a licensee shall not be applicable to the Board. In its decision in **State of Uttar Pradesh** v. **Hindustan Aluminium Corporation**[32] this Court analysed the interconnection between Section 26 of the 1948 Act and Section 22 of the 1910 Act. The court held that the obligation under Section 22 of the 1910 Act to supply energy to every person within the area of supply is not fastened to the Board. Although Clause VI of Schedule to the 1910 Act also mandates the licensee to supply electricity on demand, the second proviso specifies that the said clause is applicable to the Board only when the distribution mains have been laid by the Board and the supply through any of them has commenced.

[32] (1979) 3 SCC 229

67. Under Section 21 of the 1910 Act, the Supply Licensee prescribed conditions with the previous sanction of the state government. Similarly, the Boards could also prescribe conditions under Section 21 of the 1910 Act by virtue of Section 26 of the 1948 Act.

68. Section 49 of the 1948 Act read as follows:

> **"49. Provisions for the sale of electricity by the Board to persons other than licensees.**- (1) Subject to the provisions of this Act and of regulations, if any made in this behalf, the Board **may supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit** and may for the purposes of such supply frame uniform tariffs."
>
> ***
>
> (emphasis supplied)

Under the 1948 Act, the Electricity Boards were empowered to prescribe terms and conditions of supply under Section 49 read with Section 79(j). The Board was empowered to fix such terms and conditions as it thinks fit for supply of electricity to any person not being a licensee. Section 79 permitted the Board to make regulations providing for the principles governing the supply of electricity by the Board to persons other than licensees under Section 49:

> **"79. Power to make regulations.**- The Board may by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder to provide for all or any of the following matters, namely:-
>
> ***
>
> (j) principles governing the supply of electricity by the Board to persons other than licensees under section 49;"

Clause (j) of Section 79 empowered the Board to make regulations prescribing the principles governing the supply of electricity to consumers. According to Section 79A, any regulation made by the Board had to be laid before the State Legislature. Thus, the conditions of supply framed by the Board under section 49 read with section 79 and section 79A possessed a statutory nature and would be binding on consumers.

69. It has been a consistent position in law that the conditions of supply stipulated by the licensees or Boards have a statutory character.[33] A two-judge Bench of this Court, in **Jagdamba Paper Industries (P) Ltd** v. **Haryana State Electricity Board,**[34] was dealing with a challenge to the unilateral enhancement of security by the Board under the agreement with consumers of electric energy. This Court held that the Board has been conferred with statutory powers under section 49(1) of the 1948 Act to determine the conditions on the basis of which supply is to be made. Similarly, in **Bihar State Electricity Board** v. **Parmeshwar Kumar Agarwala**[35], a two-judge Bench of this Court held that the terms and conditions on which the Board supplies electricity to a consumer have a statutory character.

70. In **Ferro Alloys Corpn. Ltd** v. **A P State Electricity Board**[36] a two-judge Bench of this Court upheld the validity of Section 49 of the 1948 Act. The Court observed that the terms and conditions notified under Section 49 must relate to the object and purpose for which they were issued. There, the Court upheld the authority of the Board to prescribe a security deposit in the following terms:

[33] Punjab State Electricity Board v. Bassi Cold Storage, Kharar and Another, 1994 Supp (2) SCC 124
[34] (1983) 4 SCC 508
[35] (1996) 4 SCC 686
[36] 1993 Supp (4) SCC 136

> "**102**. [...] Under the regulations framed by the Board in exercise of powers of Section 49 read with Section 79(j) the consumer is only entitled and the Board has an obligation to supply energy to the consumer upon such terms and conditions as laid down in the regulations. If, therefore, the regulations prescribed a security deposit that will have to be complied with. It also requires to be noticed under Clause VI of the Schedule to the Electricity Act that the requisition for supply of energy by the Board is to be made under proviso (a) after a written contract is duly executed with sufficient security. This, together with the regulations stated above, could be enough to clothe it with legal sanction."

71. In **Hyderabad Vanaspathi** (supra), a three-judge Bench of this Court had to decide upon the validity of Condition 39 of the "Terms and Conditions of Supply" prescribing an adjudicatory machinery for assessing and levying penal damages. This Court considered the legal provisions under the 1910 Act and 1948 Act to hold that terms and conditions notified under Section 49 of the latter enactment were valid and had statutory force. The relevant paragraph is extracted below:

> "**20.** We have already seen that Section 49 of the Supply Act empowers the Board to prescribe such terms and conditions as it thinks fit for supplying electricity to any person other than a licensee. The Section empowers the Board also to frame uniform tariffs for such supply. Under Section 79(j) the Board could have made regulation therefor but admittedly no regulation has so far been made by the Board. The Terms and Conditions of Supply were notified in BPMs No. 690 dated 17-9-1975 in exercise of the powers conferred by Section 49 of the Supply Act. They came into effect from 20-10-1975. They were made applicable to all consumers availing supply of electricity from the Board. **The Section in the Act does not require the Board to enter into a contract with individual consumer. Even in the absence of an individual contract, the Terms and Conditions of Supply notified by the Board will be applicable to the consumer and he will be bound by them. Probably in order to avoid any possible plea by**

> **the consumer that he had no knowledge of the Terms and Conditions of Supply, agreements in writing are entered into with each consumer. That will not make the terms purely contractual. The Board in performance of a statutory duty supplied energy on certain specific terms and conditions framed in exercise of a statutory power. Undoubtedly the terms and conditions are statutory in character and they cannot be said to be purely contractual.**"
>
> (emphasis supplied)

72. The above discussion shows that Conditions of Supply were notified: first, by the Supply Licensee and Electricity Boards under Section 21 of 1910 Act; and second, by the Electricity Boards under Section 49 of 1948 Act. The decision in **Hyderabad Vanaspathi Ltd** (supra) is illustrative of the fact that the courts have upheld the validity of the Conditions of Supply notified by the Electricity Boards. Significantly, the decision in **Hyderabad Vanaspati Ltd.** (supra) holds that the power of the Board to formulate terms and conditions under Section 49 of the 1948 Act is distinct from the power to make regulations embodied under section 79 of the said Act. Therefore, the terms and conditions of supply notified by the Board under Section 49, although in the nature of subordinate legislation, were not required to be placed before the State Legislature under section 79A of the 1948 Act. In that case, it was also held that statutory conditions could be invalidated only if they were in conflict with any provisions of the 1948 Act or the Constitution.

73. The auction-purchasers have referred to **India Thermal Power Ltd** v. **State of MP**[37] to argue that the conditions of supply are not statutory, but form a part of the contract between the Electricity Board and the consumer. Hence, it

[37] (2000) 3 SCC 379

was submitted that these contractual terms cannot be enforced by the Board against the new owner or occupier of the premises. In **India Thermal Power Ltd** (supra), the issue before the two-judge Bench was whether the State Government can alter the terms of the Power Purchase Agreement entered into under Sections 43 and 43-A of the 1948 Act. Section 43 empowered the Board to enter into an arrangement with any person for purchase or sale of electricity. Section 43-A provided that the tariff for the sale of electricity by a generating company shall be determined in accordance with the norms regarding the operation and plant-load factor as determined by the Central Government from time to time. It was in light of these provisions, that this Court observed that every provision of an agreement entered into between a generating company and Electricity Board in exercise of the enabling power conferred under Sections 43 and 43-A does not render the entirety of the contract statutory. The relevant observations are extracted below:

> "11. [...] Merely because a contract is entered into in exercise of an enabling power conferred by a statute that by itself cannot render the contract a statutory contract. **If entering into a contract containing the prescribed terms and conditions is a must under the statute then that contract becomes a statutory contract. If a contract incorporates certain terms and conditions in it which are statutory then the said contract to that extent is statutory.** A contract may contain certain other terms and conditions which may not be of a statutory character and which have been incorporated therein as a result of mutual agreement between the parties. Therefore, **the PPAs can be regarded as statutory only to the extent that they contain provisions regarding determination of tariff and other statutory requirements of Section 43-A(2)**. Opening and maintaining of an escrow account or an escrow agreement are not the statutory requirements and, therefore, merely because PPAs contemplate

> maintaining escrow accounts that obligation cannot be regarded as statutory."
>
> (emphasis supplied)

74. We are of the opinion that the reasoning of this Court in **India Thermal Power Ltd** (supra) actually supports the arguments of the Electric Utilities. As evinced from **Hyderabad Vanaspathi** (supra), the conditions of supply enacted by the Boards have a statutory character. Therefore, any condition enacted under Section 49 of the 1948 Act, specifically one requiring the new owner to clear the arrears of the previous owner as a precondition to availing electricity supply, will have a statutory character. When such a condition is incorporated as part of a contract, such contract also attains a statutory character and the liability contained therein becomes a statutory liability, which can be enforced by the utilities against third parties, including the new owners of the premises in question.

75. The next question that comes up for consideration is whether the Electric utilities can enact a condition providing for recoupment of electricity arrears of a previous owner from the new owner. Under the 1948 Act, the Board could enact terms and conditions for the supply of electricity under Section 49 read with Section 79(j). This Court has held on many occasions that the term 'regulate' is to be given a wide interpretation allowing the performance of everything necessary for the organised implementation, development, and conduct of business. In **Deepak Theatre** v. **State of Punjab**[38] a three-judge Bench of the Supreme Court held that the power to regulate implies the power to prescribe and enforce all such proper and reasonable rules necessary for conduct of business. It was held:

[38] 1992 Supp (1) SCC 684

> "**3**. It is settled law that the rules validly made under the Act, for all intents and purposes, be deemed to be part of the statute. The conditions of the licence issued under the rules form an integral part of the statute. The question emerges whether the word regulation would encompass the power to fix rates of admission and classification of the seats. The power to regulate may include the power to license or to refuse the licence or to require taking out a licence and may also include the power to tax or exempt from taxation, but not the power to impose a tax for the revenue in rule making power unless there is a valid legislation in that behalf. Therefore, **the power to regulate a particular business or calling implies the power to prescribe and enforce all such proper and reasonable rules and regulations as may be deemed necessary to conduct the business in a proper and orderly manner. It also includes the authority to prescribe the reasonable rules, regulations or conditions subject to which the business may be permitted or conducted.** A conjoint reading of Section 5, Section 9, Rule 4 and condition 4-A gives, therefore, the power to the licensing authority to classify seats and prescribe rates of admission into the cinema theatre."
>
> (emphasis supplied)

76. In **K Ramanathan** v. **State of Tamil Nadu**[39] a three-judge Bench of this Court held that the word "regulation" does not have a rigid or inflexible meaning. This Court observed that "power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject." The Constitution Bench in **V S Rice and Oil Mills** v. **State of Andhra Pradesh**[40] also observed that the word "regulate" is of wide import.

77. The above analysis must guide the interpretation of Section 49 read with Section 79(j) of the 1948 Act which empowered the Board to enact such terms

[39] (1985) 2 SCC 116
[40] (1964) 7 SCR 456

and conditions as the Board thinks fit. This power of the Board would extend to enacting conditions providing for recovery of dues of the erstwhile owner from the new owner as a precondition for supply of electricity. Further, this Court has consistently upheld the Conditions of Supply providing for recoupment of arrears of a previous owner from the new owner as a pre-condition for supply of electricity. A two-judge bench of this Court in **Haryana State Electricity Board** v. **Hanuman Rice Mills, Dhanauri**[41], while summarising the position of law laid down in **Paramount Polymers** (supra) and **Paschimanchal Vidyut Vitran Nigam Ltd**. (supra), observed that the supplier can recover the arrears of electricity dues of the previous owner or occupier from the purchaser of the property if the statutory rules or terms and conditions of supply which are statutory in character authorise the same:

> **"12.** The position therefore may be summarised thus:
>
> (i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.
>
> (ii) **Where the statutory rules or terms and conditions of supply which are statutory in character, authorise the supplier of electricity to demand from the purchaser of a property claiming reconnection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser."**
>
> (emphasis supplied)

78. In **Paramount Polymers** (supra), a two-judge Bench of this Court was called upon to decide the validity of clause 21-A of Terms and Conditions of

[41] (2010) 9 SCC 145

Supply which provided that no fresh connection in respect of the premises would be given to a purchaser unless the purchaser cleared the amount that was left in arrears by the previous consumer. The Court held that it was within the power of the Electricity Board to insert clause 21-A in the Terms and Conditions of Supply under section 49 of the Supply Act:

> "15. […] Under Section 49 of the Supply Act, the licensee or rather, the Electricity Board, is entitled to set down the Terms and Conditions of Supply of electrical energy. In the light of the power available to it, also in the context of Section 79(j) of the Supply Act, **it could not be said that the insertion of clause 21-A in the Terms and Conditions of Supply of electrical energy is beyond the power of the appellant.**"
>
> (emphasis supplied)

79. As regards the 2003 Act, the Electric Utilities submit that Section 50 read with Section 181(2)(x) authorises the State Commission to frame the conditions governing Electricity Supply enabling recovery of electrical charges, including the electricity arrears of the previous owner from the new owner. The auction purchasers concede that Section 50 of the 2003 Act is exhaustive, but contend that it does not enable the State Commission to lay down conditions for recovery of electricity arrears of the previous owner. To comprehensively analyse the above submission, it is necessary to refer to the relevant provisions under the 2003 Act.

80. Section 2(24) of the 2003 Act defines "Electricity Supply Code" to mean the Electricity Supply Code specified under Section 50. Section 50 reads as follows:

> "**50. The Electricity Supply Code** – The State Commission shall specify an Electricity Supply Code to provide for **recovery of electricity charges**, intervals for billing of electricity charges, **disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity**, measures for preventing tampering, distress or damage to electric plant or electrical line or meter, entry of distribution licensee or any person acting or his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters."
>
> (emphasis supplied)

81. Section 50 of the 2003 Act specifies that the State Commission shall specify an Electricity Supply Code. Section 2(64) defines "State Commission" as the State Electricity Regulatory Commission constituted under Section 82(1). The State Commission is authorised to notify the Electric Supply Code under section 181(2)(x). The use of expressions such as "recovery of electricity charges", "disconnection of supply", "restoration of supply", under Section 50 indicate that the scope of the regulatory powers of the State Commission under the said provision is wide enough to govern all matters relating to the supply of electricity to the premises.

82. The 2003 Act lays down the legislative framework for generation, transmission, distribution, trading, and use of electricity in India. In the process, the Parliament has also conferred discretion on the regulatory authorities, particularly the Central Commission and State Commission, to work out further details within the framework of the legislative policy laid down in the legislation. While making subordinate legislation, the delegated authority has to act within the confines of the plenary legislation.[42] The rules or regulations enacted by the

[42] JK Industries Ltd. v. Union of India, (2007) 13 SCC 673

Central Commission or State Commission cannot override the 2003 Act by stipulating inconsistent provisions or by supplanting the parent statute.

83. The 2003 Act empowers the State Commission to make regulations on matters specified under Section 181(2). In **PTC India Ltd.** v. **Central Electricity Regulatory Commission**[43] a Constitution Bench of this Court held that regulations can be framed by State Commissions so long as they satisfy two conditions: first, they must be consistent with the provisions of Act; and second, they must be made for carrying out the provisions of the Act. The Court held:

> "**28**. The 2003 Act contemplates three kinds of delegated legislation. Firstly, under Section 176, the Central Government is empowered to make rules to carry out the provisions of the Act. Correspondingly, the State Governments are also given powers under Section 180 to make rules. Secondly, under Section 177, the Central Authority is also empowered to make regulations consistent with the Act and the rules to carry out the provisions of the Act. Thirdly, under Section 178, the Central Commission can make regulations consistent with the Act and the rules to carry out the provisions of the Act. SERCs have a corresponding power under Section 181. The rules and regulations have to be placed before Parliament and the State Legislatures, as the case may be, under Sections 179 and 182. Parliament has the power to modify the rules/regulations. This power is not conferred upon the State Legislatures. **A holistic reading of the 2003 Act leads to the conclusion that regulations can be made as long as two conditions are satisfied, namely, that they are consistent with the Act and that they are made for carrying out the provisions of the Act.**"
>
> (emphasis supplied)

84. The scheme of the 2003 Act makes it evident that the regulatory powers of the State Commission under section 181(2) are of wide import. The Commission

[43] (2010) 4 SCC 603

has certain plenary powers to regulate on matters contained in section 181(2), including Electric Supply Code under Section 50. Accordingly, the Commission can notify a Supply Code governing all the matters pertaining to supply of electricity such as "recovery of charges", "disconnection of supply" and "restoration of supply". In our opinion, such an authority also extends to stipulating conditions for recovery of electricity arrears of previous owners from new or subsequent owners.

85. In **Paschimanchal Vidyut Vitran Nigam** (supra), a two-judge Bench was considering the legality of the actions of the appellant licensee to recover electricity dues from the purchaser of subdivided plots. Clause 4.3 of the Uttar Pradesh Electricity Supply Code stipulated that a new connection to subdivided premises shall be given only after the share of the outstanding dues attributed to such premises is duly paid by the applicant. This Court held that a distribution licensee can stipulate such terms necessary for supply of electricity, including that the arrears due in regard to the supply of electricity made to the premises when they were in the occupation of the previous owner or occupant, should be cleared before the electricity supply is restored or a fresh connection is provided to the premises. Therefore, a condition enabling the distribution licensee to insist on the clearance of the arrears of electricity dues of the previous consumer before resuming electricity supply to the premises is valid and permissible under the scheme of the 2003 Act.

86. The next question that arises for consideration is whether a regulation providing for recouping the arrears of a previous consumer from the subsequent owner has a reasonable nexus with the provisions of the 2003 Act. Section 42 of

the 2003 Act requires the distribution licensee to develop and maintain an efficient, coordinated, and economical distribution system in their area of supply to supply electricity in accordance with the provisions of the said Act. A distribution licensee is an intermediary, performing the function of conveying supply of electricity from generating companies to the consumer, at their premises. In order to provide a supply of electricity to consumers, a distribution licensee is required to lay down infrastructure such as electricity lines, transformers, and other equipment. The nature of the supply of electricity also depends upon the type of consumer as well their needs. The licensee has to make a significant capital outlay for creating the necessary infrastructure as well as operation and maintenance costs to keep the infrastructure in readiness according to Section 42. The licensees are required to maintain the infrastructure even if the consumer does not consume electricity. They are also required to pay the salaries of their employees and pay the dues of electricity generation and transmission companies.

87. The 2003 Act has been enacted to promote the development of the electricity industry as well as to protect the interests of the consumers and to ensure the supply of electricity to all areas. The Supply Conditions providing for recoupment of electricity dues of a previous consumer from a new owner are necessary to recover the costs incurred for laying down the infrastructure as well as the ongoing current liabilities towards the electricity generation and transmission companies. In the absence of such conditions, it may be difficult for the distribution licensees to recover defaulted payments, adding to the revenue

deficits. This may adversely impact the financial health of the distribution licensees to the detriment of the interests of the consumers.

88. In **Paschimanchal Vidyut Vitran Nigam** (supra), this Court observed that a condition stipulating that the distribution licensee can recover the electricity dues from the new owner or occupier was necessary to safeguard the interests of the distributor. It was observed:

> **"13. A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues**. Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishments, provisions similar to Clauses 4.3(g) and (h) of the Electricity Supply Code are necessary to safeguard the interests of the distributor."
>
> (emphasis supplied)

89. Electricity constitutes a public good. The Court's interpretation of the law must foster this position. In **Hyderabad Vanaspati** (supra) this Court was adjudicating upon the validity of Clause 39 of the Conditions of Supply which defined various malpractices and provided for enquiries by designated officials. This Court observed that it was the statutory duty of the Board to supply, transmit, and distribute electricity throughout the state in the most efficient and economical manner. It was further observed that terms and conditions such as Clause 39 were necessary to prevent unauthorised use, pilferage or malpractices

by the consumers. Such terms were necessary to recoup the loss suffered by pilferages, and to stop the continuation of similar malpractices.

90. Apart from protecting a public good, such conditions also have a reasonable nexus with objects of the 2003 Act, such as a robust development of the electricity industry, protecting the interests of consumers as well as the financial interests of the distribution licensees. The need to protect the financial interests of distribution licensees has been explicitly recognized in Section 61 of the 2003 Act which empowers the Appropriate Commission to specify the terms and conditions for the determination of tariff in accordance with commercial principles. The relevant part of the Section 61 reads as follows:

> "**61. Tariff regulations**.- The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing do, shall be guided by the following, namely:-
>
> ***
>
> (b) the generation, transmission, distribution, and supply of electricity are conducted on **commercial principles**;
>
> ***
>
> (d) **safeguarding of consumers' interests and at the same time, recovery of the cost of electricity in a reasonable manner**;"
>
> (emphasis supplied)

91. The Conditions of Supply and Electricity Supply Code which require the payment of electricity dues of a previous owner as a condition for the grant of an electricity connection have a clear nexus to the scheme of the parent legislations and the objectives sought to be achieved. It is just and reasonable for distribution licensees to specify conditions of supply requiring the subsequent owner or

occupier of premises to pay the arrears of electricity dues of the previous owner or occupier as a pre-condition for the grant of an electricity connection to protect their commercial interests, as well as the welfare of consumers of electricity.

