

(2007) 09 BOM CK 0097

In the Bombay High Court

Case No : Writ Petition No. 3472 of 2007

Akanksha International

APPELLANT

Vs

Maharashtra State Electricity Distribution Co. Ltd.

RESPONDENT

Date of Decision : 05-09-2007

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 39
Electricity Act, 2003 — Section 43, 50
Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 — Regulation 10.5
Maharashtra Land Revenue Code, 1966 — Section 169
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(4), 35, 5
State Financial Corporations Act, 1951 — Section 32G

Citation : (2007) 6 ALLMR 611 : (2007) 5 BomCR 481 : (2007) 109 BOMLR 1959 : (2008) 1 MhLj 753

Hon'ble Judges : P.V. Kakade, J;P.R. Borkar, J

Bench : Division Bench

Advocate : S.V. Advant, for the Appellant; H.M. Karwa, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Borkar, J.—This is a petition filed by the Proprietor of M/s Akanksha International, which has purchased the land, building, plant and machinery of M/s Amar Amit Jalna Alloys Private Limited in auction sale conducted by the secured creditor under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as, "the Securitisation Act, 2002"), for direction to the respondent Electricity Distribution Company to consider application for fresh electricity connection to the petitioner and to quash and set aside the letter dated 1.6.2007 issued by the respondent to the petitioner as illegal. By the said letter the respondent has insisted on the petitioner to pay an amount of Rs. 3,30,78,926.87 plus interest which were arrears of electricity charges due from erstwhile consumer M/s Amar Amit Jalna Alloys Private Limited.

2. The petitioner stated that the State Bank of India, Jalna Branch had granted financial assistance to M/s Amar Amit Jalna Alloys Private Limited, D-52/5, Additional M.I.D.C., Jalna. Against the said borrowing, M/s Amar Amit Jalna Alloys Private Limited (hereinafter referred to as, "M/s Amar Amit Company") owed an amount of Rs. 3,67,94,628/- to the Bank. The Bank executed an Assignment Agreement u/s 5 of the Securitisation Act, 2002 in favour of Asset Reconstruction Company India Limited (hereinafter referred to as, "the ARCIL") on 29.3.2004. The ARCIL is a Reconstruction and Securitisation Company registered with the Reserve Bank of India and is a public financial institution. Under the Assignment Agreement, the ARCIL took up proceedings under the Securitisation Act, 2002. After giving notice under Sections 13(2) and 13(4) of the Securitisation Act, 2002, the ARCIL put on sale the property of the erstwhile owner company and the petitioner purchased it for Rs. 75,00,000/-. A sale certificate was issued in her favour on 15.5.2006 transferring to her right, title, interest, ownership and possession of the Plot No. D-52/5 admeasuring 3000 square meters situated at Additional M.I.D.C., Jalna along with the plant, machinery, other accessories, appurtenances as well as infrastructure erected thereon. The sale certificate issued by the ARCIL was later on lodged for registration and was registered at No. 1567-2007 on 30.4.2007.

3. Pursuant to the sale certificate, the petitioner made an application to M.I.D.C. and got the plot purchased and transferred in her name. The petitioner is bona fide purchaser of secured assets and is not transferee nor successor of previous owner. Prior to the purchase of the property by the petitioner, the respondent had disconnected the electricity supply to the erstwhile owner company. On 2.4.2007 the petitioner made application for fresh electricity connection in her name. However, by letter dated 1.6.2007 the respondent informed the petitioner that she would have first to clear the dues of Rs. 3,30,78,926.87 outstanding against M/s Amar Amit company. It is this order which is challenged by the petitioner in this petition.

4. It is argued on behalf of the petitioner that the petitioner is a purchaser under the auction sale held under the Securitisation Act, 2002 and not a purchaser under sale inter vivos, or a legal representative or heir of the previous owner. The sale certificate issued to the petitioner has made it clear that the scheduled property was made free from all encumbrances known to the secured creditors. The buyer is not liable for any liability to Central Excise, Sales Tax, M.S.E.B., P.F., M.D.C. incentives, income tax dues and any creditors. In view of this clear indemnity in the sale certificate and in view of the provisions of the Securitisation Act, 2002, the petitioner is not liable to pay any amount to the respondent and the respondent cannot insist on dues owed by M/s Amar Amit Company by the petitioner. Moreover, Special Civil Suit No. 88 of 2002 is already filed by the respondent against M/s Amar Amit Company for recovery of the dues. The respondent is not entitled to enforce liability owned by the previous owner against the petitioner and as such the petitioner is entitled to have new electric connection in her name and, therefore, various reliefs as claimed may be granted.