V. Whether arrears of electricity can become a charge or encumbrance over the premises

92. The next issue that arises for our consideration is whether arrears of electricity can become a charge or encumbrance over the premises. An ancillary issue is whether such arrears can become a charge on the property only through an express provision of law. Before we embark upon our analysis, we clarify that it is unnecessary to deal with the submission of the auction purchasers regarding registration under Section 17 of the Indian Registration Act 1908 for the conditions of supply contained in a contract to constitute a charge. The decision of this court in **M.L. Abdul Jabbar Sahib** v. **M.V. Venkata Sastri & Sons**,[44] was limited to the extent that it holds that a charge created by an act of parties under Section 100 of the Transfer of Property Act 1882 does not attract the provisions of Section 59 of the Indian Registration Act 1908.

93. The contention of the auction purchasers is that arrears of electricity are not a charge on property as they do not run with the land. They have relied on the decision in **Ahmedabad Municipal Corporation** v. **Haji Abdulgafur Haji Hussenbha**[45] to submit that enforcement of a charge against the property in the hands of a transferee for value without notice of the charge does not arise, and electricity dues are simply an unsecured debt. On the other hand, the Electric

[44] (1969) 1 SCC 573
[45] (1971) 1 SCC 757

Utilities submit that it is not even their case — in the absence of an express provision of law — that there is any mortgage or charge over the property in the form that the licensee would be a secured creditor.

94. Section 100 of the Transfer of Property Act 1882 contemplates two types of charges: charges created by act of parties and charges arising by operation of law. It inter alia provides as follows:

> "**100. Charges: Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property**; and all the provisions hereinbefore contained [1][which apply to a simple mortgage shall, so far as may be, apply to such charge].
> Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, [and, **save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge**."
> (emphasis supplied)

95. 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.[46] 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.

96. The second paragraph of Section 100 provides an exception to the general proposition that a charge runs with the land and can be enforced even if the property has passed into the hands of a third party. It provides that a charge cannot be enforced against a property in the hands of a transferee without notice. The words *"save as otherwise expressly provided by any law for the time being in force"* indicate that a charge can be enforced against a transferee without notice when an express provision of law exists. Hence, a charge cannot be enforced against a transferee if they have no notice of the same, unless the requirement of such notice has been dispensed with by law.[47]

97. In **Al Champdany Industries Ltd. v. Official Liquidator**,[48] this Court held that such a provision of law should not merely create a charge, but it must expressly provide for the enforcement of a charge against the property in the hands of a transferee for value without notice of the charge.

98. In **Haji Abadulgafur Haji Husseinbhai** (supra), this Court considered the doctrine of constructive notice as provided under Section 100. In that case, the Municipal Corporation had a charge on the property of a person who was in arrears of property tax. An auction purchaser, who became the owner of the property, resisted the attempt of the Municipal Corporation to recover the arrears of pending taxes in exercise of its charge on the ground that they were not aware

[46] Dattatreya Shanker Mote v. Anand Chintaman Datar & Ors, (1974) 2 SCC 799
[47] Dattatreya Shanker Mote v. Anand Chintaman Datar, (1974) 2 SCC 799; State of Karnataka v. Shreyas Papers Pvt. Ltd, 2006 (1) SCC 615
[48] (2009) 4 SCC 486

of the past municipal tax arrears. The Corporation argued that the transferee was imputed with constructive knowledge of the charge created against the property due to Section 141 of the Bombay Provincial Municipal Corporations Act 1949. The Court held against the Municipal Corporation on the ground that in the facts of the case, the plaintiff did not have constructive notice of the arrears of municipality.

99. While explaining the purport of Section 100, this Court held that the second half of Section 100 enacts a general prohibition and no charge can be enforced against property in the hands of a transferee for consideration without notice of the charge. In terms of Section 100, an exception to this rule must be expressly provided by law. The Court held that whether a transferee has actual or constructive notice which satisfies the requirement of notice in the proviso to Section 100, must be determined in the facts and circumstances of each case. This Court observed:

> **"4.** This section in unambiguous language lays down that no charge is enforceable against any property in the hands of a transferee for consideration without notice of the charge except where it is otherwise expressly provided by any law for the time being in force. The saving provision of law must expressly provide for enforcement of a charge against the property in the hands of a transferee for value without notice of the charge and not merely create a charge. …… The real core of the saving provision of law must be not mere enforceability of the charge against the property charged but enforceability of the charge against the said property in the hands of a transferee for consideration without notice of the charge. Section 141 of the Bombay Municipal Act is clearly not such a provision. The second contention fails and is repelled."

100. Counsel for the Electric Utilities have not referred to any provision in the plenary legislation of the 2003 Act by which electricity dues would constitute a charge on the premises. The provisions of the 1910 Act, 1948 Act, and the 2003 Act do not provide that the arrears of electricity dues would constitute a charge on the property or that such a charge shall be enforceable against a transferee without notice. It is pertinent to note that this Court has reiterated that arrears of electricity cannot become a charge or encumbrance over the premises, in the absence of an express provision of law in the 1910 Act, 1948 Act or 2003 Act.[49]

101. In **Isha Marbles** (supra), this Court observed that under the provisions of 1910 Act read with 1948 Act, electricity arrears do not create a charge over the property. It observed:

> "**56.** From the above it is clear that the High Court has chosen to construe Section 24 of the Electricity Act correctly**. There is no charge over the property. Where that premises comes to be owned or occupied by the auction-purchaser, when such purchaser seeks supply of electric energy he cannot be called upon to clear the past arrears as a condition precedent to supply. What matters is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability against the third party**. Of course, the bona fides of the sale may not be relevant."

102. Similarly, in **Paschimanchal Vidyut Vitran Nigam** (supra), this Court held that in the absence of any contract to the contrary, the amount payable towards supply of electricity does not constitute a charge on the premises.

[49] 1995 SCC (2) 648; AIR 2007 SC 2; (2010) 9 SCC 145

103. Consequently, in general law, a transferee of the premises cannot be made liable for the outstanding dues of the previous owner since electricity arrears do not automatically become a charge over the premises. Such an action is permissible only where the statutory conditions of supply authorise the recovery of outstanding electricity dues from a subsequent purchaser claiming fresh connection of electricity, or if there is an express provision of law providing for creation of a statutory charge upon the transferee.

104. The next issue which falls for consideration is whether an electricity charge can be introduced by way of statutory regulations or rules enacted by a regulatory commission under its rule making power in the 2003 Act.

105. Counsel for the auction purchasers have relied on **Deputy Commercial Tax Officer, Park Town Division** v. **Sha Sukhraj Peerajee**,[50] and **Indian Council of Legal Aid and Advice** v. **Bar Council of India**,[51] to argue that a charge cannot be introduced by way of regulations as the subject matter is not covered under Section 50 of the 2003 Act. It was further contended that only a fiscal levy by way of statutory exaction could be fastened on land. In the context of electricity, it was urged that a state legislation can provide for a charge on property only by providing for levy of a duty on consumption or sale of electricity. Relying on **India Cement Ltd & Ors** v. **State of Tamil Nadu**[52] and **Al Champdany Industries** v. **Official Liquidator**[53], it has been argued that only such a fiscal exaction would get attached to the land.

[50] AIR 1968 SC 67
[51] 1995 (1) SCC 732
[52] (1990) 1 SCC 12
[53] (2009) 4 SCC 486

106. The subject of taxes on the consumption or sale of electricity within the State falls under Entry 53, List II of the Seventh Schedule of the Constitution. A number of States have enacted legislations providing for the levy of electricity duty on consumption or supply of electricity. In these instances, the legislature specifically provides that the duty payable under the state legislation shall be a first charge on the amount recoverable by the licensee for the electrical energy supplied. Further, the manner in which such charges are to be realised from the consumer is provided for in the state legislation and relevant subordinate legislation. For example, the Kerala Electricity Duty Act 1963 and Kerala Electricity Duty Rules 1963 provide that the dues from a consumer towards electricity duty create a first charge on the amounts recoverable for the energy consumed.

107. However, Entry 53 of List II of the Seventh Schedule does not have any bearing on the issues involved in this batch of cases. This is because neither is any tax levied under Article 265 of the Constitution nor is any levy imposed. It is not the case of the distribution licensees that the State Commission under Section 50 of the 2003 Act has the power to provide for fiscal exactions.

108. A subordinate rule or regulation, as in the case of the Electricity Supply Code framed by a regulatory commission, can provide for a statutory charge to be fastened on the premises within which consumption of electricity was effected. In terms of Section 50 of the 2003 Act, a State Commission is empowered to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity and other cognate matters. In terms of Section

181 of the 2003 Act, the State Commission is empowered to make regulations and rules consistent with the Act which carry out the provisions of the Act. As held in the preceding paragraphs, the rule making power contained under Section 181 read with Section 50 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. The State Commission is conferred with wide powers under the statutory framework to provide for different mechanisms in the Electricity Supply Code for recovery of electricity arrears of the previous owner. The recovery of electricity arrears may take effect either by requiring a subsequent owner of premises to clear payment of outstanding dues as a condition precedent for an electricity connection, or by deeming that any amount due to the licensee shall be a first charge on the assets, or by any other reasonable condition.

109. 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 judgement 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.

110. Reliance by the auction purchasers on the decisions in **India Cement Ltd** (supra) or **Indian Council of Legal Aid and Advice** (supra) render little assistance to their cause. The question in **India Cement Ltd** (supra) was whether the State Legislature had competence to enact a cess on royalty on

mineral rights under Article 246 read with Entry 49 of List II of the Seventh Schedule. In **Indian Council of Legal Aid and Advice** (supra), this Court dealt with Rule 9 in Chapter III of Part VI of the Bar Council of India Rules, which barred persons who have completed 45 years of age from enrolment as an advocate. Both these decisions bear little relevance to the issue which has arisen in the present appeals.

111. The auction purchasers have also relied on the decision in **Sha Sukhraj Peerajee** (supra). This Court held that Rule 21-A framed by the State Government under Section 19 of the Madras General Sales Tax Act, 1939 was ultra vires. In terms of Rule 21-A, a purchaser of a business carried on by a 'dealer' could be made liable for arrears of sales tax due from the dealer in respect of transactions of sale which took place before the transfer. This Court held that the rule making power under Section 19 could not be used to enlarge the scope of recovery and payment of tax from some person other than a 'dealer' under the Act. Section 10, inserted by the Amendment Act of 1956, provided that the outstanding amount on the date of default was made a charge on the property of the person liable to pay tax. This Court did not consider the import of Section 10 of the Act since the business was transferred before the amending Act came into force. The ratio of the case is neither helpful nor applicable in the instant case, since this Court was dealing with the specific provisions of the Madras General Sales Tax Act 1939.

112. 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 immoveable property. The electricity utilities would get a period of twelve years to recover the dues charged on the immoveable property from the date when the money payable became due.

113. 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

114. The Electric Utilities have submitted that Section 56 of the 2003 Act only deals with the right of the licensee to disconnect supply. Explaining the scope of the relevant provision, it has been submitted that Section 56 sets out different timelines, namely (a) when the disconnection can be made i.e., when payment of charges is not made after giving requisite notice; (b) how long the disconnection can be maintained i.e., so long as the outstanding dues remain; and (c) when it is to be restored i.e., immediately when the outstanding dues are paid. Reliance has been placed on **Ajmer Vidyut Vitran Nigam Limited** v. **Rahamatullah Khan**,[54] and **M/s Prem Cortex** v. **Uttar Haryana Bijli Vitran Nigam Limited**[55] to contend that the use of the expression "under this section" in Section 56(2) means that the avenue of effecting disconnection to recover money cannot be resorted to after the limitation period. It is further contended that Section 56 does not bar the recovery of pending charges through other avenues of recovery in accordance with law. The licensees urge that civil remedies and statutory power to recover electricity can be utilised simultaneously. It was urged that Section 56 does not restrict the right of the licensee to insist on payment of the arrears of charges incurred on the premises, from a subsequent applicant for a fresh connection to the same premises.

115. On the implication of the two-year limitation period under Section 56(2), it is submitted that (i) the limitation is with reference to the bar on disconnection by the licensee; (ii) no limitation is provided under Section 56 after the electricity is

[54] (2020) 4 SCC 650
[55] Judgment dt. 5.10.2021 in CA 7235 of 2009

discontinued for non-payment of dues; (iii) a valid and subsisting money decree in favour of the Electricity Board against the erstwhile owner of the premises would not be affected by the limitation period of two years; (iv) no time limit has been provided for cessation of the right of the licensee to demand past dues for giving a new connection to the premises; and (v) the right of the licensee not to give a connection till the outstanding dues are cleared is a continuing right and cannot be said to be extinguished.

116. On the other hand counsel representing the auction purchasers have urged that (i) the period of limitation under Section 56(2), which begins with a non obstante clause, bars the recovery of outstanding electricity dues from successful auction purchasers who apply for a new connection for the supply of electricity from the licensee; (ii) two conditions need to be fulfilled to get over the embargo on the recovery of a sum due from any consumer, after a period of two years from the date when such sum became first due, namely (a) such sum has been shown continuously as recoverable as arrears of charges for electricity supplied, and (b) the licensee shall not cut off the supply of the electricity; (iii) the conditions of supply, being subordinate legislation, cannot override the duty cast upon the licensee, and dues cannot be recoverable either in a manner or over and above what is provided for in the Section 56 (2); and (iv) any alternative interpretation would render the bar under Section 56(2) meaningless, and the conditions of supply could be used to resurrect time barred claims as held in **State of Kerala** v. **VT Kallianikutty**.[56]

[56] (1999) 3 SCC 657

117. The power to discontinue supply to a consumer is dealt with in Section 56 of the 2003 Act. The provision is extracted below:

> **"Section 56: Disconnection of supply in default of payment**
>
> (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and **without prejudice to his rights to recover such charge or other sum by suit,** cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:
>
> Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -
>
> (a) an amount equal to the sum claimed from him, or
>
> (b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.
>
> (2) **Notwithstanding anything contained in any other law** for the time being in force, **no sum due from any consumer**, **under this section shall be recoverable after the period of two years** from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."
>
> (emphasis supplied)

118. Section 56 falls under Part VI which is titled “Distribution of Electricity”. Section 56 provides for disconnection of electrical supply in case there is a default in payment of electricity charges.

119. The power to disconnect is a drastic step which can be resorted to only when there is a neglect on the part of the consumer to pay the electricity charges or dues owed to the licensee or a generating company, as the case may be. Section 56(1) provides that where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or a generating company, the licensee or generating company may after giving a written notice of fifteen days, disconnect the supply of electricity, until such charges, including the expenses incurred are paid. The power to disconnect electricity is conditioned on the fulfilment of the conditions stipulated. The cutting off or disconnection is without prejudice to the rights of the distribution licensee to recover such charge or other sums by other permissible modes of recovery. The proviso to Section 56(1) carves out an exception by providing that electricity supply will not be cut off if the consumer, “under protest”, either deposits the amount claimed or deposits the average charges paid during the preceding six months.

120. The statutory right of the licensee or the generating company to disconnect the supply of electricity is subject to the period of limitation of two years provided by Section 56(2). Section 56(2) provides that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer “under this section” shall be recoverable after a period of two years from the date

when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of electricity. The limitation of two years is limited to recovery of sums under Section 56. This is evident by the use of the expression, "under this section".

121. The first issue pertains to the simultaneous exercise of statutory and civil remedies by the licensing authority to recover electricity arrears. The liability to pay electricity charges is a statutory liability and Section 56 provides the consequences when a consumer neglects to pay any charge for electricity or any sum other than a charge for electricity due from him. Section 56(1) provides that the power of the licensee to disconnect electrical supply when a consumer is in default of payment is "without prejudice to his rights to recover such charge or other sum by suit". This means that the licensee can exercise both its statutory remedy to disconnect as well as a civil remedy to institute a suit for recovery against the consumer since the licensee will not necessarily obtain the amount due from the consumer by disconnecting the supply. In its decision in **Bihar SEB** v. **Iceberg Industries Ltd.**,[57] this Court has held that the power to disconnect supply under Section 56 is a special power given to the supplier in addition to the normal mode of recovery by instituting a suit. The power to disconnect the supply of electricity as a consequence of the non-payment of dues and as a method to recover dues is supplemental to the right of the licensee to institute a suit or other proceedings for the recovery of dues on account of electrical charges.

[57] (2020) 20 SCC 745

122. Section 56(1) of the 2003 Act is *pari materia* to Section 24 of the 1910 Act. Section 24 of the 1910 Act empowered the Electricity Board to issue a demand and to discontinue supply to consumers who neglected to pay charges, without prejudice to the right to recover such charges or other sums by way of a suit. The import of Section 24 was considered by this Court in **Isha Marbles** (supra), where it was observed that the action of cutting off electricity supply after service of the notice as prescribed under Section 24 was in addition to the general remedy of filing a suit for recovery.

123. In **M/s Swastic Industries** v. **Maharashtra State Electricity Board**,[58] this Court held that the right to discontinue supply of energy under Section 24 was not taken away by Section 60A of the 1948 Act, which provided an option to the Electricity Board to file a suit within the period of limitation stipulated there. This Court observed that:

> **"5. It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it. The right to file a suit is a matter of option given to the licensee, the Electricity Board. Therefore, the mere fact that there is a right given to the Board to file the suit and the limitation has been prescribed to file the suit, it does not take away the right conferred on the Board under Section 24** to make demand for payment of the charges and on neglecting to pay the same they have the power to discontinue the supply or cut off the supply, as the case may be, when the consumer neglects to pay the charges. **The intendment appears to be that the obligations are mutual**…."
>
> (emphasis supplied)

[58] (1997) 9 SCC 465

Hence, 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.

124. The second issue pertains to the implication of the period of two years provided in Section 56(2) on the civil remedies of Utilities to recover electricity dues. Section 56(2), which begins with a non obstante clause, provides a limitation of two years for recovery of dues by the licensee through the means of disconnecting electrical supply. It puts a restriction on the right of the licensee to recover any sum due from a consumer under Section 56 after a period of two years from the date when such sum became first due. If this provision is invoked against a consumer after two years, the action will be permissible when the sum, which was first due, has been shown continuously as recoverable as arrears of charges for electricity supplied. Under Section 56, the liability to pay arises on the consumption of electricity and the obligation to pay arises when a bill is issued by the licensee for the first time. Accordingly, the period of limitation of two years starts only after issuance of the bill.

125. 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

[59] (2008) 12 SCC 213

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.

126. In its report dated 19 December 2002, the Standing Committee of Energy opined that the restriction for recovery of arrears under Section 56 was considered necessary to protect the consumer from arbitrary billings.[60] In other words, the enactment of Section 56(2) was to address the mischief of arbitrary billings. Hence, Section 56(2) was incorporated to ensure that a licensee does not abuse its special power of disconnection of electrical supply. Section 56(2) ensures that a licensee does not have the liberty to arbitrarily impose a bill after a long period and then recover such a huge amount through the drastic step of disconnection of electrical supply.

127. In **Rahamatullah Khan** (supra), a two judge Bench of this Court dealt with the applicability of the period of limitation provided by Section 56(2) on an additional or supplementary demand raised by the licensee. A consumer was billed under a particular tariff but after an audit, it was discovered that a different tariff code should have been applied. An additional bill was subsequently raised in 2014 for the period from July 2009 to September 2011. Section 56(2) was interpreted not to preclude the licensee from raising a supplementary demand after the expiry of the period of limitation under Section 56(2) in the case of a mistake or a bona fide error. However, it did not empower the licensee to take recourse to the coercive measure of disconnection of electricity supply for

[60] Standing Committee of Energy- Thirteenth Lok Sabha, The Electricity Bill 2001- Thirsty First Report, Ministry of Power (2002)

recovery of the additional demand. This Court held that the bar of limitation of two years does not preclude the licensee from resorting to other modes of recovery of electricity arrears. The court observed:

> **"7.4** Sub-section (1) of Section 56 confers a statutory right to the licensee company to disconnect the supply of electricity, if the consumer neglects to pay the electricity dues. This statutory right is subject to the period of limitation of two years provided by sub-section (2) of Section 56 of the Act
>
> **7.5 The period of limitation of two years would commence from the date on which the electricity charges became "first due" under sub-section (2) of Section 56**. This provision restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears of electricity supplied, in the bills raised for the past period. If the licensee company were to be allowed to disconnect electricity supply after the expiry of the limitation period of two years after the sum became "first due", it would defeat the object of Section 56(2).
>
> **8.** Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. **It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand**.
>
> **9.** Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18-3-2014 for the period July 2009 to September 2011. The licensee company discovered the mistake of billing under the wrong Tariff Code on 18-3-2014. The limitation period of two years under Section 56(2) had by then already expired.
>
> **9.1. Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case**

> **of a mistake or bona fide error. It did not, however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand**."
>
> **(emphasis supplied)**

128. The exposition of law by this Court in **Rahamatullah Khan** (supra) was considered by a coordinate bench in **Prem Cortex** (supra). A consumer was served with a short assessment notice and the Court had to consider whether short billing and the subsequent raising of an additional demand would tantamount to a deficiency of service. This Court observed that the bar contemplated in Section 56 operates on two distinct rights of the licensee, namely, the right to recover and the right to disconnect. This Court observed that under the law of limitation, the remedy and not the right is extinguished. The bar with reference to the remedy of disconnection was held to be an exception to the law of limitation. This Court further considered the impact of Section 56(1) on Section 56(2) and observed:

> **"15.** Therefore, the bar actually operates on two distinct rights of the licensee, namely, (i) the right to recover; and (ii) the right to disconnect. The bar with reference to the enforcement of the right to disconnect, is actually an exception to the law of limitation. Under the law of limitation, what is extinguished is the remedy and not the right. To be precise, what is extinguished by the law of limitation, is the remedy through a court of law and not a remedy available, if any, de hors through a court of law. However, section 56(2) bars not merely the normal remedy of recovery but also bars the remedy of disconnection. This is why we think that the second part of Section 56(2) is an exception to the law of limitation.
> ….

> **23.** Coming to the second aspect, namely, the impact of Sub-section (1) on Sub-section (2) of Section 56, it is seen that the bottom line of Subsection (1) is the negligence of any person to pay any charge for electricity. Sub-section (1) starts with the words "**where any person neglects to pay** any charge for electricity or any sum other than a charge for electricity due from him".
>
> **24.** Sub-section (2) uses the words "no sum due from any consumer **under this Section**". Therefore, the bar under Sub-section (2) is relatable to the sum due under Section 56. This naturally takes us to Sub-section (1) which deals specifically with **the negligence on the part of a person to pay any charge for electricity** or any sum other than a charge for electricity. **What is covered by section 56, under sub-section (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee**."
>
> (emphasis supplied)

129. 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.

130. We may also briefly deal with the objection of the auction purchasers that the conditions of supply cannot be used to resurrect time barred debts. Counsel placed reliance on **VT Kallianikutty** (supra), where it was held that a time barred debt cannot be recovered by taking recourse to the provisions of the Kerala Revenue Recovery Act. This decision is not helpful to the auction purchasers in

the present batch of cases. In that case, a three-judge Bench of this Court while dealing with agricultural loans extended by the Kerala Finance Corporation, held that since the Kerala Revenue Recovery Act does not create a new right, a person could not claim the recovery of amounts which are not legally recoverable. In reaching its decision, this Court, however, reasoned that the statute of limitation bars the remedy by way of a suit beyond a certain time period, without touching the right to recover the loan. The right remains untouched and it can be exercised in any other suitable manner provided.

131. 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.

VII. Implication of the sale of premises on "as is where is" basis, with or without reference to electricity arrears of the premises

132. The Electric Utilities have urged that (i) the auction purchasers were put to notice of the requirement of the clearance of dues; (ii) the public auction-sales of premises were held on an "as is where is" basis; (iii) this would include a condition of acknowledging all liabilities in respect of the premises, with or without a specific reference of payment of electricity dues; and (iv) in a sale arising out of

commercial transactions, the auction purchaser is required to undertake due diligence of outstanding dues which are premises specific. On the other hand, the auction purchasers submitted that (i) a condition such as "as is where is" is a feature of physical property and does not extend to claims which are not charges or other encumbrances running with land; (ii) the argument finds support in the decisions in **Punjab Urban Planning and Development Authority** v. **Raghu Nath Gupta**[61] and **Delhi Development Authority** v. **Kenneth Builders and Developers Pvt Limited**[62]; (iii) electricity dues cannot be ascertained merely by looking at a property; and (iv) there was no obligation on the applicants to ascertain the electricity dues payable, more so in view of the judgement in the **Isha Marbles** (supra).

133. In the present batch of cases, the premises were sold in auction sales generally held on an "as is where is" basis. A sale on "as is where is basis" postulates that the purchaser would be acquiring the asset with all its existing rights, obligations and liabilities. When a property is sold on an "as is where is" basis, encumbrances on the property stand transferred to the purchaser upon the sale.

134. In **U.T. Chandigarh Administration** v. **Amarjeet Singh**[63], a two-judge Bench of this Court explained the characteristics of a public auction in the context of the maintainability of a consumer complaint. This Court held that where existing sites are put up for sale or lease by public auction and the sale is confirmed in favour of the highest bidder, the resultant contract relates to sale or

[61] (2012) 8 SCC 197
[62] (2016) 13 SCC 561
[63] (2009) 4 SCC 660

lease of immovable property, and not a provision of service or sale of goods. This Court delved into the nature of public auctions and opined on the implications of an auction conducted on an "as is where is basis", where an auction purchaser is expected to exercise due diligence with regard to the condition of a site. The Court observed:

> **"19. ….** In a public auction of sites, the position is completely different. A person interested can inspect the sites offered and choose the site which he wants to acquire and participate in the auction only in regard to such site**. Before bidding in the auction, he knows or is in a position to ascertain, the condition and situation of the site. He knows about the existence or lack of amenities. The auction is on `as is where is basis'. With such knowledge, he participates in the auction and offers a particular bid. There is no compulsion that he should offer a particular price.** When the sites auctioned are existing sites, without any assurance/representation relating to amenities, there is no question of deficiency of service or denial of service. Where the bidder has a choice and option in regard to the site and price and when there is no assurance of any facility or amenity, the question of the owner of the site becoming a service provider, does not arise…
>
> **20. Where there is a public auction without assuring any specific or particular amenities, and the prospective purchaser/lessee participates in the auction after having an opportunity of examining the site, the bid in the auction is made keeping in view the existing situation, position and condition of the site**. If all amenities are available, he would offer a higher amount. If there are no amenities, or if the site suffers from any disadvantages, he would offer a lesser amount, or may not participate in the auction. Once with open eyes, a person participates in an auction, he cannot thereafter be heard to say that he would not pay the balance of the price/premium or the stipulated interest on the delayed payment, or the ground rent, on the ground that the site suffers from certain

> disadvantages or on the ground that amenities are not provided…."
>
> (emphasis supplied)

135. In **Raghu Nath Gupta** (supra),[64] this Court held that a successful auction purchaser of commercial plots sold with a superimposed condition of "as is where is" basis is estopped from later contending that he is not bound by the terms and conditions of the auction notice or that the seller had not provided basic amenities. The Court relied on the terms and conditions, specifically Clause 25, stipulated in the auction notice published by Punjab Urban Planning and Development Authority in reaching its conclusion and held that the auction notice would have considerable bearing in resolving the dispute. Clause 25 of the auction notice provided that the site was offered on "as is where is" basis and the Authority would not be responsible for levelling the site or removing structures, if any, thereon. The phrase "as is where is" was explained by this Court in the following terms:

> "**14. We notice that the respondents had accepted the commercial plots with the open eyes, subject to the above mentioned conditions. Evidently, the commercial plots were allotted on "as is where is" basis. The allottees would have ascertained the facilities available at the time of auction and after having accepted the commercial plots on "as is where is" basis, they cannot be heard to contend that PUDA had not provided the basic amenities like parking, lights, roads, water, sewerage etc.** If the allottees were not interested in taking the commercial plots on "as is where is" basis, they should not have accepted the allotment and after having accepted the allotment on "as is where is" basis, they are estopped from contending that the basic amenities like parking, lights, roads, water,

[64] (2012) 8 SCC 197

> sewerage etc. were not provided by PUDA when the plots were allotted…."
>
> (emphasis supplied)

136. In **Kenneth Builders and Developers** (supra), in the circumstances arising in that particular case, this Court refused to accept the seller's reliance on the "as is where is" condition and held that refusal of the Delhi Pollution Control Committee,[65] to grant permission to the auction purchaser, frustrated the Development Agreement which was entered into between the seller, Delhi Development Authority,[66] and the builder. DDA had held an auction on an "as is where is" basis for involving the private sector for the development of a project land. The bid was accepted and a Development Agreement was entered between DDA and the builder. However, when the builder attempted to carry out construction activity, it was prohibited by DPCC leading to an impasse in the development activity. The terms and conditions of auction specifically mentioned that there was a presumption that the intending purchaser had inspected the site and had familiarised himself with prevalent conditions in all respects including the status of infrastructural facilities available before giving its bid. Under Clause 6 of the Development Agreement, it was the responsibility of the developer to get various approvals and clearances from governmental departments. Clause 11 of the Development Agreement further stipulated that the builder was deemed to have inspected the site and its surroundings and checked the information available. This Court held that the auction sale on an "as is where is" basis and the specific clauses in the Development Agreement "related only to physical

[65] "DPCC"
[66] "DDA"

issues pertaining to the project land and ancillary or peripheral legal issues pertaining to the actual construction activity". It was observed:

> "**34. When the DDA informed Kenneth Builders that the project land was available on an "as is where is basis" and that it was the responsibility of the developer to obtain all clearances, the conditions related only to physical issues pertaining to the project land and ancillary or peripheral legal issues pertaining to the actual construction activity, such as compliance with the building bye-laws, environmental clearances etc**. The terms and conditions of "as is where is" or environmental clearances emphasized by learned counsel for the DDA certainly did not extend to commencement of construction activity prohibited by law except after obtaining permission of the Ridge Management Board and this Court. On the contrary, it was the obligation of the DDA to ensure that the initial path for commencement of construction was clear, the rest being the responsibility of the developer. The failure of the DDA to provide a clear passage due to an intervening circumstance beyond its contemplation went to the foundation of implementation of the contract with Kenneth Builders and that is what frustrated its implementation.
>
> **35.** Reliance by the learned counsel for DDA on the **"as is where is" concept as well as Clause 6 and 11 of the Development Agreement in this context is misplaced. As mentioned above, this primarily pertains to physical issues at site**…."
>
> (emphasis supplied)

137. Reliance placed by the auction purchasers on **Raghu Nath Gupta** (supra) and **Kenneth Builders and Developers** (supra) to contend that "as is where is" is a feature of physical property, limited to encumbrances or charges running with land, is misconceived. In both the cases relied upon by the auction purchasers, the judgments were rendered on the peculiar facts at hand. In **Raghu Nath Gupta** (supra) this Court was dealing with the availability of basic facilities like

parking, lights, roads, water and sewerage, but the application of the doctrine of "as is where is" was not limited to only physical features of the property. Further, in **Kenneth Builders and Developers** (supra) based on the facts, this Court opined that a sale on "as is where is" could not be interpreted to mean that the auction purchaser would be responsible to take permission for the initial commencement of construction itself, which was the obligation of the DDA. The observation of this Court that "this primarily pertains to physical issues at site" was limited to specific clauses in the Development Agreement.

138. 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.

139. The view which we take finds support in the judgments of this Court in **Paramount Polymers** (supra) and **Srigdhaa Beverages** (supra). In **Paramount Polymers** (supra), the premises of the erstwhile owner were sold under the State Financial Corporations Act 1951 on an "as is where is" basis. This Court held that an auction purchaser cannot be considered an ignorant party and a reasonable

enquiry would have put it on notice of the subsistence of such a liability. It was observed:

> "**9.** …. Before submitting its bid to the Financial Corporation the first respondent would certainly have inspected the premises and could have come to know that power connection to the premises had been snapped and this information should have put it on reasonable enquiry about the reasons for the power disconnection leading to the information that the previous owner of the undertaking or consumer was in default. Moreover, the appellant had clearly written to the Financial Corporation even before the sale was advertised by it, informing it that a sum of Rs.64,23,695/- was due towards electricity charges to the appellant and when selling the undertaking, that amount had to be provided for or kept in mind. Therefore, any reasonable enquiry by the first respondent as a prudent buyer would have put it on notice of the subsistence of such a liability. The sale was also on 'as is where is' basis….."

140. In **Srigdhaa Beverages** (supra)**,** this Court was considering an auction sale under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.[67] The Court analysed Clauses 24 and 26 of the auction notice, which stipulated an "as is where is" sale with respect to all statutory dues and absolved the authorised officer of all liabilities for any charge, encumbrances and dues, including electricity dues. It concluded that the auction purchaser was "clearly put to notice" since there was a specific mention of the quantification of dues of various accounts including electricity dues. On the liability of the past owners to bear electricity dues when the sale is on "as is where is" and existence of electricity dues is specifically mentioned, this Court

[67] "SARFAESI Act"

categorically held that the auction purchasers were bound to inspect the premises and provide for the dues in all respects. This Court observed:

> "**16.2**. Where, as in cases of the E-auction notice in question, the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on "AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS", there can be no doubt that the liability to pay electricity dues exists on the respondent (purchaser)."

141. 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.

142. 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.

143. 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.

G. Application: Facts of Individual Cases

144. Before we apply the above analysis to the facts of the individual cases, it needs to be clarified that each case involves, in one way or another, application of the conditions of supply or Electricity Supply Code. At the outset, we note that the relevant date to determine the applicability of the conditions of supply or Electricity Supply Code is the date on which the auction purchaser applied for a fresh connection or reconnection for supply of electricity to the premises. The cause of action arises when a fresh connection or reconnection is sought by the auction purchaser. This has also been reiterated in the decision of this Court in **Paramount Polymers** (supra). This Court observed:

> "11. ….. We are also not in a position to agree with the High Court that the relevant date is the date of sale of the undertaking by the Financial Corporation to the first respondent. The insertion of clause 21-A was circulated by the communication dated 27-11-2001 and it was subsequently followed by the formal notification in terms of Section 49 of the Supply Act read with Section 79(j) of that Act. **The first respondent having applied for a fresh connection**

> **only on 1-1-2002, the application would be governed by the Terms and Conditions including the term inserted on 27-11-2001, as subsequently formally notified**. In the writ petition filed on 27-2-2002 in that behalf, the Court could not have come to the conclusion that the application made by the first respondent was not governed by the amended Terms and Conditions of Supply including clause 21-A thereof…..On our interpretation of clause 21-A of the Terms and Conditions of Supply as inserted with particular reference to sub-clauses (b) and (c) thereof, we are of the view that the said sub-clauses clearly applied to the first respondent when it made an application on 1-1-2002 seeking a fresh connection for the premises."
>
> (emphasis supplied)

Considering the facts of the nineteen cases, we decide the appeals in the following manner:

I.Kerala

145. The KSEB in exercise of powers conferred under Section 49 and Section 79(j) of the 1948 Act framed regulations relating to Conditions of Supply of Electrical Energy. The regulations were published in the Gazette on 15 December 1989 and came into force with effect from 1 January 1990. Clause 15 deals with the agreement for a service connection. The relevant clause, with which we are concerned, is extracted below:

> "**15. Agreement for Service Connection**
>
> **15(c)**: When there is transfer of ownership or right of occupancy of the premises the registered consumer shall intimate the transfer of right of occupancy of the premises within 7 days to the Assistant Engineer/Assistant Executive Engineer concerned. On such intimation having been received the service shall be disconnected. If

> the transferee desires to enjoy service connection, he shall pay off the dues to the Board and apply for transfer of ownership of service connection within 15 days and execute fresh agreement and furnish additional security. New consumer number shall be allotted in such cases cancelling the previous number.
>
> **15(d):** All dues to the Board from a consumer shall be the first charge on the assets of the consumer. All dues including penalty shall be realized as public revenue due on land.
>
> **15(e):** Reconnection or new connection shall not be given into any premises where there are arrears on any account due to the Board pending payment, unless the arrears including penalty, if, any, are cleared in advance (if the new owner/occupier/ allottee remits the amount due from the previous consumer, the Board shall provide re-connection or new connection depending on whether the service remains disconnected/dismantled, as the case may be. The amount so remitted will be adjusted against the dues from the previous consumer if the Board gets the full dues from the previous consumer through R.R. action or other legal proceedings the amount remitted by the new owner/occupier to whom connection has been effected shall be refunded. But the amount already remitted by him/her shall not bear any interest)"

146. In terms of Clause 15(c), when there is a transfer of ownership or right of occupancy of the premises, the registered consumer shall intimate the transfer of the right of occupancy of the premises within seven days to the officer concerned. On such intimation being received, the service shall be disconnected. If the transferee desires a service connection, they shall pay off the dues and apply for transfer of the ownership of the service connection. In terms of Clause 15(d), all dues to the KSEB from a consumer shall be the first charge on the assets of the consumer. In terms of Clause 15(e), a new connection or reconnection shall not

be given to any premises where there are arrears on any account unless they are cleared in advance.

147. The validity of Clause 15(e) was upheld by a Full Bench decision of the Kerala High Court in **Suraj v. KSEB**.[68] The High Court upheld the validity of the said regulation on the ground that it is unjust to compel the Board to supply electricity to the very same premises without the arrears of the previous owner or occupier being cleared. The High Court observed:

> "8. Regulations make no distinction between an auction purchaser and others in the matter of supply of electricity. Regulations 15(d) and (e) have been incorporated with a purpose, or else by successive transfer of the premises the Board's right to recover the amount from the previous consumers as well as from the assets could be effectively defeated at the same time the Board is called upon to provide electricity to the same premises. **Regulation 15(e) has a reasonable nexus with the object sought to be achieved, that is to save public property so as to subserve the general interest of the community. Once electricity is disconnected and the equipment dismantled, it is unjust to compel the Board to give electricity connection to the very same premises at the instance of a third party which will not be in public interest especially when electricity is considered as a public property.** Further petitioner has also not challenged the validity of Regulations 15(d) and 15(e) in this writ petition."
>
> (emphasis supplied)

148. Two cases — **K.C. Ninan** v. **KSEB**[69] and **KJ Dennis** v. **KSEB**,[70] arise from the state of Kerala. In both these cases, the Kerala High Court upheld the validity of Clause 15(e) and directed that to avail a fresh electricity connection for

[68] 2005 (3) KLT 856
[69] CA 2109-2110/2004
[70] CA 2108/2004

premises where arrears are due, the auction purchasers would have to pay outstanding dues of the previous consumer in compliance with the said condition.

Item 101.9: KJ Dennis v. Kerala State Electricity Board; Civil Appeal 2108 of 2004

149. The KSEB disconnected the electricity connection of Pearlite Wire Products Ltd in 1992 on account of unpaid electricity charges. Meanwhile, the Kerala High Court ordered the winding up of the company under the Sick Industrial Companies (Special Provision) Act 1985,[71] as the original owner failed to pay its dues to Syndicate Bank and Kerala Financial Corporation. On 20 April 1997, KSEB addressed a letter to the Official Liquidator, demanding payment of Rs 66 lakhs, being arrears of electricity charges and penal interest. On 27 January 1999, the offer of the appellant to purchase the properties of Pearlite Wire Products Ltd was accepted and was confirmed by the Kerala High Court on 4 March 1999. The terms of sale, as settled by the High Court, provided that:

> "7. General terms and conditions:-
>
> ***
>
> (c) The assets are sold on "As Where is and Whatever there Is" condition.
>
> (d) The assets are sold on the assumption that the tendered have inspected the assets, know what they are tendering for, whether they have inspected or not and the principle of 'Caveat Emptor' will apply."

150. The appellant sought permission of the KSEB for wiring for an electricity connection in the property by a letter dated 4 June 1999. Wiring permission was rejected by KSEB due to the outstanding dues of the erstwhile owner, and it was

[71] "SICA"

stated that a new connection would be provided if the appellant was ready to remit the amount due from the previous consumer.

151. In the interregnum, KSEB filed a claim petition before the Company Court in a company petition[72] claiming a sum of Rs 86,54,711 from Pearlite Wire Products Ltd, which was in liquidation. The claim petition was admitted for Rs 63 lakhs. The appellant filed a company application[73] seeking a direction to the KSEB to not insist on payment of arrears of electricity charges by the auction purchaser, which were due from the company in liquidation. On 18 September 2000, the Single Judge rejected the application filed by the appellant, holding that KSEB can insist on the arrears being cleared before the connection is given. Aggrieved by the order, the appellant challenged the validity of Clause 15(e) before the High Court on the ground that it is violative of Article 14 of the Constitution. On 18 July 2001, the Division Bench rejected the challenge. Finally, on 14 September 2001, the impugned order was passed in which the Review Petition against the order of the Division Bench was dismissed.

152. By its judgement dated 18 July 2001, the Kerala High Court upheld the validity of Clause 15(e) and held that the KSEB is not bound to give a reconnection or a new connection to the premises where there are arrears on any account due to the Board, unless the arrears including penalty, are cleared in advance. It observed that Section 79(j) read with Section 49 of the 1948 Act gave considerable latitude to the Board to make regulations governing the supply of electricity, and the Board could effect supply of electricity upon such terms and

[72] Company Petition 15 of 1994
[73] Company Application 349 of 1999 in Company Petition 15 of 1994

conditions as it thinks fit, that is, in accordance with Clause 15(e). The Court further noted that even when all formalities have been satisfied by a prospective consumer in accordance with Clause VI of the Schedule to the 1910 Act, the Board retains the power to lay down appropriate regulations to safeguard electricity, which is public property and take actions in the best interest of the Board. The Court placed reliance on the judgement of the Kerala High Court in **A Ramachandran** v. **KSEB**[74] in reaching its decision.

153. In the impugned judgement dated 14 September 2001 in the Review Petition, the Court further clarified that Clause 15(e) can also be invoked in winding up proceedings as the manner in which the new person became owner, allottee or occupier of the property is immaterial. Finally, the High Court clarified that the mere fact that the Electricity Board was trying to recover the due amount as a secured creditor before the winding up proceedings as against the previous owner, would be of no consequence on the applicability of Clause 15(e).

154. Notice was issued by this Court on 25 January 2002. By an order dated 28 February 2007, this Court directed the parties to negotiate a settlement and arrive at a formula to recover the amount agreeable to both parties. This Court observed:

> "Balancing the equities as they arise in the present case would be a delicate task, and whichever way we decide this case the losing party may feel that justice has been denied to it. At the same time, we cannot lose sight of the fact that the appellants have made huge investments as claimed by them, and only the interest component on such investment may create a huge liability as against the appellant. On the other

[74] 2000 SCC OnLine Ker 75

> hand, if the industry starts functioning, perhaps the Electricity Board will also stand to gain. We have no doubt that instead of litigating, if the parties could have settled the dispute, both would have benefited to a great extent."

However, no settlement could be reached.

155. We are of the view that the Kerala High Court was correct in upholding the validity of Clause 15(e). Clause 15 of the Conditions of Supply of the Electrical Energy, which is statutory in character, unequivocally provides that the Board is not obligated to give reconnection or a new connection in the premises where there are any arrears of electricity charges from a previous consumer, unless the arrears including penalty are cleared by the new owner/ occupier/ allottee. Furthermore, in the present case the terms of auction sale provided that the assets were sold on "as is where is and whatever there is" basis. In the light of the clear facts, the respondent would be well within its right to demand the electricity arrears due, from the appellant-purchaser. Since KSEB's claim petition was admitted for Rs 63,94,298 the amount remitted, if any, by the appellant to whom connection has been effected would be adjusted in accordance with Clause 15(e).

156. We hold that the decision of the High Court does not call for interference. The appeal is therefore dismissed.

Item 101: K.C. Ninan v. Kerala State Electricity Board; Civil Appeal No. 2109-2110 of 2004

157. The appellant purchased the property of United Industries Cochin Ltd in a court auction on 31 October 1989. The electricity connection of the premises was

earlier disconnected in 1980 and the electric supply line was dismantled in 1985 on account of non-payment of electricity charges. On 1 December 1989, the appellant *allegedly* applied to KSEB for an electric connection to the purchased premises. Subsequently, on 1 January 1990, Clause 15 of the Conditions of Supply of electrical energy was effectuated. On 12 June 1990, the KSEB sent a communication to the appellant, refusing to grant an electric connection unless the appellant paid the arrears of electricity of the premises. As a consequence, the appellant filed a writ petition seeking a permanent electrical connection and challenging Clause 15(e) of the Conditions of Supply.

158. The High Court in the judgement dated 13 February 2003 relied on **KJ Dennis** (supra) and **A Ramachandran** (supra), and rejected the prayer of the auction purchaser to get an electricity connection without paying the dues of the previous owner to the KSEB. The appellant filed a review petition against the judgement dated 13 February 2003. It was the appellant's contention that the decisions in **Ramachandran** (supra) and **KJ Dennis** (supra) are inapplicable to the facts of the case. The appellant submitted that the "judgement under review was delivered without taking note of the fact that condition 15(e) was incorporated in the Conditions of Supply of Electrical Energy only with effect from 1.1.1990 while the petitioner purchased the property on 31.10.1989 in a Court auction and the application for electric connection was made on 1.12.1989." The review petition filed by the appellant was dismissed on the ground that the High Court's decision in **Ramachandran** (supra) took into consideration the ratio in **Isha Marbles** (supra) and thereafter upheld the action taken by the respondent-Board.

159. This Court issued notice on 7 January 2004, and granted leave on 2 April 2004. Recovery proceedings were stayed on 5 May 2006.

160. The appellant has submitted in the course of the written submissions that the impugned regulation would apply prospectively as subordinate legislation made by a delegate cannot have retrospective effect unless rule making power in the concerned statute expressly or by necessary implication confers power in this behalf.[75] It was further stated that the appellant had applied for electricity connection on 1 December 1989, before the Conditions of Supply came into force. It has been urged that in the absence of any existing statutory regulations, the appellant cannot be called upon to clear the past arrears incurred by the erstwhile consumer as a condition precedent to electricity supply.

161. The relevant date to determine the applicability of the Conditions of Supply is the date on which the auction purchaser applies for a fresh connection of electricity for the premises, and not the date of purchase of the undertaking. The issue before this Court is whether there was any statutory provision in operation governing the issue of recovery of the defaulted amount as on the date when the appellant applied for a new electric connection.

162. The respondent in their counter affidavit has raised a dispute on the factum of the date of application for a fresh connection of electricity. The respondent submits that the court sale was held on 31 October 1989, which was confirmed on 22 January 1990 and the sale certificate was signed on 6 April 1990. It is argued that in these circumstances, it is unlikely that the appellant would have

[75] Reliance placed on State of Madhya Pradesh v. Tikamdas, (1975) 2 SCC 100

received possession of the premises or would have applied for an electric connection on 1 December 1989, as alleged by the appellant.

163. However, neither party has submitted any material on record to prove the date of the application for the grant of a power connection. In view of the material factual dispute and insufficient evidence on record, we remand the matter to the High Court to determine whether Condition 15 of Conditions of Supply of Electrical Energy would apply to the appellant's case, bearing in mind the principles which have been laid down in this judgment.

II. Maharashtra

164. 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.

165. In light of the New Industrial Development Policy 1993, aimed at reviving sick industries, the MSEB issued Circular 518 dated 18 June 1993, titled "Power Supply to closed and Sick Industrial Unit". The aim of Circular 518 was to encourage prospective entrepreneurs to take over sick industrial units under Section 29 of the State Financial Corporation Act 1957. The Circular presented prospective owners who purchased sick/ closed industrial units in auction with

two options — either pay arrears including minimum charges to get electricity supply reconnected, or apply for a fresh connection after completing necessary formalities, without being liable for outstanding arrears of the previous owner. The circular further provided that Condition 23(b) of the MSEB Conditions of Supply would not apply to prospective consumers with effect from 1 April 1993.

166. The circular was withdrawn by the Circular 607 dated 19 December 1998, whereby it was mandated that reconnection or fresh connection would be released only after the arrears of the Electricity Board are cleared. The circular purported to emanate from Condition 23(b) of the Conditions of Supply, as framed by the MSEB. The circular was made operative with immediate and prospective effect.

167. In light of the impugned judgments of the Bombay High Court, which are in appeal before us, MSEB by its Circular 684 dated 25 September 2003 allowed auction purchasers of closed/ sick industrial units to exercise either of the options as prescribed by Circular 518 dated 18 June 1993. However, an undertaking was required by the incoming consumers to unconditionally agree to pay the arrears of previous owners in case the Supreme Court decided in favour of MSEB.

168. 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"

169. Presently, the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other Standards of Performance of Distribution Licensees including Power Quality) Regulations 2021[76] 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.

170. From the state of Maharashtra, there are six judgments of the Bombay High Court which are in appeal before us.

169. Mr. Ajit Bhasme, learned senior counsel appearing on behalf of the appellant-Board urged the following common legal submissions:

[76] "2021 Regulations"

a. MSEB Conditions of Supply, as then prevalent under the 1910 Act and the 1948 Act, are statutory in character, as held by this Court in **Hyderabad Vanaspati** (supra). The Conditions of Supply are in addition to and not in lieu of other modes of recovery;

b. MSEB Conditions of Supply are a part of the standard agreement entered into between the consumer and the Electricity Company. Clause 14 of the standard agreement between the Electricity Board and the consumer incorporates the Conditions of Supply as a part of the agreement;

c. The reliance placed by the Bombay High Court on the judgement in **Isha Marbles** (supra) cannot be sustained since the case of **Isha Marbles** (supra) is distinguishable on facts;

d. The General Auction Conditions of Sale of SICOM in Clause 2 stipulate that the sale is on “as is where is and what is” basis. Auction purchasers were put on notice of their liability for the past electricity arrears due to the inclusion of the standard auction proclamation (Clause 6) while inviting bids;

e. Regulation 10.5 of Maharashtra Electricity Supply Code 2005 explicitly states that any unpaid electricity dues shall be a charge on the premises transferred; and

f. All six cases pertain to the period prior to 2005 i.e., before the enactment of the Maharashtra Electricity Supply Code 2005. The 1976

MSEB Conditions of Supply would continue to operate till the enactment of the Maharashtra Electricity Supply Code in 2005.

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

a. **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;

b. **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

c. **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.

172. 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.

173. 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.

174. In **Maharashtra State Electricity Board** v. **Super & Stainless Hi Alloys Ltd.,**[77] 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.

175. In **Supdt. Engg. Maharashtra State Electricity Board** v. **M/s Umang Enterprises**,[78] the High Court placed reliance on the decisions of this Court in **Isha Marbles** (supra) and **Gujarat Inns** (supra) to reject the argument of the appellant-Board. The Bombay High Court disposed of the writ petition with a direction to the appellant to grant an electricity connection to the premises, without insisting on clearance of past dues of the previous consumer. It is important to note that the High Court in its reasoning did not refer to the MSEB Conditions of Supply and the import of Condition 23 on the liability of the auction purchasers.

176. In **Maharashtra State Electricity Board** v. **Ecto Spinners**,[79] and **Maharashtra State Electricity Distribution Co. Ltd.** v. **M/s Zia Iron Store**,[80] the

[77] Civil Appeal 5312-5313 of 2005
[78] Civil Appeal No. 5314 of 2005
[79] Civil Appeal No. 6587 of 2005
[80] SLP(Civil) No. 6068 of 2006

High Court considered the purport of Condition 23 of the MSEB Conditions of Supply. It concluded that Condition 23 was not applicable to involuntary transfers, such as by operation of law or in pursuance of the decree of a competent court. Accordingly, it held that the respondent-purchasers could not be made liable for the dues of the erstwhile owners as a prerequisite to obtain a new electricity connection.

177. The Bombay High Court in the impugned judgement dated 20 July 2005 in **Ecto Spinners** was aided by the following reasons to arrive at this conclusion:

a. Condition 23(b) does not refer to an involuntary transfer though it does refer to a voluntary transfer or a transfer on account of the death of the owner. The word "successor" in the expression "any person claiming to be heir, legal representative, transferee, assignee or successor of the defaulting consumer" would have to be understood by applying the principle of ejusdem generis. Accordingly, the words preceding the word "successor" clearly disclose a reference to a person who acquires the right to the property on account of either voluntary transfer or on account of death of the owner; and
b. Transfer of a property purchased in a public auction is an involuntary transfer by the owner. Hence, Condition 23 does not impose any liability on a transferee occupying the premises of the erstwhile consumer on account of having acquired right by public auction or any other mode of non-voluntary transfer.

178. 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:

a. 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

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

179. In general law, electricity arrears do not constitute a charge over the property. Under the provisions of the 1910 Act read with the1948 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.

180. 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.

181. 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.

182. In **Hyderabad Vanaspathi** (supra) this Court held that the Conditions of Supply in the State of Andhra Pradesh, notified in exercise of the powers conferred by Section 49 of the 1948 Act, are statutory in character. The Court noted that no regulation has been made under Section 79(j) of the 1948 Act.

183. In the present case, the appellant-Board in exercise of its powers under Section 49 of the Electricity Supply Act formulated the MSEB Conditions of Supply. Accordingly, the MSEB Conditions of Supply are statutory in nature.

184. When a provision having a statutory force and effect is relied upon by the Electric Utilities to impose the liability of clearing the outstanding dues of the erstwhile consumer on a third party, it is for the courts to determine whether the said statutory provision is applicable to the facts of the case before it. In **Special Officer, Commerce, North Eastern Electricity Supply Company of Orissa** v.

Raghunath Paper Mills Private Limited,[81] this Court observed that Regulation 13(10)(b) of the Orissa Electricity Regulatory Commission Distribution (Conditions of Supply), Code, 2004 was inapplicable to the facts of the case as the auction purchaser had requested for a fresh connection, whereas in terms of the concerned regulation, previous dues had to be cleared only with respect to a reconnection or a transfer of service connection from the name of the erstwhile consumer.

185. The submission of the appellant on the applicability of Condition 23 rests on the meaning and scope of Condition 23 in relation to the liability of a person who becomes the new owner or occupier of the premises of the erstwhile consumer, to which electricity was being supplied. Condition 23 is extracted below:

> "Clause 23: Assignment or Transfer of Agreement
>
> a) The consumer shall not without previous consent in writing of the Board, assign, transfer or part with the benefit of his Agreement with the Board nor shall the consumer in any manner part with or create any partial or separate interest thereunder.
>
> b) A consumer who commits breach of condition 23(a) **above** and neglects to pay to the Board any charges for energy or to deposit with the Board amount of security deposit or compensation and the supply of such consumer is disconnected under Section 24 of the Indian Electricity Act, 1910 or under condition no. 31(a) of these conditions **dies, or transfers, assigns or otherwise dispenses of the undertaking or the premises** to which energy was being supplied to the consumer, **any person claiming to be heir, legal representative, transferee, assignee or successor of the defaulting consumer** with or without consideration in any manner shall be deemed to be liable to pay the arrears of electricity charges, security deposit or compensation due payable by the consumer and it shall be lawful for the Board to refuse to supply or reconnect the supply or to give a new

[81] (2012) 13 SCC 479

> connection to such person claiming to be the heir, legal representative, transferee, assignee or successor of the defaulting consumer of such premises, unless the amount of such charges due and / or the compensation demanded from the defaulting consumer, is as the case may be duly paid to or deposited with the Board."
>
> (emphasis supplied)

186. In terms of Condition 23(a), a consumer is not entitled to transfer the benefit under their agreement with the Electricity Board without the previous consent of the Board. In terms of Condition 23(b), if the consumer commits breach of Condition 23(a) and neglects to pay the Board any charges for energy and consequently, the electricity supply of such consumer is disconnected, then the third party upon whom such a transfer was effected is liable to pay arrears of electricity which the defaulting consumer has not paid. Liability of a third party to pay dues of the erstwhile consumer is attached when the conditions specified in Condition 23(a) and Condition 23(b) are satisfied.

187. The rule of "ejusdem generis" is a principle of construction. The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. It applies when the following ingredients are present: (i) the statute contains an enumeration of specific words; (ii) the subjects of enumeration constitute a class or category; (iii) that category is not exhausted by the enumeration; (iv) a general term follows the enumeration; and (v) there is no indication of a different legislative intent.[82]

[82] Amar Chandra v. Collector of Excise, Tripura, (1972) 2 SCC 442; Grasim Industries Ltd. v. Collector of Customs, (2002) 4 SCC 297

188. For the application of the ejusdem generis rule, it is essential that enumerated things before the general words must constitute a distinct category or a genus or a family which admits of a number of members.[83] In **Adoni Cotton Mills Ltd.** v. **Andhra Pradesh State Electricity Board**,[84] this Court had to interpret Section 49(3) of the 1948 Act, which empowered the Electricity Board to fix different tariffs for the supply of electricity to any person having regard to the geographical position of any area, the nature of supply and purpose for which the supply is required and any other relevant factors. This Court refused to limit the generality of "other relevant factors" since there was no genus of the enumerated factors. Geographical position of the area and the nature and purpose of the supply were held not to be related to any common genus.

189. In the impugned judgment **Ecto Spinners**, the Bombay High Court observed that the word "successor", occurs in the collocation of other words "heir", "legal representative", "transferee" and "assignee", and its meaning must take colour from the preceding words in association with which it is used. It held that the word "successor" has to be understood to refer to an owner acquiring the right by way of voluntary transfer or on account of the right of inheritance.

190. We are unable to accept the reasoning of the High Court. The dictionary meaning of some words and expressions, which have a bearing on this case, has been set out in Black's law Dictionary as follows:

[83] Lokmat Newspapers (P) Ltd. v. Shankarprasad, (1999) 6 SCC 275; Jaiprakash Associates Ltd. v. Tehri Hydro Development Corpn. (India) Ltd., (2019) 17 SCC 786
[84] (1976) 4 SCC 68

> **"Heir**: A person who, under the laws of intestacy, is entitled to receive an intestate decedent's property[85]
>
> **Legal representative**: A legal heir; or an executor, administrator or other legal representative[86]
>
> **Transferee**: One to whom a property interest is conveyed[87]
>
> **Assignee**: One to whom property rights are transferred by another"[88]

191. It is clear from the plain meaning of the words that the expressions "heir", "legal representative", "transferee" and "assignee" do not fall into one single distinct category. According to the reasoning in the impugned judgment, Condition 23 itself consists of more than one genus or category of transfer — acquiring the right to a property on account of voluntary transfer, or on account of death of the owner. The word "successor", which was interpreted by the High Court in a restricted manner, is itself of wide amplitude and will have to be given a plain meaning. The expression "successor" has been defined in Black's Law Dictionary as "a person who succeeds to the office, rights, responsibilities, or place of another; one who replaces or follows a predecessor." [89] The category of a "universal successor" is further understood to mean "someone who succeeds to all the rights and powers of a former owner, as with an intestate estate or an estate in bankruptcy".[90]

192. The wide compass of the expression "any person claiming to be heir, legal representative, transferee, assignee or successor of the defaulting consumer"

[85] Black's Law Dictionary (WEST: Thomson Reuters 9th edition), Pg 791
[86] Black's Law Dictionary (WEST: Thomson Reuters 9th edition), Pg 1416
[87] Black's Law Dictionary (WEST: Thomson Reuters 9th edition), Pg 136
[88] Black's Law Dictionary (WEST: Thomson Reuters 9th edition), Pg 1636
[89] Black's Law Dictionary (WEST: Thomson Reuters 9th edition), Pg 1569
[90] *Id*

can be understood with regard to the former corresponding phrase “dies, or transfers, assigns or otherwise dispenses of the undertaking or the premises”.

193. In the case at hand, the use of the expression “otherwise dispenses of” in the phrase “a consumer…dies, or transfers, assigns or otherwise dispenses of the undertaking or premises", does not bring into play the rule of ejusdem generis for the preceding words “dies”, “transfers”, “assigns” do not belong to a single limited genus.

194. The word “transfer” itself is generally regarded to have a wide connotation, comprehending within it both voluntary and involuntary transfers. In **Mangalore Electric Supply Co. Ltd.** v. **The Commissioner of Income Tax, West Bengal**,[91] a three-judge Bench of this Court held that a compulsory acquisition of property can constitute a “transfer” within the meaning of Section 12B(1) of the Indian Income Tax Act 1962. It rejected the argument that the word “transfer” must be construed ejusdem generis with the preceding words “sale”, “exchange”, “relinquishment”. On the wide amplitude of the word ‘transfer’, this Court observed:

> “**8.** We find it impossible to accept this submission. In the first place if it was intended that voluntary transfers alone should fall within the meaning of the section, it was unnecessary for the legislature to use the expression “transfer”, an expression acknowledged in law as having a wide connotation and amplitude. Earl Jowitt, in “The Dictionary of English Law” says:
>
> > “**In the law of property, a transfer is where a right passes from one person to another**, either (1) by virtue of an act done by the transferor with that intention, as in the case of a conveyance or assignment by way

[91] (1978) 3 SCC 248

> of sale or gift, etc; or (2) **by operation of law, as in the case of forfeiture, bankruptcy, descent, or intestac**y."
>
> Roland Burrows on "Words and Phrases", Volume V, contains a statement under the caption "Transfer on Sale" at p. 331 that even a transfer of land under compulsory powers is a transfer "on sale". It is unnecessary for us to consider the question whether a compulsory acquisition of property is a "sale" within the meaning of Section 12-B(1) and indeed, it is needless for the present purpose to go that far. We are concerned with the narrower question whether a compulsory acquisition of property can amount to a "transfer" within the meaning of Section 12-B(1) and upon that question it is important to bear in mind that the word "transfer" is comprehensive and is regarded generally as comprehending within its scope transfers both of the voluntary and involuntary kinds. Without more, therefore, there is no reason for limiting the operation of the word "transfer" to voluntary acts of transfer so as to exclude compulsory acquisitions of property."
>
> (emphasis supplied)

195. The rule of ejusdem generis cannot be applied when there is no distinct category or a genus. In the absence of a genus, the words 'transfer' or 'otherwise dispenses of', which are wide in their meaning, cannot be restricted to only mean voluntary transfers by the application of the ejusdem generis principle.

196. The rule of ejusdem generis is not an inviolable rule of law.[92] Where the context and mischief of the statutory enactment do not require a restricted meaning to be attached to words of general import, the court has to give the words their plain and ordinary meaning.[93] Condition 23 of the MSEB Conditions of Supply is a mode of recovery of electricity arrears of the erstwhile consumer, which could be recovered even from a successor. The MSEB, in our opinion,

[92] Valparaiso Kottarathil Kochuni v. States of Madras & Kerala, (1960) 3 SCR 887
[93] BHEL v. Globe Hi-Fabs Ltd., (2015) 5 SCC 718

intended to cover all possible cases of transfer of the undertaking or premises of the erstwhile consumer, be it voluntary, on account of death of the consumer, or by operation of law. Circular 518 dated 18 June 1993 and Circular 607 dated 19 December 1998 issued by the MSEB emanated from Condition 23 of the MSEB Conditions of Supply. They contained directions vis-à-vis power supplied to those property owners who purchased sick and closed industrial units. The context and the purpose of the statutory terms and conditions of supply demand that a broader construction should be adopted, and there is no room for the application of the rule of ejusdem generis.

197. On our interpretation of Condition 23 of the MSEB Conditions of Supply with particular reference to subclause (b) thereof, we are of the view that the said sub-clause is applicable to involuntary transfers, such as court auctions.

198. Applying the above considerations to the appeals our conclusions are as follows:

Item 101.1: Maharashtra State Electricity Board v. Super & Stainless Hi Alloys Ltd; Civil Appeal 5312-5313 of 2005

199. The first respondent purchased a sick industrial unit in auction from the SICOM under Section 29 of the State Financial Corporations Act. It filed a writ petition challenging the actions of the appellant-Board in denying it a new electricity connection. A subsequent writ petition was filed by SICOM challenging the vires of Circular 607 dated 19 December 1998. By a common judgment dated 19 December 2002, the Bombay High Court disposed of the writ petitions and quashed the impugned Circular 607 on the ground that MSEB lacked jurisdiction

as the circular was beyond the powers of the Board under Section 24 of the 1910 Act. The High Court relied on **Isha Marbles** (supra), to reach the conclusion that although Section 24 provides for payment of arrears for reconnection after the supply is disconnected, it only refers to the consumer who failed to pay the dues and does not concern itself with a new owner or occupier of the premises.

200. The appellant preferred the present Special Leave Petition. This Court issued notice on 6 May 2003 and leave was granted on 25 August 2005. By an order dated 24 August 2006, the question whether electricity dues constitute a charge on the property so far as the transferor and the transferee of the unit are concerned was referred to a larger bench.

201. In our considered view, the decision in **Isha Marbles** (supra) and Section 24 of the Electricity Act 1910 are by themselves not an answer on whether the appellant-Board had a power to issue Circular 607. In **Srigdhaa Beverages** (supra), this Court held that the electricity dues, where they are statutory in character under the Electricity Act and as per the terms and conditions of supply, cannot be waived in view of the provisions of the Act itself, more specifically Section 56 of the 2003 Act (*pari materia* with Section 24 of the 1910 Act), and cannot partake the character of purely contractual dues. The power of the appellant-Board to impose a condition that the purchaser of an undertaking will have the obligation to clear the arrears of electricity dues of the prior consumer is sourced from Condition 23 of the MSEB Conditions of Supply framed under Section 49 of the 1948 Act.

202. It was the submission of the respondents that the impugned circular cannot affect the rights of the auction purchasers who purchased sick/ closed industrial units under Section 29 of the State Financial Corporation Act 1951 as the sale was "not voluntary". As discussed above, Condition 23 is of wide import, which covers sale of property made in court auctions. Furthermore, Section 29(2) of the State Financial Corporation Act provides that a sale under Section 29 which resulted in transfer of property shall vest in the successor all rights in the property transferred as if the transfer has been made by the owner of the property. Accordingly, a sale made by the corporation is deemed to be a sale made by the owner of the property, attracting Condition 23 of the MSEB Conditions of Supply.

203. It is necessary to reproduce some of the relevant clauses of the "General Auction Conditions of Sale" of properties put on sale by SICOM. The clauses are extracted below:

> **"Clause 4**: The purchaser may take inspection of the property to be sold. **Even if the purchaser does not take inspection, he shall be deemed to have inspected all the assets put up for sale on "As is where is and what is basis" in regard to the condition thereof, before making the offer for purchase of the same.** It is hereby expressly agreed and declared that notwithstanding the provisions of Section 55 of the Transfer of Property Act or any other enactment for the time being in force in that behalf, SICOM shall not be bound to disclose to the purchaser any defect, whether material or otherwise in the property, whether or not SICOM may be or may not be aware of such defect and whether or not the purchaser could not with ordinary care and diligence discover such defects.
>
> **Clause 6**: The purchaser shall make his own arrangement for getting required power connection, water and other facilities and payment of arrears of rates and taxes of the said property and shall meet all the costs of whatever nature to be incurred in that behalf. SICOM

> shall not be liable to pay any arrears if charges and costs/ expenses, if any, in respect of power, water or any other facilities required. **The purchaser shall make own inquiries about arrears of dues for supply of power, water and other facilities, if any, and the same shall be borne and paid by the purchaser alone**."
>
> (emphasis supplied)

204. The aforesaid terms and conditions of the auction as set out by SICOM indicate that the property was being sold on "as is where is and what is basis". The auction purchaser was at all times on clear notice of the fact that the property was being sold on an "as is where is" basis and that SICOM did not undertake any liability for the payment of dues. This clause was further subject to another provision in Clause 6, where the purchaser was liable to make their own inquiries about arrears of dues for *supply of power*, water and other facilities and the auction purchaser was made liable to pay such arrears. This makes it clear that apart from the MSEB Conditions of Supply, which have statutory effect, the purchaser who purchased property in auctions conducted under Section 29 of the State Financial Corporations Act also had knowledge of his liability for the past arrears of electricity of the premises when he bid in the auction. By virtue of the stipulations in the sale deed, as far as the first respondent is concerned, it was liable to discharge the electricity dues payable to the Electricity Board by the erstwhile consumer.

205. In light of what we have stated above, we set aside the judgement of the Division Bench and allow the appeal.

Item 101.10: Supdt. Engg. Maharashtra State Electricity Board v. M/s Umang Enterprises; Civil Appeal No. 5314 of 2005

206. The first respondent was a successful auction purchaser of the property of M/s Creekay Yarn Industries Ltd, which was put to sale in consequence of an arbitral award. The respondent-purchaser took out a Judges Order[94] in a civil suit before the Bombay High Court, seeking a clarification that it was not liable for past dues and liabilities of any kind in respect of the property purchased through the auction sale. The Bombay High Court by its order dated 29 January 2003 declared that the respondent-purchaser was not liable to pay any arrears payable by the erstwhile owner. The appellant alleges that this order was passed ex-parte. The order of the Bombay High Court in Judges Order dated 29 January 2003 has not been placed on record before this Court.

207. The respondent-purchaser requested the appellant for a new electricity connection, which was denied on 6 June 2003 on the ground that the respondent was not eligible for a new connection unless the dues of the erstwhile consumer were discharged in terms of Condition 23 of the MSEB Conditions of Supply. The respondent filed a writ petition, with an interim prayer seeking a direction to grant a new electric connection. The main prayer in the writ petition sought a declaration that the demand made by the Electricity Board to pay arrears was unfounded in law. The Bombay High Court by its impugned judgment dated 24 September 2004 disposed of the writ petition with a direction to the appellant to grant an electricity connection to the premises within one month, without insisting on clearance of past dues of the previous consumer. The High Court placed

[94] Judges Order No. 10 of 2003 in Civil Suit no. 2978 of 1991

reliance on the decisions of this Court in **Isha Marbles** (supra) and **Gujarat Inns** (supra).

208. The appellant preferred the present Special Leave petition. This Court issued notice on 6 January 2005.

209. As already stated before, this Court in both **Isha Marbles** (supra) and **Gujarat Inns** (supra) did not hold the auction purchaser liable to clear the electricity arrears incurred by the previous owners because there was no specific statutory provision in that regard, or any clause dealing with the issue of electricity dues. In the present case, the MSEB placed specific reliance on Condition 23 of MSEB Conditions of Supply to hold the auction purchasers liable. The MSEB Conditions of Supply were incorporated in the individual contracts entered between the Electricity Board and the consumers. Clause 14 in the standard agreements entered between the MSEB and consumers provides that the Conditions of Supply, as amended from time to time, shall be deemed to be part of the agreement. The erstwhile consumers were aware of the statutory MSEB Conditions of Supply. The relevant clause is extracted below:

> "Clause 14(a): Condition and Miscellaneous Charges for supply of electrical energy of the Maharashtra State Electricity Board for the time being in force and as amended by supplier from time to time shall be deemed to be part of the Agreement and shall govern the parties hereto in so far as applicable. A copy of the current Conditions and Miscellaneous Charges for supply is set out in the second schedule hereto."

210. We are of the considered view that the impugned order cannot be sustained and is accordingly set aside.

Item 101.11: Maharashtra State Electricity Board v. Ecto Spinners; Civil Appeal No. 6587 of 2005

211. In 1999, the unit of M/s Prabhavati Spinning Mill, a co-operative spinning mill, was closed down. The electricity supplied to M/s Prabhavati Spinning Mill had earlier been disconnected by the appellant in default of payment of consumption charges. In 2004, the first respondent purchased M/s Prabhavati Spinning Mill, which was liquidated by the authorities under the Maharashtra Co-operative Societies Act 1960. The agreement of sale was executed in favour of the first respondent on 26 July 2004 and since then, the first respondent had the possession of the property. The final deed of assignment was yet to be executed. The first respondent incurred an expenditure of Rs 4 crores to overhaul the plant and machinery at the premises, and thereafter applied for a fresh electricity connection as a High Tension Consumer for the premises. Meanwhile, the plots were transferred by the Maharashtra Industrial Development Corporation to the first respondent on 4 February 2005. The appellant, however, relied on the MSEB Conditions of Supply and the agreement entered with the erstwhile consumer to decline granting electricity connection until the arrears of the erstwhile consumer were cleared. The respondent filed a writ petition before the Aurangabad Bench of the Bombay High Court, seeking a direction to the appellant to supply electricity to the respondent at its premises.

212. By the impugned judgement dated 20 July 2005, the Bombay High Court allowed the writ petition. The High Court held that the respondent could not be made liable for the dues of the erstwhile owner as a prerequisite for obtaining a new electricity connection as there was neither any statutory provision nor an agreement creating any charge over the property in relation to the electricity arrears.

213. This Court granted leave on 24 October 2005. As discussed above, Condition 23 of MSEB Conditions of Supply is a specific provision applicable to the case of the first respondent. In view of the above, we allow this appeal, and set aside the judgment and order of the High Court.

Item 101.12: Maharashtra State Electricity Distribution Co. Ltd. v. M/s Zia Iron Store; SLP(Civil) No. 6068 of 2006

214. The original consumer, M/s Sumit Re-Rolling Mills Pvt. Ltd, Nagpur, defaulted in the payment of a loan taken from the Nagpur Nagrik Sahakari Bank. The bank filed a dispute before the Co-operative court at Nagpur. The Judge, Cooperative court at Nagpur by an order dated 23 February 2005 granted permission to sell the hypothecated plant and machinery and mortgaged land and building of M/s Sumit Re-Rolling Mills Pvt. Ltd. In the execution of the award, the property belonging to M/s Sumit Re-Rolling Mills Pvt. Ltd was purchased by the first respondent.

215. The authorised officer of the bank handed over the physical possession of the entire moveable plant and machinery and immovable land and building,

mortgaged with the bank, to the respondent on 21 March 2005 on “as is where is” and “as is what is” basis.

216. A deed of assignment and sale dated 17 February 2006 was entered between the Nagpur Nagarik Sahakair Bank Ltd. and the respondent. Clause 2 of the indenture notes that the bank would not take any liability for any dues like electricity dues and charges for fresh power connection. The relevant clause is extracted below:

> “The liabilities, if any and the liabilities which may arise in
> future in respect of the dues of Local authorities and dues of Revenue Authority, MIDC Authority and Sales Tax etc. and also for transfer of property in question, shall be for transfer of property in question shall be payable by the purchaser. The property hereby assigned in on “as is where is" and "as is what is" basis. The Bank does not undertake any liability or responsibility to procure any permission/licence etc.in respect, of the property offered for sale or for any dues like water/service charges of the
> MIDC, transfer fees, electricity dues and charges for fresh power connection, Local Authority, or Nazul/NIT dues, in respect of the said property and the same shall be solely and exclusively borne and paid by the Purchaser.”

217. 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.

218. The appellant filed a Special Leave Petition challenging the impugned judgement. The appellant has argued that the concept of voluntariness is not a sine qua non for Condition 23 of the MSEB Conditions of Supply. In the reply filed by the respondent, it has been urged that it is not a necessary party to the present petition since it had sold the premises in dispute to Rajaram Steel Industries Pvt Ltd by a deed of assignment dated 29 March 2006.

219. 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.

220. 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.

221. 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.

222. 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.

223. In view of the aforesaid legal position, which has emerged, we are of the view that the impugned order of the High Court cannot be sustained. The appeal is allowed.

Item 101.13: Maharashtra State Electricity Board v. M/s Jai Tirath Financiers Pvt. Ltd.; SLP(Civil) No. 10732 of 2006

224. In 1999, liquidation proceedings were initiated against M/s Hariganga Alloys & Steel Ltd. By a sale notice dated 2 May 2001, offers were invited from interested bidders for purchase of properties of M/s Hariganga Alloys & Steel Ltd on “as is where is” and “as is what is” basis. The first respondent successfully purchased the assets in the auction sale and took possession of the purchased property in 2002.

225. On 17 June 2005, the respondent applied to the appellant for a new electricity connection to the premises purchased in the auction. By a letter dated 22 June 2005, the appellant rejected the application on the ground that arrears of electricity charges of Rs 83 lakhs of the erstwhile owner were pending and a permanent electricity connection could not be released till full dues were paid. The appellant permitted release for a temporary connection. The respondent filed Company Application No. 106 of 2005 in Company Petition No.6 of 1999 in the matter of liquidation of M/s Hariganga Alloys & Steel Ltd, seeking the release of a new electricity connection without clearance of arrears.

226. The application of the respondent was allowed by the impugned order dated 10 February 2006, passed by a Single Judge at the Nagpur Bench of the Bombay High Court. The High Court held that the appellant could not deny electricity connection to the respondent on the ground of recovery of arrears of the erstwhile owner of the plot. The High Court noted that the appellant was one

of the secured creditors and directed it to make its claim before the Official Liquidator in accordance with law.

227. The appellant preferred the present Special Leave petition. On 17 July 2006, this Court issued notice and stayed the operation of the impugned order.

228. During the pendency of the appeal, the respondent had sold the property to M/s Ankush Shikshan Santha and the new owner had submitted a proposal dated 9 August 2007 to the appellant that it was prepared to settle the dues of M/s Hariganga Alloys & Steel Ltd in twelve instalments. By an order dated 22 October 2007, this Court directed the appellant to restore the electricity connection after receipt of the first two instalments by the respondent in view of the undertaking given by the respondent that it shall deposit the entire arrears of Rs 83 lakhs in terms of the proposal dated 9 August 2007. The Court has been informed that pursuant to the order, M/s Ankush Shikshan Santha had paid the arrears to the tune of Rs 83 lakhs and the appellant has granted a fresh electricity connection.

229. In the meantime, an Interlocutory Application[95] was filed by the respondent for disposing the petition on the ground that it had become infructuous. The appellant in the reply affidavit has contested the IA on the ground that even though the principal amount of Rs 83 lakhs has been paid towards arrears, interest charges to the tune of approximately Rs 2 crore on the principal amount are still to be recovered.

[95] IA No. 2 of 2007

230. Since the respondent applied for electricity connection on 17 June 2005, the Maharashtra Electricity Supply Code 2005, which came into force from 20 January 2005, is applicable in the instant case. Accordingly, a charge was created on the electricity arrears in terms of Regulation 10.5. At the same time, the Court cannot be oblivious to the commercial exigencies in view of which the settlement proposal was complied with. The appellant has recovered an amount of Rs 83 lakhs. In the facts and circumstances of the case it would be iniquitous to direct the payment of interest at this stage. We therefore direct a closure of the dispute in the above terms in the exercise of the jurisdiction under article 142 of the Constitution.

231. In the circumstances, it is not possible to entertain the appeal at this stage. The appeal is accordingly dismissed. Pending applications, if any, stand disposed of.

Item 101.14: Maharashtra State Electricity Distribution Co. Ltd. v. M/s Garib Nawaj Scrap Merchant; Civil Appeal No. 10732 of 2006

232. In 2002, the electricity supply of M/s R & J Alloys Pvt. Ltd was permanently disconnected by the appellant. On 3 October 2005, the first respondent successfully purchased the properties of M/s R & J Alloys Pvt. Ltd in an auction held pursuant to a sale conducted for enforcement of a recovery certificate issued by the Debt Recovery Tribunal. The respondent took over possession of the property and the sale was confirmed by the order of the Recovery Officer dated 8 December 2005. The terms of the auction sale of the properties of M/s R & J Alloys Pvt. Ltd stated that the sale was conducted on “as is where is basis”.

233. On 30 December 2005, the respondent applied to the appellant for a new electricity connection. This was followed by a subsequent letter dated 2 January 2006. By letter dated 12 January 2006, the appellant refused to give a new electric connection unless the arrears of Rs 11 crores of the erstwhile owner of the property were paid. The respondent filed a writ petition before the Bombay High Court, seeking an electricity connection. On 13 October 2006, the High Court passed the impugned order granting interim relief to the first respondent. The High Court took note of the pending referral of the legal issue to a larger bench of this Court. It observed that the right of the Electricity Board to claim arrears from auction purchasers hinged upon the adjudication of the said issued. The High Court directed the Electricity Board to grant interim electricity connection subject to final adjudication of the rights of the parties.

234. The appellant herein preferred the present Special Leave Petition against the interim order of the High Court. On 9 July 2007, leave was granted by this Court and the case was tagged with Civil Appeal No. 5312-5313 of 2005. The impugned order of the High Court granting interim electricity connection was stayed by this Court.

235. The submission which has been urged by Mr Ajit Bhasme, senior counsel appearing on behalf of the appellant is that the first respondent knowingly purchased the premises with the liability to pay past dues, evident from clause 3 and clause 4 of the terms of the auction sale. Accordingly, it has been urged that the respondent is liable to pay the dues in view of Condition 23(b) of the MSEB Conditions of Supply. Mr MY Deshmukh, counsel appearing on behalf of the first

respondent has urged that the MSEB Conditions of Supply 1976 are inapplicable after the enactment of the Maharashtra Electricity Supply Code 2005.

236. The respondent has in its written submissions has brought to the attention of this Court the suit for recovery[96] initiated by the appellant against the erstwhile owner. During the pendency of the present appeal, the trial court by an order dated 30 September 2009 passed a decree in favour of the appellant for the debt due from the erstwhile consumer and its proprietor in respect of the arrears of electricity bills. The first respondent has urged that in view of the decree, the appellant ought to have withdrawn the present appeal instead of protracting the litigation.

237. At the outset, we would deal with the submissions on the applicability of the 2003 Act. The electricity connection was permanently disconnected in 2002, and the first respondent acquired ownership rights in the premises in 2005. The first respondent made the application for a new electricity connection on 30 December 2005. Hence, the first respondent requested the appellant to supply electricity after the Maharashtra Electricity Supply Code 2005 came into effect on 20 January 2005. Accordingly, the Maharashtra Electricity Supply Code 2005 would govern the facts in the present case. In terms of Regulation 10.5 of the Maharashtra Electricity Supply Code 2005, any unpaid electricity dues constitute a charge on the premises, and would be recoverable from the new owner or occupier of the premises to whom the premises have been transferred.

[96] Spl. Civil No. 104 of 2003

238. Furthermore, the terms of the auction sale put the first respondent on notice that this was a sale on "as is where is" basis and the purchaser would be liable for arrears of different authorities, including MSEB, if an excess amount in sale proceeds was not available. The relevant clauses are extracted below:

> "**3.** So far known to this office there are (no) arrears of Municipal tax, MSEB or Corporation tax or both taxes. However, any legitimate claim made in that behalf shall be paid from out of the sale proceeds if the same is in excess of the amount mentioned in the Recovery Certificate. **In case such excess amount is not available the liability shall be borne by the purchaser. However, prospective purchaser is expected to check up from** MIDC, CIDCO, **MSEB,** Municipal corporation etc. **for the dues if any on the property**.
> **4.** The properties shall be sold on "AS IS WHERE IS BASIS"."
>
> **(emphasis supplied)**

239. Accordingly, the dues owed by M/s R & J Alloys Pvt. Ltd to the MSEB are a charge on the property purchased by the first respondent in a public auction. The charge attaches to the property and a 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.

240. So far as the filing of civil suit by the appellant in 2003 against the erstwhile owner is concerned, that is an alternative remedy provided by law which the appellant can undertake in order to recover electricity arrears from the erstwhile consumer. Besides disconnection of electricity, the MSEB has the remedy to file civil suits followed by execution petitions for recovery of the dues from the erstwhile consumer. The filing of the civil suit will not debar the appellant from recovering any outstanding charge for electricity from a person to whom the

property is transferred or the occupier of the said premises where new electricity connection is sought in terms of Regulation 10.5.

241. The counsel for the respondent has urged that although the decree in the civil suit was passed in favour of the appellant on 30 September 2009, the appellant has failed to execute it till date. The distribution licensee should not let arrears mount up and must be prompt in disconnecting electricity supply and thereafter pursuing its remedy by filing a suit for recovery of moneys/ dues. It becomes the bounden duty of the distribution licensee to diligently pursue the decree awarded and recover amounts from the real defaulter. Any amount that may have been realised in the execution of the decree would have to be given due credit for in determining the amount payable by the respondent.

242. In view of the reasons which have been adduced earlier, we allow the appeal and set aside the order of the High Court.

III. Gujarat

243. In Gujarat, the right of the Electric Utilities to demand outstanding dues is traceable to the following provisions:

a. **Up to the enactment of the 2003 Act on 10 June 2003**: The governing legislation consists of the 1910 Act and the 1948 Act. Clause 2(j) of Conditions of Supply of the Gujarat Electricity Board was inserted by a notification dated 10 August 2001. It reads:

> "**2(j) Recovery of old dues:**
>
> Reconnection or new connection for any premises, where there are arrears of the Board pending from the consumer/occupier, shall not be entertained. The new successor/ occupier has to clear these dues of the previous consumer before the application of successor/occupier is processed for supply of electricity. If the Board, at a later date, gets the full or part of these dues from the previous consumer, the amount shall be refunded to the successor/occupier after adjusting the costs including legal expenses to recover such arrears and the refund shall bear no interest."

b. **From 10 June 2003 to 31 March 2005**: As per Section 185(2)(a) of the 2003 Act, the extant Conditions of Supply continued to apply.

c. **From 31 March 2005 when the Supply Code came into force**: Clause 4.1.11 was notified under the Supply Code. The relevant regulation is as follows:

> "Regulation 4.1.11
>
> An Application for new connection, reconnection, addition or reduction of load, change of name or shifting of Service Line need not be entertained unless any dues of the Applicant to the Distribution Licensee in respect of any other service connection held in his name anywhere in the jurisdiction of the Distribution Licensee have been cleared."

d. **From 20 August 2010 when the Supply Code was amended**: Clauses 4.1.11, 4.1.16, and 4.8 of the Supply Code were notified under Section 43 read with Section 50. Clause 4.1.11 post the amendment in 2010 reads thus:

> **"Clause 4.1.11**

> An application for new connection, reconnection, addition or reduction of load, change of name or shifting of service line for any premises need not be entertained unless any dues relating to that premises or any dues of the applicant to the Distribution Licensee in respect of any other service connection held in his name anywhere in the jurisdiction of the Distribution Licensee have been cleared.
>
> Provided that in case the connection is released after recovery of earlier dues from the new applicant and in case the licensee, after availing appropriate legal remedies, get the full or part of the dues from the previous consumer/owner or occupier of that premise, the amount shall be refunded to the new consumer/owner or occupier from whom the dues have been recovered after adjusting the expenses to recover such dues."

The High Court of Gujarat had occasion to deal with the validity of Clause 2(j) of the Conditions of Supply and Clause 4.1.11 of the Gujarat Electricity Supply Code.

Item 101.2: M/s Navyug Steel Cast and Anr. v. Paschim Gujarat Vij Co.; Civil Appeal No. 7303 of 2005

244. On 10 August 1998, a petition for winding up of Anik Steel Ltd. was filed wherein an order for winding up of the company was passed and an Official Liquidator was appointed. By an advertisement dated 21 December 2001, the Official Liquidator invited tenders for the auction sale of the property of the previous owner. The appellant submitted an offer of Rs. 35.5 lakhs for purchase of the property on an "as is where is" basis. The offer letter specified that the petitioner *"shall not be responsible for any of the past dues of the Gujarat Electricity Board, Excise and Customs Department, Sales Tax and Income Tax*

Department and of any outsiders whether it is Government, Semi-Government Corporations and/ or Board, Bank or of any private parties". After inter se bidding, the appellant's offer of Rs. 45.5 lakhs was found to be highest. On 23 July 2022, the Official Liquidator submitted a report before the Gujarat High Court for confirmation of the sale in favour of the appellant for Rs. 45.5 lakhs. The High Court accepted the sale in favour of the appellant subject to certain terms and conditions. One such condition was:

> "10. **The purchaser shall be liable to pay all statutory dues, if any, due and payable on the properties of the company for the period after the date of winding up.** The payment of such dues for pre-liquidation period shall be settled as per the **provisions** of the Companies Act, 1956. However, dues, taxes, cess, if any applicable on the sale of assets shall be paid by the purchaser."
>
> (emphasis supplied)

245. In accordance with the auction terms laid down by the High Court, the consideration was paid and possession of the assets was handed over to the appellant. When the appellant applied for a fresh connection, the respondent insisted on payment of outstanding dues of the previous owner before granting a fresh connection. The appellant filed a writ petition challenging Clause 2(j) of the Conditions of Supply. The Single Judge allowed the writ petition and struck down clause 2(j) of the Conditions of Supply for being arbitrary and inconsistent with statutory provisions of the law. The respondent preferred special appeals against the judgment of the Single Judge before the Division Bench. The Division Bnech by judgment dated 18 July 2005 upheld the validity of Clause 2(j) on the ground that it fell within the ambit and scope of Section 49(1) of the 1948 Act.

246. On 10 August 2001, Gujarat Electricity Board issued a notification under Section 49 of the 1948 Act incorporating Condition 2(j) in the 'Condition and Miscellaneous Charges for Supply of Electrical Energy'. Condition 2(j) empowered the Board to insist on payment of arrears of electricity dues of the former consumer as a condition precedent to the restoration of the earlier connection or release of a fresh connection in favour of the new owner/occupier of the premises. As discussed in preceding paragraphs, such conditions can lawfully be stipulated in light of the overall scheme of the 1910 Act and the 1948 Act. Such terms and conditions stipulated in accordance with Section 49 of the 1948 Act have a statutory character.

247. On 23 July 2002, the High Court passed an order confirming the sale in favour of the appellant on the terms and conditions mentioned in the order. The terms and conditions of the auction sale show that the property was sold on an "as is where is" basis to the appellant. The appellant has relied on Condition 10 to argue that it was only liable to pay charges accrued after the date of winding up order. It has been further averred by the appellant that the arrears are for a period before the date of winding up order, which is 10 August 1998. The facts of the case make it evident that the appellant requested supply of electricity by a letter dated 12 August 2002. In the present case, the payment of electricity dues, being statutory in nature, cannot be waived. The auction conditions are subservient to the statutory demand made under Condition 2(j) of the Conditions of Supply. Therefore, we uphold the impugned judgment of the High Court.

248. Before parting, we would like to highlight that by an order dated 18 November 2011, this Court directed the appellant to deposit Rs. 25 lakhs with the respondent and secure the balance principal amount by giving a bank guarantee of a nationalised bank in the name of the respondent within a period of eight weeks from the date of the order to obtain a fresh electricity connection. The relevant part of the said order is reproduced below:

> "The principal amount claimed by Paschim Gujarat Vij Company Limited is to the tune of Rs. 1.26 crores. The applicant-petitioner has applied for grant of fresh electricity connection which is being denied on the ground that arrears, referred to above, have not been paid by the previous owner [consumer]. The petitioner is an auction purchaser. Pending further orders, we direct the petitioner to deposit Rs. 25 lakhs with Respondent No. 1 and secure balance principal amount by giving a Bank Guarantee of a Nationalised Bank in the name of Paschim Gujarat Vij Company Limited - Respondent No. 1 within a period of eight weeks from today, without prejudice to their rights and contentions. Upon compliance of above conditions, electricity connection shall be granted."

249. This Court has been informed that the appellant chose not to get the fresh connection in terms as set out by this Court. Through an Interlocutory Application, the appellant has indicated that it is impossible for them to pay the total accumulated dues amounting to Rs. 578 lakhs with interest and other charges. Therefore, the appellant seeks the benefit of the amnesty scheme dated 29 March 2012 issued by the Gujarat government. Further, the appellant submits that it can only clear its original liability upto Rs. 126 lakhs. The relevant part of the said application is extracted hereunder:

> "10. The applicants submit that the applicant is approaching this Hon'ble Court with the intention to

> get the benefit of this amnesty scheme of Government of Gujarat for only reasons that if the applicant succeeds, the Applicant would be required to pay original dues if the applicant lose the matter in the Hon'ble Supreme Court the liability of the applicant will be only upto Rs. 126.00 Lakhs (original amount) and the Applicant will not be liable to pay any other delay payment charges and other charges, etc. Therefore, the applicant prays before this Hon'ble Court that is liability of the Applicant is fixed only upto the amount of the original dues i.e. Rs. 126.00 Lakhs without any interest and penalty, etc., the applicant is ready to deposit such sum as is required by this Hon'ble Court to be deposited with respondent no. 1 and for the balance the applicant is ready to submit the bank guarantee and/ or is ready to deposit the whole amount with this Hon'ble Court as security."

We allow the above application in the interests of equity, justice, and fairness to the extent that the appellant is only liable to pay the principal amount of Rs. 126 lakhs and any outstanding interest accrued prior to the date of application for supply of electricity.

Item 101.3: Torrent Power AEC Limited v. M/s Shreeji (Rakhail) Commercial Cooperative Housing Society Limited & Others; SLP (C) No. 2880 of 2007

250. The appellant is an electric utility engaged in distribution and retail supply of electricity in Ahmedabad. Raipur Manufacturing Company Ltd, the previous owner, became liable to pay an amount of Rs. 12 crores towards electricity dues together with running interest thereon. On account of the outstanding debt, the appellant disconnected electricity supply to the premises of the company at Ahmedabad on 15 July 1999. In 2001, winding up proceedings were filed against the previous owner before the Company Court of the High Court of Gujarat. The

sale of property of the previous owner was sanctioned by the High Court of Gujarat by an order dated 2 December 2002 in favour of the respondent. The relevant terms and conditions imposed by the High Court were:

> "1. The sale of properties of the Company shall be on "as is where is and whatever there is" basis and the Official Liquidator will not transfer the title except the title which the company was having prior to its liquidation.
>
> ***
>
> 5. All the statutory dues including the municipal dues, taxes, cess, etc. shall be paid and borne by the purchaser, Ajar Enterprises Private Limited. The purchaser shall be solely liable to all levies, charges, claims, arrears, etc. that may be existing or imposed by any Central, State or local authorities or any other person claiming through them in whatever manner, on the said properties sold."

251. After taking possession of the property, the respondent addressed a letter dated 7 January 2004 to the appellant for grant of an electricity connection. However, the appellant declined to grant supply of electricity unless the respondent paid the pending dues of the erstwhile owner. The respondent filed a writ petition before the High Court of Gujarat challenging the appellant's refusal to grant an electricity connection. Through a common judgment, the Single Judge held that respondent, being an auction purchaser, cannot be called upon to clear the past arrears of the previous owners in the absence of any statutory provision. Further, it was observed that there was no condition between the parties by which the respondents were made liable to pay the arrears of electricity dues of the previous owners. It was also observed that the state government had not incorporated any condition similar to Condition 2(j) of the Conditions of Supply in

respect of the Petitioners. The Division Bench in the impugned judgment dated 1 May 2006 upheld the decision of the Single Judge.

252. The respondent has submitted that the Gujarat Electricity Supply Code relied upon by the distribution licensee has no application to the facts of the present case. According to the auction purchaser, the Gujarat Electricity Supply Code came into force with effect from 31 March 2005, whereas the respondent auction purchaser applied for electricity on 13 August 2004, that is, much prior to the Electricity Supply Code having come into effect.

253. In the impugned judgment, the High Court considered the purport of the Regulation 4.1.11 of the Gujarat Electricity Supply Code and held that it was not applicable to the respondent. According to the High Court, the sole reason that Regulation 4.1.11 of the Gujarat Electricity Supply Code was inapplicable was because the said regulations only applied to the *electricity dues of the applicant*, and did not make the applicant liable to clear the dues of the previous owner.

254. The High Court omitted to notice that the Gujarat Electricity Supply Code came into force with effect from 31 March 2005 while the respondent applied for electricity connection on 13 August 2004. Hence, the respondent had applied for a connection before the coming into force of the Gujarat Electricity Supply Code. Thus, the said regulations will not be applicable to the facts of the present case.

255. Since the respondent applied for electricity connection on 13 August 2004, the 2003 Act and the rules and regulations made thereunder are inapplicable in the instant case. It has been admitted by the appellant that there was no statutory

condition requiring the respondents to pay the outstanding electricity dues of the previous owner at the point of time when they applied for electricity connection.

256. The appellant has submitted that Ahmedabad Electricity Company,[97] the predecessor of the appellant, notified the Conditions of Supply on 14 October 1994, and that would be applicable. For the period from 10 June 2003 till 31 March 2005, when the Electricity Supply Code came into force, the 1994 Conditions of Supply continued to operate in terms of Section 185(2)(a) of the 2003 Act. Condition 2 of the 1994 Conditions of Supply provided that a requisition for supply of electrical energy shall be made in accordance with the requisition form attached at Annexure A of the said conditions and shall be signed by the owner or occupier of the premises for which supply is required. Annexure A of the said conditions provides a form of requisition for supply of energy. The requisition form is not only limited to a new connection, but also extends to reconnection, extension of load, tapping connection, and name change. The form also requires the applicant to pay all the dues of energy bills and other charges up to the date of transfer. The relevant undertaking is extracted below:

> "I/We hereby give consent to transfer above mentioned service in the name of the applicant and I/We abide to pay all the dues of energy bills & other charges upto the date of transfer."

257. A perusal of Annexure A makes it evident that the above extracted undertaking is actually the undertaking of a 'current consumer' giving consent to transfer the service connection and undertaking to pay all past dues. This is not an undertaking of an applicant, which has been separately provided for in the

[97] "AEC"

same form. Therefore, Annexure A makes a clear distinction between a 'current consumer' and an applicant for electricity connection. Since the respondent purchased the said property through an auction-purchase, there was no 'current consumer' to give any consent. Therefore, the undertaking under Form A will not be applicable qua the respondent. Hence, we find no reason to interfere with the findings of the High Court. The appeal shall stand dismissed.

Item 101.4: Dakshin Gujarat Vij Co. v. Apurva Chemicals, SLP (C) No. 37871 of 2012 and 101.17: Paschim Gujarat Vij Company v. Apurva Chemicals, SLP (C) No. 18280 of 2013

258. A power connection was issued in favour of Arunesh Processors Pvt Ltd, the previous owner. Due to non-payment of energy bills, the agreement with the power supply company was terminated with effect from 01 February 1995. In 1995, the appellant filed a suit for recovery of Rs. 3.41 lakhs against the previous owner before the Civil Judge, Sr. Division, Valsad. In 2002, the suit was decreed in favour of Gujarat Electricity Board, which was the predecessor of the appellant. Arunesh Processors Pvt Ltd was wound up in 2002 and its assets were auctioned by the Bombay High Court on an "as is where is basis". The respondent participated in the auction proceedings and acquired the assets of Arunesh Processors Pvt Ltd at Vapi, Gujarat. The sale was confirmed in favour of the respondent for Rs. 70 lakhs on 11 August 2005 by the Bombay High Court. Thereafter, on 12 December 2008 a deed of conveyance was executed between the Official Liquidator, High Court of Bombay and the respondent. In 2010, the

appellant filed Darkhast No. 7 of 2010 for execution of the decree passed in the suit in 2002.

259. On 16 December 2010, the respondent approached the appellant requesting it to release power supply to the plot at Vapi, Gujarat. On 03 January 2011, the appellant informed the respondent that power supply cannot be released on the plot because Darkhast No. 7 of 2010 was pending and dues were not recovered from the previous owner. Since the respondent was in need of power supply on the said plot, it paid the outstanding dues of the previous owner to the tune of Rs. 17 lakhs on 25 February 2011. However, on 17 August 2011, the respondent approached the appellant to refund the paid amount. The appellant refused to refund the amount, contending that the previous owner had not yet acknowledged the receipt of their claim. The respondent instituted a writ petition before the High Court of Gujarat for challenging Clause 4.1.11 of the Gujarat Electricity Supply Code as being inconsistent with the 2003 Act. The High Court in the impugned judgment dated 03 December 2012 held that Clause 4.1.11 of the Conditions of Supply was ultra-vires the provisions of 2003 Act.

260. It is beyond the pale of doubt that the respondent requested the appellant to release power supply to their premises on 16 December 2010. At the relevant point of time, the amended Clause 4.1.11 was in force. In the impugned judgment dated 03 December 2012, the High Court held that the State Commission is not authorised to prescribe a condition under Section 50 of the 2003 Act for payment of dues of a previous owner or occupier from the new owner as a precondition to supply electricity. It was further held that Section 43 of the 2003 Act does not

impose any condition for payment of electricity dues attached to the premises before getting supply of electricity. The High Court observed that the phrase “any dues relating to that premises” conveyed that the premises were held to be a defaulter of electricity dues and charges, and was inconsistent with the provisions of the 2003 Act. On the basis of the above reasons, the High Court concluded that the first part of Clause 4.1.11 was ultra vires the provisions of Sections 43, 50, 56, and 181 of the 2003 Act.

261. The appellant submitted that the Board is empowered to frame terms and conditions providing for recovery of electricity dues attached to the premises. It has been further contended that since the auction was held on “as is where is basis”, the auction purchaser was required to carry out due diligence in regard to the dues owed against the property being purchased. The appellant has further submitted that the regulations imposing a condition that the dues relating to particular premises should be cleared before electricity supply is restored or a new connection is given to the premises cannot be termed as arbitrary or unreasonable. To reinforce their argument, the appellant has relied upon the observations made by this Court in **Paschimanchal Vidyut Vitran Nigam** (supra).

262. On the other hand, the respondent contended that there is no provision under the 2003 Act enabling the distribution licensee to impose a pre-condition of the clearance of dues relating to the previous owner or their premises. It has been further argued that Clause 4.1.11 affixing the dues to the premises is contrary to Section 43 of the 2003 Act, which affixes the liability to pay electricity

dues and charges on the consumer. The dues relating to the premises would be a financial encumbrance on the property, and as such would be transferred with the sale of the land.

263. In the instant case, the first part of Clause 4.1.11 provides that an application for electricity supply for any premises need not be entertained unless any dues relating to the premises have been cleared. The said clause indicates that a distribution licensee can withhold connection to the premises unless its dues with respect to the said premises have been cleared. In our opinion, the High Court has erred in observing that the phrase "any dues relating to that premises" is inconsistent with the provisions of the 2003 Act. The use of the said phrase does not entail that the premises are deemed to be a defaulter and made liable to pay electricity dues, as the High Court suggests. According to Clause 4.1.1 of Electricity Supply Code, it is the applicant who has to make an application in terms of Annexure A and pay all the required electricity dues and charges, including the electricity arrears of the previous owner relating to the premises. Thus, on the overall reading of the Electricity Supply Code, it becomes evident that dues of the previous consumer relating to that premises are sought to be recouped from the new owner or occupier of the premises.

264. In the impugned judgment, the High Court referred to the example of a multi-storied residential building to observe that *"the licensee may successfully demand that a new purchaser of a different flat whose vendor was not a defaulter, would still be liable to pay the arrears of a defaulting consumer of another flat of the same on the ground that it is a part of the same premises."* In

this context, we have already held that there is a synergy between the consumer and premises. A new owner can only be obligated to pay the electricity arrears of the previous owner with respect to the premises to which electricity connection is being sought. Therefore, the phrase “any dues relating to that premises” has to be understood with regard to the supply of electricity made to the premises when it was in occupation of the previous owner.

265. We have already clarified that electricity arrears do not automatically become a charge over the premises. A Statutory charge is created only where there is an express provision of law providing for creation of a statutory charge upon the transferee. Clause 4.1.11 does not have the effect of creating a charge on the property as it does not specifically provide for creation of a statutory charge. Besides, the phrase “any dues relating to that premises” cannot be interpreted to impute financial liability on the premises.

266. Moreover, the High Court has held that the 2003 Act does not enable the Electric Utilities to frame conditions to recover dues of a previous consumer from a subsequent owner or occupier. We disagree with this reasoning of the High Court in view of our analysis in the preceding paragraphs, where we have held that the Electric Utilities can specify the requirement that the subsequent owner or occupier of the premises has to pay the arrears of electricity dues of the previous consumer as a pre-condition for the grant of an electricity connection. However, such terms and conditions of supply should be valid and reasonable by conforming to the overall scheme and purpose of the 2003 Act.

267. Consequently, we set aside the impugned judgment of the High Court dated 2 December 2012. Any pending IAs are disposed of accordingly.

Item 101.5: Madhya Gujarat Vij Co. Ltd. v. Agriculture Produce Market Committee, SLP (C) No. 8197-8198 of 2014

268. Rajprakash Spinning Mills Ltd.[98] was a consumer of the Gujarat Electricity Board since 1967. On 31 December 1994, its power was disconnected due to the non-payment of electricity dues. On 18 July 1995, the Gujarat Electricity Board instituted a suit in the Civil Court, Nadiad against RSML for recovery of electricity charges amounting to Rs. 78 lakhs. In the meantime, RSML went into liquidation and the High Court appointed the Official Liquidator. On 20 August 2002, the suit was decreed in favour of the Electricity Board. In 2003, the Board lodged a claim before the Official Liquidator with decree in the suit for Rs. 78 lakhs and legal expenses and interest up to December 2002, which cumulatively amounted to Rs. 1.39 crores.

269. On 17 December 2003, the Official Liquidator executed a sale deed in favour of the respondent. The sale deed specifically mentions the liability of the purchaser about the dues. On 25 February 2004, a revised sale deed was registered and executed in favour of the respondent and the said sale deed was executed by the Official Liquidator in pursuance of the confirmation of the sale for a consideration of Rs. 97 lakhs.

270. On 10 April 2007, the respondent addressed a letter to the appellant for release of the electricity connection. On 13 April 2007, the appellant declined to

[98] "RSML"

grant a new connection unless the electricity charges amounting to Rs. 78 lakhs outstanding against the premises were paid. The respondent filed a writ petition for the grant of an electricity connection. The petition was dismissed by a Single Judge by an order dated 08 September 2009 on the ground that the person who purchased the premises had to pay the electricity dues of the previous occupant. The Division Bench in the impugned judgment dated 16 July 2013 held that the subsequent purchaser is not liable to pay the electricity dues of the previous owner.

271. The auction-purchaser submitted an application for a new electric connection on 10 April 2007. The Gujarat Electricity Supply Code was notified on 31 March 2005. At the relevant time, unamended Regulation 4.1.11 was applicable, according to which only the dues of the applicant to the distribution licensee had to be cleared for the grant of a new connection or for reconnection of electric supply. The said regulation did not obligate the new owner to clear the electricity dues of the previous owner. Therefore, the respondent could not have been made liable to pay the arrears of the previous owner as a pre-condition to obtain a new electricity connection.

272. In view of the above reasons, we uphold the impugned judgment dated 16 July 2013 of the High Court. The appeal shall stand dismissed.

Item 101.6: Torrent Power Limited v. M/s Shashwat Homes Private Limited; SLP No. 19878 of 2007

273. Gujarat Steel Tubes Company[99], the previous owner, was subjected to liquidation proceedings and the electricity connection was disconnected for non-payment of dues amounting to Rs. 1.5 crores. GSTC was ordered to be wound up by the Gujarat High Court. A parcel of the GSTC's land was bought in auction by Spectra Enterprises Private Limited for a sum of Rs. 42.10 crores. In 2006, the name of the respondent came to be mutated in the revenue records pertaining to the said parcel of land. On 24 January 2007, the respondent approached the appellant seeking a new connection for electricity in respect of the premises. The appellant declined to grant a new connection pending the payment of the outstanding electricity dues of the previous owner. The respondent instituted a writ petition before the Gujarat High Court. By the impugned judgment dated 31 January 2014, the High Court held that the subsequent owner is not liable to pay the electricity dues of the previous owner.

274. The respondent approached the appellant for seeking a new electricity connection on 24 January 2007. At the relevant time, the 2005 Electricity Supply Code was in force. Regulation 4.1.11 of the 2005 Electricity Supply Code required only the dues of the applicant, if any, to be paid at the time of the application for a new connection. In the affidavit filed before the High Court, the appellant conceded that unamended Regulation 4.1.11 was applicable to the respondent, who is the auction-purchaser. The facts of the present clearly demonstrate that on 24 January 2007, when the auction-purchaser applied for

[99] "GSTC"

electricity, unamended Clause 4.1.11 was operational and applicable. Therefore, the respondent cannot be made liable to clear the dues of the previous owner in the absence of any express statutory condition in that regard. The impugned judgment of the High Court is upheld. The appeal shall stand dismissed.

Item 101.7: Dakshin Gujarat Vij Co. Ltd v. Amardeep Association; SLP (C) No. 73 of 2015

275. In 1994, Navsari Cotton and Silk Mills Ltd[100] was declared a sick industrial unit. As on the date of NCSML's closure, it owed outstanding electricity dues of Rs. 416.36 lakhs. On 17 October 1994, the electricity supply was permanently disconnected. On 15 December 1996, the Board for Industrial and Financial Reconstruction[101] prepared a New Rehabilitation Scheme under Section 18 of SICA. The said scheme provided for sale of surplus land of NCSML under paragraph 2(g):

> "(g) The plant and machinery of the weaving section and the process house along with its building and the surplus land with the company are proposed to be disposed of and the sale proceeds of about Rs. 500 lakhs would be utilised for the implementation of the scheme."

276. Pursuant to the Rehabilitation Scheme of 1996, the Government of Gujarat passed a resolution inter alia granting (i) permission for sale of surplus land of NCSML; and (ii) exemption from power cut for five years to NCSML with the condition that, any reconnection charges as in the case of arrears shall be given to the Gujarat Electricity Board in instalments. Later, in 1997, the workers of

[100] "NCSML"
[101] "BIFR"

NCSML decided to form a co-operative by the name Morarji Desai Textile Labour Co-operative Society Industries Limited[102] to take over the unit of the company for its revival.

277. In 2003, the BIFR directed the disposal of the surplus land of the said company by constituting an Assets Sale Committee. The notice for sale of the surplus land was published in Gujarat Samachar in 2003 under which the land was to be sold on "as is where is basis". The relevant extract of the notice is set out below:

> "As per the order of the B.I.F.R., the land situated at Vijalpore bearing Survey No. 336/1, 311, 310/1, 310/2, 310/5, 310/7, 307/1, 308/1 having ownership of Navsari Cotton and Silk Mills, out of total admeasuring area of the land, 11 Lakh square feet land with possession is to be given on AS IS WHERE IS BASIS as per the prevailing laws and rules."

278. The Assets Sale Committee accepted the offer made by respondent for a consideration of Rs. 561 lakhs for the surplus land. The sale deed dated 29 May 2003 mentioned that the additional open land was free from all encumbrances including lien and charge. Clause 9 further specified that *"all taxes, land revenue, education cess, and other outstanding dues up to date has been paid and if any dues remain unpaid that is to be paid by the Company."*

279. On 01 December 2004, the respondent applied for a new connection. However, the appellant refused to grant a new connection until the outstanding dues were cleared in terms of Clause 2(j) of the Conditions of Supply. In 2006, the respondent moved an application before the BIFR for a direction to release

[102] "MDTLCIL"

power supply. On 12 June 2006, the BIFR sanctioned a Revised Rehabilitation Scheme directing the appellant to release an electricity connection to the respondent. Since the electricity supply was not released, the respondent instituted a writ petition before the High Court of Gujarat. In 2010, a Single Judge of the High Court allowed the writ petition by directing the appellant to release the electricity connection to the residential establishments on the surplus land without insisting on the payment of the dues of the previous owner. The Single Judge held that Clause 2(j) was not applicable because the worker's co-operative society was a going concern and the Electricity Board can recover the dues from them. The Division Bench in the impugned judgment dated 21 November 2014 upheld the decision of the Single Judge. The Court held that the BIFR scheme would be binding on the appellant even though they were not a party to the proceedings. It was further held that SICA is a special Act in comparison to the 2003 Act. Therefore, a scheme framed under SICA was held to have an overriding effect over Clause 2(j) of the Conditions of Supply.

280. The respondent has contended that according to the BIFR Scheme, electricity connection was provided to MDTLCIL separately and not to the surplus land sold to the respondent. Hence, no dues could have been recoverable from the respondent. The respondent further contended that the rehabilitation schemes framed by BIFR have an overriding effect on the terms and conditions stipulated under Clause 2(j) of the Conditions of Supply. The respondents have also drawn attention to Clauses 3 and 9 of the sale deed which exempted the respondent from the payment of the past dues of NCSML. The said clauses are extracted below:

> "(3) [...] On the said property, there is no debt i.e. lien or charge of anybody and is not under seize, attachment, or injunction of any court. [...] On the said property, nobody has maintenance and residence charge on it, there is no charge of Government taxes/duties like, Income Tax, Sales Tax, etc. on said property. There is no acquisition, requisition, or reservation of Government or local body or with that intention any notice in not served to the company. In short, there is no one claiming right title or claim as mortgage, claimant, shareholder or by other way or any other interest in the said property and the company has all rights and authority for managing the said property by all way and by giving such trust and assurance, the company has executed this sale deed. And even if, in future, any one claims right on the property, then risk thereof stands on the company and that is if due to such right or chapter if any loss or expenses occurred by you or your heirs, that is to be repaid by the company."
>
> [...]
>
> (9) All taxes, land revenue, education cess, and other outgoings related to the said property and outstanding dues upto date has been paid and if any dues remains to be paid that is to be paid by the company. Now onwards, the responsibility for payment of all taxes, etc. related to the said property will be on the first party. By support of this deed the purchaser can enter its name on said property in Government, Semi-Government and local records, City Survey Records and Municipal Records and for that we have to give our signature, consent, and such signed consent admitted being considered."
>
> (emphasis supplied)

281. To decide this issue, the question that arises before us is whether SICA is special legislation in relation to the 1910 Act and 2003 Act. SICA was enacted with a view to secure the timely detection of sick companies and speedy determination of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies. Section 18 mandated an operating agency such as a BIFR to prepare a scheme providing for transfer of

business, properties, assets, and liabilities of the sick industrial company on terms and conditions as specified in the scheme. According to Section 18(8) of SICA, once the scheme is sanctioned, it is binding on the sick industrial company as well as the shareholders, creditors, and guarantors of the sick industrial company. Section 32 of the SICA gave overriding effect to any rules or schemes made under the provisions of the Act:

> **"32. Effect of the Act on other laws**.—(1) **The provisions of this Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law** except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976), for the time being in force or in the Memorandum or Articles of Association of an industrial company or in any other instrument having effect by virtue of any law other than this Act.
>
> ***
>
> (emphasis supplied)

282. In **Tata Motors Ltd v. Pharmaceutical Products of India Ltd**[103] this Court held that SICA is a special legislation in comparison to the Companies Act. The Court observed:

> "**22. The provisions of a special Act will override the provisions of a general Act. The latter of it (sic Act) will override an earlier Act. The 1956 Act is a general Act**. It consolidates and restates the law relating to companies and certain other associations. It is prior in point of time to SICA.
>
> **23. Wherever any inconstancy (sic inconsistency) is seen in the provisions of the two Acts, SICA would prevail. SICA furthermore is a complete code. It contains a non obstante clause in Section 32.**

[103] (2008) 7 SCC 619

> **24. SICA is a special statute. It is a self-contained code**. The jurisdiction of the Company Judge in a case where reference had been made to BIFR would be subject to the provisions of SICA."
>
> (emphasis supplied)

283. The 2003 Act also contains a provision similar to Section 32 of SICA. Section 174 of the 2003 Act provides that the provisions of the said Act will have overriding effect notwithstanding anything contained in any other law for the time being in force. It therefore becomes evident that both SICA and 2003 Act are special laws in their respective field.

284. In **LIC v. D J Bahadur**,[104] this Court was confronted with the question as to whether the LIC Act is a special legislation or a general legislation with respect to the Industrial Disputes Act, 1947. Justice V R Krishna Iyer (supra) held that in determining whether a particular statute is general or special, the focus has to be on the principal subject matter and the particular perspective. On the basis of the observation that a legislation may be general for some purposes and special for other purposes it was held that the Industrial Disputes Act, 1947 being a special law, prevails over the LIC Act. It was held:

> "52. In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity, not absolutes — so too in life."

[104] (1981) 1 SCC 315

285. In **UP State Electricity Board** v. **Hari Shankar Jain**,[105] a three-judge Bench of this Court was called upon to determine whether the Industrial Employment (Standing Orders) Act, 1946 is a special legislation and overrides the 1948 Act in regard to the age of superannuation. Justice O Chinnappa Reddy, speaking on behalf of the Bench held that the Industrial Employment (Standing Orders) Act, 1946 is a special legislation dealing with the conditions of service of workmen in industrial establishments. On the other hand, the 1948 Act is an act to coordinate the development of electricity, and does not seek to regulate the conditions of services of the employees of the State Electricity Board. The Court held that the 1948 Act is a special legislation in regard to the subject of development of electricity. It was observed:

> "7. [...] The Electricity Supply Act does not presume to be an Act to regulate the conditions of service of the employees of State Electricity Boards. It is an Act to regulate the co-ordinated development of electricity. It is a special Act in regard to the subject of development of electricity, even as the Industrial Employment (Standing Orders) Act is a special act in regard to the subject of conditions of service of workmen in industrial establishments. If Section 79(*c*) of the Electricity Supply Act generally provides for the making of regulations providing for the conditions of service of the employees of the Board, it can only be regarded as a general provision which must yield to the special provisions of the Industrial Employment (Standing Orders) Act in respect of matters covered by the latter Act."

286. Keeping the above principle in mind, it is necessary to examine the subject matter of SICA and the 2003 Act. Under SICA, the operating agency had to prepare a scheme with respect to a sick industrial company providing for financial

[105] (1978) 4 SCC 16

reconstruction, proper management, amalgamation, and any other preventive, ameliorative, and remedial measures. On the other hand, the 2003 Act is a consolidating law relating to generation, transmission, distribution, trading, and use of electricity. The 2003 Act relates specifically to supply of electricity to consumers, whereas SICA is silent on the aspects of the supply of electricity to consumers. The principal subject matter of SICA is to provide ameliorative measures for reconstruction of sick companies, while the purpose of the 2003 Act is development of the electricity industry. Thus, the purpose of the two enactments is entirely different. The 2003 Act is a later enactment, and Section 175 specifically provides that the provisions of the Act are in addition and not in derogation of any other law for the time being in force, including the SICA.

287. In **KSL & Industries Ltd** v. **Arihant Threads Ltd**,[106] a three-judge Bench of this Court was called upon to decide which enactment between the SICA and Recovery of Debts Due to Banks and Financial Institutions Act, 1993[107] would prevail over the other. The Court observed that although both the legislations are special laws in relation to their respective subject matters, SICA would prevail over the RDDB Act by virtue of the incorporation of a non-derogation clause in the latter. In the RDDB Act, Parliament had specifically provided that the RDDB Act shall be in addition to and not in derogation of other laws mentioned therein including SICA:

> "49. **The term "not in derogation" clearly expresses the intention of Parliament not to detract from or abrogate the provisions of SICA in any way. This, in effect must mean that Parliament**

[106] (2015) 1 SCC 166
[107] "RDDB Act"

> **intended the proceedings under SICA for reconstruction of a sick company to go on and for that purpose further intended that all the other proceedings against the company and its properties should be stayed pending the process of reconstruction.** While the term "proceedings" under Section 22 of SICA did not originally include the RDDB Act, which was not there in existence Section 22 covers proceedings under the RDDB Act."
>
> (emphasis supplied)

288. Similarly, Section 175 of the 2003 Act provides that the provisions of the Act are in addition and not in derogation of any other law for the time being in force. Therefore, by specifically providing that the 2003 Act shall be in addition to and not in derogation of any other laws for time being in force, the Parliament has preserved and give precedence to the proceedings under SICA. Section 32 of SICA provides an overriding effect to a scheme framed under it. Section 18 of the SICA mandates an operating agency such as BIFR to prepare a scheme providing for transfer of business, properties, assets, and liabilities of the sick industrial company on terms and conditions as may be specified in the scheme.

289. SICA is a special statute and Section 32 read with Section 18(8) of the SICA gives an overriding effect to the Scheme. The 1996 Rehabilitation Scheme and the 2006 Revised Rehabilitation Scheme bind the appellant, but override Clause 2(j) of the terms and conditions of supply.

290. Applying the above position of law to the facts of the present case, it is apparent that the respondent purchased 'surplus land' of NCSML in pursuance of the rehabilitation scheme framed by BIFR. When the respondent was given possession of the land in 2003, NCSML was a going concern as it continued to

be operated by MDTLCIL. The relevant clauses of the sale deed expressly excluded the respondent from the past dues of NCSML. In fact, the Clause 9 of the sale deed reiterated that NCSML would be responsible to pay any outstanding dues related to the land. Further, the 2006 Revised Rehabilitation Scheme solely puts the onus of clearance of electricity arrears on NCSML, while directing the appellant to release electricity connection to the respondent. Thus, NCSML being the consumer, was obligated to clear the arrears of electricity pertaining to the said premises. The appellant could only recover dues from NCSML, since it was a going concern at the time when the respondent applied for supply of electricity. It is admittedly the case that the appellant did not institute any proceeding for recovery of dues from NCSML. This has been observed in the judgment dated 14 June 2010 of the High Court:

> "Under these circumstances, no recovery was made by Respondent against NCSML. If no recovery were made against NCSML, the demand of dues against the Petitioner (respondent herein) which is the purchaser of portion of land owners by NCSML is not sustainable."

291. The High Court has rightly observed that the appellant cannot selectively withhold electricity to the respondent under the guise of demand for past electricity arrears. The stance of the appellant is opposed to the rehabilitation scheme framed by the BIFR. The Revised Rehabilitation Scheme formulated by the BIFR will be binding on the appellant by virtue of Section 18(8) of SICA. According to the said provision, once a scheme is sanctioned, it shall not only bind the sick industrial company and the transferee company, but also creditors such as the appellant. The statutory provision is extracted below:

> "18. Preparation and sanction of Schemes -
>
> (8) On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors and guarantors and employees of the said companies."

292. On 20 March 2015, a two-judge Bench of this Court passed an interim order staying the operation of the impugned judgment in the following terms:

> "The impugned judgment and order dated 21.11.2014 passed by the High Court of Gujarat is stayed subject to Respondent No. 1 furnishing a bank guarantee of 50% of the total dues.
>
> It is made clear that the electricity will be supplied only on furnishing the aforesaid bank guarantee.
>
> Such of those purchasers who wish to pay the amount due to the petitioner are permitted to do so. The petitioner will consider the case on merits and take a decision on providing the electricity connection."

293. We accordingly vacate the stay on the impugned judgment dated 21 November 2014. Any amount furnished by the respondent shall be refunded back. The appeal shall stand dismissed.

Item 101.8: Paschim Gujarat Vij Company Limited v. Sarifaben Mehboobbhai Solanki, SLP (C) No. 13400/2018

294. The electricity supply of Kanti Cotton Mills Pvt Ltd, the previous owner, was disconnected on 09 June 1981. The mill was deemed to be a 'relief undertaking' under Section 3 of the Bombay Relief Undertakings (Special

Provisions) Act, 1958. In 1982, Gujarat State Textile Corporation[108] took over the management of the Mill under the Industries (Development and Regulation) Act, 1951. In 1996, the BIFR submitted its report stating that huge losses were being suffered and recommended winding up under Section 20 of SICA. In 1997, the Company Court ordered winding up and appointed the Official Liquidator. On 21 October 1997, GSTC requested a disconnection of electricity supply in view of the winding up proceedings. On 22 July 1998, a court auction was held for the sale of immovable property. The offer of Jay Mahakali Infrastructure Pvt Ltd.[109] was found acceptable and confirmed by the High Court. On 28 June 2004, a sale deed was executed in favour of JMIPL for a consideration of Rs. 5.5 crores.

295. On 23 May 2005, the appellant served a notice on JMIPL demanding payment of Rs. 2.3 crores. On 05 September 2006, a Single Judge allowed the petition which was instituted by JMIPL by holding that the claim of the appellant for arrears of electricity dues, being in the nature of a money claim, was required to be lodged within 3 years, and was barred by limitation. The appeal was dismissed by the Division Bench by a judgment dated 04 April 2014 on the ground that the appropriate remedy available to the appellant was to file a civil suit or get a garnishee order so that the purchaser would know that there is a liability on the property in question. On 16 December 2016, the High Court dismissed the review petition preferred by the appellant on the ground of delay.

296. The respondents purchased a small residential house from JMIPL in 2012. On 4 October 2014, the respondents applied for the grant of an electricity

[108] "GSTC"
[109] "JMIPL"

connection. Since the request was not acceded to, the respondent instituted a complaint before the Consumer Grievances Redressal Forum seeking a connection without insistence on the dues of the earlier owner as they had purchased the plot from JMIPL. The forum disposed of the case in light of Clause 4.1.11 of the Electricity Supply Code, which was amended in 2010. The respondent approached the Electricity Ombudsman, who relied upon the previous order of the High Court to direct the appellant to supply electricity to the respondents by an order dated 30 March 2015. The appellants filed a Special Civil Application before the High Court against the order of the Ombudsman. On 16 February 2016, the Single Judge of the High Court dismissed the application. The Division Bench of the High Court by judgment dated 8 September 2017 declined to interfere on the ground that a Special Leave Petition[110] preferred before this Court against the order dated 4 April 2014 was dismissed.

297. It is important to reiterate that the appellant had also denied an electricity connection to JMIPL, the predecessor-in-title of respondent. However, JMIPL filed a petition under Article 226, which was allowed by a Single Judge of the High Court. The appellant filed a Letters Patent appeal, which was dismissed by the Division Bench of the High Court by a judgment dated 04 April 2014 on the ground of limitation. The Ombudsman, in its order dated 30 March 2015, based its decision on this judgment of the Division Bench. The judgment dated 04 April 2014 attained finality. The right of the respondent to receive supply of electricity stood crystallised on the judgment attaining finality upon the dismissal of the Special Leave Petition filed by the appellant. Therefore, the order passed by the

[110] Diary No. 23261 of 2017

Ombudsman, and the subsequent orders passed by the High Court affirming the decision of the Ombudsman, do not suffer from any infirmity. The impugned judgment of the High Court is upheld for that reason. The appeal shall stand dismissed.

Item 101.16: Torrent Power Ltd. v. M/s Abhisar Developers, SLP(C) 9092-9094 of 2013

298. On 01 September 1986, New Gujarat Synthetic Company, the previous owner, went into liquidation. On 12 September 1986, the electricity connection to the premises of the previous owner was disconnected for non-payment of dues amounting to Rs. 77 lakhs. On 12 October 2006, a public auction was conducted of the immovable properties of the previous owner, including their premises. These were purchased by Star Associates and conveyed to Abhisar Developers, the respondent herein.

299. On 28 December 2006, the respondent-purchaser applied for a new connection for the premises. However, the appellant called upon the respondent to clear the outstanding dues of the premises. In 2007, the respondent filed a writ petition before the High Court of Gujarat praying for new connection without payment of the arrears. In 2010, the High Court allowed the petition and directed the Licensee to provide the connection. On 3 December 2012, the Division Bench of the High Court held that the Clause 4.1.11 of the Gujarat Electricity Supply Code, as amended in 2010, is ultra vires the provisions of the 2003 Act.

300. The appellant has referred to Clauses 4.1.16, 4.8.1, and 4.8.4 of the Electricity Supply Code to argue that the auction-purchaser cannot deny

knowledge of the requirement to clear the outstanding dues of the premises. In response, the auction-purchaser has submitted that there was no statutory provision at the relevant time requiring the payment of the dues of the previous owner from the subsequent owner as a condition precedent for providing for a fresh connection.

301. The relevant Clauses 4.1.16, 4.8.1, and 4.8.4 of the 2005 Electricity Supply Code are extracted hereunder:

> "4.1.16 The Distribution Licensee shall give no dues certificate to consumer on his request to avoid any possibilities of pending dues of previous owner while purchasing new house/ premises.
>
> [...]
>
> 4.8.1 The Consumer shall not without prior consent in writing of the Distribution Licensee assign, transfer or part with the benefit of the Agreement executed with the Distribution Licensee nor shall part with or create any partial or separate interest there under in any manner. Transfer of service connection will be effected on application in case the registered Consumer is dead or if the ownership or occupation of the property has changed or transferred. In all cases of such transfers, the arrears of every description shall be paid in full together with transfer fee as prescribed in relevant GERC Regulations.
>
> [...]
>
> 4.8.4 Where Premises to which electricity is supplied by Licensee is transferred to transferee and the transferee does not get service connection in the Premises transferred to his name, and continues to use the service connection in previous name, the transferee shall be responsible for payment of running energy bills as well as unpaid dues of energy bills and other amounts relating to the service connection. The dues to the Distribution Licensee shall be payable on demand, in default of which the supply to the Premises may be disconnected, subject to the provisions of the Acts, rules, and regulations for the time being in force. "

302. Clause 4.1.16 of the Gujarat Electricity Supply Code obligated the distribution licensee to provide no-dues certificate when requested by a consumer *"to avoid any possibilities of pending dues of the previous owner while purchasing new house/premises."* This is only a procedural provision and does not per se impose any obligation on the subsequent owner of the premises. The term "consumer" will not bring an auction-purchaser within the ambit of Clause 4.1.16 as an auction-purchaser does not become a consumer before entering into an agreement with the distribution licensee.

303. According to Clause 4.8.1, a consumer shall not transfer a service connection without the prior consent of the distribution licensee. It further provides that transfer of a service connection will be effected on application in case the registered consumer is dead or if the ownership or occupation of property has changed or been transferred. In case of a transfer, the clause provides that arrears of every description shall be paid in full together with the transfer fee. However, the said provision only applies in situations where there has been a *transfer* of a service connection. In the facts of the present case, we are dealing with a situation where the auction-purchaser applied for a new connection of electricity to the premises. Therefore, Clause 4.8.1 will not be applicable to the facts of the present case.

304. Clause 4.8.4 provides that a transferee of premises would be liable for the unpaid dues of energy bills of the defaulter transferor only if they continue to use the service connection in the previous name without transferring to their name. The said clause is only applicable where a transferee applies for a transfer of

connection, and not where a transferee applies for a new power connection in their own name.

305. In the present matter, from the perusal of facts, it is evident that the respondent applied for a fresh electricity connection for the premises on 28 December 2006. Therefore, on the date of the submission of the application for electricity by the respondent, the unamended Clause 4.1.11 of the Gujarat Electricity Supply Code was in force, according to which only the dues of the applicant to the distribution licensee had to be cleared for a new connection or reconnection of electric supply. There was no statutory provision requiring the auction purchasers to clear the arrears of the previous owner as a condition precedent for getting a fresh connection.

306. It was only in 2010 that clause 4.1.11 of the said Electricity Supply Code was amended which required the subsequent owner of the premises to clear the dues of the previous owner as a condition precedent for receiving a new electricity connection. Thus, at the time when the respondent applied for a fresh connection of electric supply, there was no existing provision requiring the applicant of a new connection to clear the dues of the previous owner linked to the premises. Therefore, the judgment dated 3 December 2012 of the High Court has to be upheld. The appeal shall stand dismissed.

IV. Assam

307. The Assam Electricity Regulatory Commission framed the AERC Supply Code on 30 August 2004 in exercise of its power under Section 50 of the 2003

Act to provide for recovery of electricity charges. Clause 3.6 deals with requisition of supply. Clause 3.6.4 is extracted below:

> **"3.6.4** In case of a person occupying a new property, it will be the obligation of that person to check the bills for the previous months or, in case of disconnected supply, the amount due as per the licensee's records immediately before his occupation and ensure that all outstanding electricity dues as specified in the bills subject to limitation as per sub-section (2) of Section 56 of the Act are duly paid up and discharged. The licensee shall be obliged to issue a certificate of the amount outstanding from the connection in such premises on request made by such person."

The impugned clause obligates a new occupier of a premises to check the bills for previous months and ensure that all the outstanding amounts are duly paid up and discharged.

Item 101.15: Carbon Resources v. Assam Electricity Regulatory Commission; SLP(C) No. 24502 of 2010

308. The previous owner, Eastern Steel and Alloys Company Ltd, had electricity dues pending for the period 1988-1989, due to which electricity supply was disconnected in 1992. The Assam State Electricity Board[111] filed a money suit before the District Judge against the previous owner, which was decreed in its favour for Rs 2.07 crore on 24 February 1997. On account of the liabilities due to UCO Bank, a warrant of attachment was levied on 30 June 2004.

309. In 2002, UCO Bank preferred an application against the previous owner before the Debt Recovery Tribunal. On 16 March 2007, the Recovery Officer of the Debt Recovery Tribunal, Guwahati issued an auction sale notice for the land

[111] "ASEB"

in question. Clause 7 of the notice of auction sale stipulated that the properties were being sold on “as is where is” basis and subject to other conditions prescribed in the Second Schedule of the Income Tax Act, 1961 and Rules made thereunder. The appellant was the highest bidder and was declared as an auction-purchaser on 20 February 2008. On 24 March 2008, a sale certificate was issued in favour of the appellant and possession was handed over to the appellant by UCO Bank on 27 March 2008. The Recovery Officer confirmed the auction sale in favor of the appellant, who took over the possession of the property on 27 March 2008. On 21 January 2009, the appellant applied for a high-tension industries electricity connection, but ASEB denied it due to pending arrears of the previous owner.

310. Therefore, the appellant filed a writ petition before the Gauhati High Court seeking: (i) an electricity connection without having to pay the arrears of the previous owner; and (ii) challenging the vires of Regulation No. 3.6.4 of the AERC Electricity Supply Code. On 2 June 2010, a Division Bench of the High Court delivered a judgment dismissing the petition.

311. The appellant has drawn the attention of this Court to the fact that the respondent had filed a suit against the previous consumer, in which a decree was passed. The appellant submits that recovery of arrears of the previous owner could be effected in execution of the decree. From the perusal of the facts, it is true that the respondent had already instituted a money suit against the previous consumer and obtained a decree. However, the respondent has stated before the High Court that the execution could not be carried out successfully. In these

proceedings, we are not concerned with the validity of the execution proceedings initiated by the respondent against the previous owner.

312. The respondent has submitted that before purchasing the premises, the appellant was required to undergo due-diligence and verify that there were no electricity dues in relation to the premises. The respondent has also questioned the validity of the sale in favor of the appellant on the ground that there was a subsisting money decree in favour of the respondent and the premises were under Court attachment. The respondent also referred to a State Government order dated 29 November 2004 directing Deputy Commissioners and Sub-divisional Officers to not issue sale/ transfer permission of land without clearance of the electricity dues. On 26 June 2006, the electricity distribution companies also issued a public notice requiring new consumers to clear the dues of the previous consumer. The relevant extract of the said public notice is hereunder:

> "It is observed that some electricity consumers having outstanding dues payable against energy consumption are trying to sale or lease out their premises (including land and building) without clearing the electricity dues.
>
> Govt. of Assam has already prohibited such transfer of premises and made it mandatory to obtain electricity dues clearance certificate from the concerned officers before applying for permission of transfer.
>
> All prospective buyers or lessee are hereby requested to satisfy themselves regarding clearance of electricity dues before taking over the possession of such premises.
>
> In the event of non discharge of liabilities of electricity dues by the previous owner, the purchaser/ lessee will be liable to clear the said dues before power supply provided to them in accordance with provision of Terms and Condition regulation notified by Assam Electricity Regulatory Commission."

313. Therefore, it has been contended by the respondent that the appellants were put to sufficient notice regarding the requirement of clearing dues before purchasing the property. In the present proceedings, the validity of the auction sale of the premises to the appellant does not arise for consideration, as it is a matter to be decided in separate proceedings. We are only concerned with whether the appellant, being a new owner of the premises, is liable to clear the dues of the previous consumer before getting a supply of electricity.

314. By the impugned judgment dated 2 June 2010, the High Court has upheld the validity of Regulation 3.6.4 of the AERC Electricity Supply Code. It held that the stipulation contained in the said regulation is reasonable and within the ambit of the powers conferred by Section 50 of the 2003 Act. We are of the opinion that the impugned clause is reasonable and consistent with the provisions of the 2003 Act. Accordingly, the appellant was obligated to check the bills for previous months and ensure that all the outstanding amounts are duly paid up and discharged. Therefore, we find no merit in the challenge to the decision of the High Court. However, to balance the interests of parties, we make it clear that if any arrears of electricity are received from the previous owner, the amount shall be adjusted with the power bills of the appellant.

V. West Bengal

315. In West Bengal, the WB Electricity Supply Code have been enacted in 2012 under the 2003 Act. The relevant regulations - Clause 3.4.2, 4.6.1 and 4.6.4 - are set out below:

> "3.4.2. The licensee shall be eligible to recover from a new and subsequent consumer(s) the dues of the

previous and defaulting consumers in respect of the same premises only if a nexus between the previous and the defaulting consumer(s) and the new consumer(s) in respect of the same premises is proved. The onus of proving a nexus, if claimed by a licensee, shall lie on the licensee."

4.6.1. If the power supply to any consumer remains disconnected continuously for a period of one hundred and eighty days where the disconnection has been effected in compliance with any of the provisions of the Act or Regulations, the agreement of the licensee with the consumer for supply of electricity shall be deemed to have been terminated with consequential effect on expiry of the said period of one hundred and eighty days. This will be without prejudice to such other action or the claim that may arise from the disconnection of supply or related issues therefor. On termination of agreement, the licensee shall have the right to remove the service line and other installations through which electricity is supplied to the consumer."

"4.6.4. Notwithstanding anything contained contrary elsewhere in these Regulations where deemed termination of agreement has taken place, then on the basis of application of any consumer new service connection can only be provided in the same premises if the outstanding dues against the deemed terminated consumer is cleared along with the late payment surcharge."

316. Under Regulation 3.4.2 of the WB Electricity Supply Code, the licensee is entitled to recover the outstanding dues of the previous owner from the new and subsequent owner if there is a nexus between the previous owner and the new consumer. Regulation 4.6.1 provides that there shall be a deemed termination of agreement if the power supply to any consumer remains disconnected for a continuous period of 180 days. Regulation 4.6.4 overrides other provisions of the WB Electricity Supply Code as it contains a non-obstante clause. Under Regulation 4.6.4, a new consumer can be given a service connection only if the

outstanding dues against the same premises is cleared along with late payment surcharge.

Item 101.18: Damodar Valley Corporation v. Sree Ramdoot Rollers Private; SLP (C) No. 15723 of 2020

317. On 30 June 2012, the appellant electricity utility, Damodar Valley Corporation, and Capricorn Ispat Udyog Private Limited, the previous owner, entered into an agreement for supply of electrical energy. The bank guarantees furnished by the respondent expired on 4 June 2014. The electricity connection to the previous owner was disconnected on 21 September 2016 for default in payment of electricity dues to the suit premises. On 14 August 2018, the State Bank of India advertised the property for e-auction under SARFAESI Act for default of dues on "as is where is basis". The relevant terms and condition of e-auction sale are as follows:

> 1. "E-auction is being held on AS IS WHERE IS and will be conducted online. ***
> 2. [To] the best of knowledge and information of the authorised officer there is no encumbrance of the properties. However, the intending bidders should make their own independent enquiries regarding the encumbrance title of properties put on auction and claim rights dies affecting the properties [prior] to submitting their bid. The E-auction advertisement does not constitute and will not be deemed to constitute any commitment or any representation of the bank. The properties is being sold with all the existing and future encumbrance whether known or unknown to the bank and authorised officer secured creditor shall not be responsible in any way for the third party claims, rights, dues.
>
> ***
>
> 7. It shall be the responsibility of the interested bidders to inspect and satisfy themselves about the properties before submission of the bid."

Clause 1 of the terms and conditions provided that the e-auction was being held on an “as is where is basis”. Clause 2 provided that the property was being sold with all present and future encumbrances, whether known or unknown to the bank. Clause 7 provided that it was the responsibility of interested bidders to inspect and satisfy themselves about the properties before submission of the bid.

318. On 31 August 2018, the assets of the previous owner were taken over by Magnum Tradelink Private Limited through an e-auction. The registration of property was done in the name of Shree Ramdoot Rollers Private Limited, who is the respondent herein. On 04 October 2018, the respondent filed an application seeking a new connection from the appellant. When the appellant refused, the respondent filed a writ petition before the High Court of Calcutta. On 17 April 2019, the Single Judge allowed the petition and ordered the appellant to process the respondent’s application within a period of three weeks. However, by its letter dated 10 May 2019 the appellant refused to grant a connection in view of the electricity dues of Rs. 22.05 crores payable by the erstwhile owner in respect of premises. The respondent again approached the High Court seeking a direction for the supply of electricity to their premises. On 19 June 2019, the Single Judge of the High Court allowed the Writ Petition and directed the grant of an electricity connection to the respondent. The Division Bench by a judgment dated 24 April 2020 dismissed the writ appeal and upheld the decision of the Single Judge.

319. In the impugned judgment dated 24 April 2020, the High Court’s interpretation largely focused on the phrase “any consumer” contained in Regulation 4.6.4. Under Regulation 4.6.4, a new consumer can be given service

connection only if the outstanding dues against the same premises are cleared along with a late payment surcharge. The Court referred to **Isha Marbles** (supra) to hold that the definition of "consumer" contained in Section 2(15) does not include an auction-purchaser. However, the Court held that it is possible to bring an auction-purchaser within the ambit of Regulation 4.6.4 if: (i) the distribution licensee establishes the fact that the premises concerned were connected to the works of the distribution licensee; (ii) for the purpose of receiving electricity; and (iii) in such a manner that the supply of electricity can be resumed by 'simply putting on a switch'.

320. The appellant has drawn attention to the fact that the supply of electricity to the premises was disconnected on 21 September 2016. Therefore, the appellant submits that on the date of the sale of the premises to the respondent, that is 31 August 2018, the supply of electricity was disconnected for more than 180 days. Hence, it is the appellant's contention that Regulation 4.6.1 is applicable and there is a deemed termination of agreement. It has been further contended that Regulation 4.6.4 has an overriding effect as it begins with a non-obstante clause. The respondent, on the contrary, has argued that Regulation 3.4.2 would be applicable in the present case. It has been argued that Regulation 4.6.4, despite having a non-obstante clause, has no bearing on the operation of Regulation 3.4.2.

321. The supply of electricity was disconnected on 21 September 2016. The supply stood disconnected for more than 180 days on 14 August 2018 which was the date of auction notice and on 31 August 2018 which was the date on which

the premises were sold to the respondent. In terms of Regulation 4.6.1, there was deemed termination of the agreement since the supply was disconnected for more than 180 days. However, Regulation 4.6.4 requires "any consumer" to clear the outstanding dues of the premises to be eligible for grant of service connection. In the present case, the respondent cannot be considered a "consumer" unless an agreement was entered into with the distribution licensee. This has also been reiterated in **Isha Marbles** (supra) in the following words:

> "62. No doubt, from the tabulated statement above set out, the auction-purchasers came to purchase the property after disconnection but they cannot be "consumer or occupier" within the meaning of the above provisions till a contract is entered into."

An auction-purchaser, such as the respondent, cannot be termed as a "consumer" unless an agreement was entered into with the distribution licensee. Therefore, we find no fault with the reasoning of the High Court.

322. Consequently, we uphold the impugned judgment of the High Court. The appeal shall stand dismissed.

H. Equity and Fairness

323. This Court is entrusted with the constitutional authority under Article 142 of the Constitution to render complete justice. Where appropriate, this Court has to take recourse to its constitutional power under Article 142 to bring about substantial justice.

324. Since the decision of this Court in **Isha Marbles** (supra), the law as regards the liability of the subsequent owner for the payment of arrears of the

electricity dues of the previous owner has been in flux. Petitions challenging the decisions of different Electric Utilities were filed as early as 2001. The orders of the High Courts had the effect of either directing the Electric Utilities to grant electricity connections to auction purchasers without insisting on payment of outstanding electricity dues, or directing the auction purchasers to comply with the conditions of supply or Electricity Supply Code, as the case may be. In some of the nineteen cases, this Court while granting leave passed interim orders. The legal issue of whether electricity dues constitute a charge on the property so far as the transferor and the transferee are concerned was referred to a larger bench by an order of this Court way back in 2006. The litigation in this batch of cases remained pending.

325. In the specific cases before us, where this Court has upheld the validity of the subordinate regulations (Conditions of Supply or Electricity Supply Code, as the case may be) and has held the relevant regulation to be applicable to the factual matrix, the auction purchasers would be liable to pay the outstanding dues of the previous consumer. On behalf of the Electric Utilities, claims have been made for interest on such arrears.

326. This Court must bear in mind the element of public interest in balancing the equities, particularly, at this stage where more than two decades have passed in litigation since the issue first arose. The 2003 Act was enacted to promote the development of the electricity industry, while protecting the interest of consumers. It must be kept in mind that many of the auction-purchasers are commercial entities who had purchased the premises for commercial ventures. Electricity

being a necessity for operation of any commercial venture, denial of electricity connections to the auction-purchasers for an indefinite period of time resulted in loss of business. The delay in the court proceedings should not be to the further detriment of the litigants.

327. Taking all facts and circumstances into consideration, including the lapse of more than two decades since the appeals were filed before this Court and the equities arising in favour of one party or the other, we direct the Electric Utilities to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction purchasers.

I. Conclusions

328. The conclusions are summarised below:

a. 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;
b. 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;
c. 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

premises are different, it will be considered as a fresh connection and not a reconnection;

d. 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;

e. 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;

f. 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;

g. 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;

h. 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;

i. 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

j. 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.

329. Pending applications, if any, shall stand disposed.

…….CJI.
[Dr Dhananjaya Y Chandrachud]

…….J.
[Hima Kohli]

…….J.
[Pamidighantam Sri Narasimha]

New Delhi;
May 19, 2023