5. The respondent company filed affidavit-in-reply and stated that M/s Amar Amit Company was manufacturing steel ingots and running the Rolling Mill business. It had two branches, one at Selgaon village and another at Plot No. D-52/5, M.I.D.C., Jalna. So far as Selgaon plant is concerned, M/s Amar Amit Company became defaulter in the month of May, 2002. The electricity charges owed by it were to the extent of Rs. 7,99,23,830/-. It was having consumer No. 567. Then the Managing Director of M/s Amar Amit Company formed another company by name "M/s Amit Products India Limited".

6. The said company M/s Amit Products India Limited filed Writ Petition No. 2090 of 2002 for supply of electrical energy to the said company. In view of the default, the right of disconnection of the supply of electrical energy was asserted by the respondent. It was argued on behalf of M/s Amit Products India Limited that it was a new company having no concern with the old M/s Amar Amit Company and is entitled to new supply of electricity in it's name. The High Court observed, taking into consideration the evidence before it, that M/s Amar Amit Company and the new M/s Amit Product India Limited are ventures of Demda family under the veil of different corporate bodies and Bharatkumar Demda is the person calling the shots. The petition for energy connection for new company was thus rejected. The writ petition was thus dismissed and the dismissal was challenged in the Supreme Court. The Supreme Court in Civil Appeal No. 5461 of 2005 (arising out of SLP (Civil) No. 25222 of 2004 upheld the judgment of this Court and refused to direct supply of electricity to M/s Amit Products India Limited, which was in fact old company - M/s Amar Amit Company.

7. It is further stated that M/s Amar Amit Company, which was running another unit on Plot No. D-52/5, M.I.D.C., Jalna became defaulter of the electric supply to the tune of Rs. 3,50,89,485/-when the temporary disconnection of the supply was effected on 29.1.2000. Since besides disconnection the respondent had remedy to file Civil Suit, it filed Special Civil Suit No. 88 of 2002 in the Court of Civil Judge, Senior Division, Jalna against M/s Amar Amit Company.

8. It is case of the respondent that the petitioner M/s Akanksha International is in fact holding status of the defaulter consumer i.e. M/s Amar Amit Company. Mr. Suryaprakash Demda is the Director of M/s Amar Amit Company and the present petitioner who is Proprietor of M/s Akanksha International is the wife of Mr. Suryaprakash Demda. In view of the modus operandi adopted by the petitioner claiming as auction purchaser of the factory, the petitioner has no locus standi to claim new electric connection. M/s Akanksha International is representing the old defaulter consumer M/s Amar Amit Company. It is no more disputed before us that the present petitioner is the wife of Mr. Suryaprakash Demda who is the Director of M/s Amar Amit Company. A document to that effect is produced at Exh. "R-2" with the affidavit-in-reply. The said document shows that Mr. Suryaprakash Demda was the Director appointed on 29.1.1999 of M/s Amar Amit Jalna Alloys Private Limited, M.I.D.C., Jalna and the particulars in form No. 32 were presented by Mr. Bharatkumar Teckchandji Demda the brother of Mr.

Suryaprakash Demda. So, it is argued before us that it is a case of various entities representing same family.

9. It is further stated by the respondent in its reply affidavit that the petitioner had filed application dated 15.2.2007 to the Debts Recovery Tribunal, Aurangabad seeking restoration of electric supply and the Tribunal without issuing notice to the respondent and without hearing the respondent, granted the application and ordered restoration of electrical energy. The Tribunal had no authority to pass such an order and there is, therefore, inherent lack of jurisdiction. The petitioner has suppressed this material fact from the court and on this count itself, the petition be dismissed. It is further stated by the respondent that the sale certificate issued by M/s Usha Martin Finance Limited constituted Attorney of Asset Reconstruction Company India Limited (ARCIL) has been issued on misrepresentation that the petitioner was not liable for dues of the respondent company towards arrears. The fact of disconnection of the power supply to M/s Amar Amit Company was a fact which could be easily known by intending purchaser on inspection of the premises. So, an enquiry into the reasons for power disconnection could have led to the information that the previous owner i.e. M/s Amar Amit Company has been defaulter consumer with huge arrears. This is an information which could have easily got by any prudent buyer. So if the petitioner had made enquiry regarding the disconnection of the electricity supply, she would have known all the facts including the arrears owed to the respondent. In these circumstances, the petitioner cannot claim herself to be bona fide purchaser.

10. The respondent has also stated that as the position of law stands under the new Electricity Act, 2002 and the Rules and Regulations made thereunder, the dues owed to respondent are charge on the property and as a statutory effect, the liability of payment of electricity dues passed on to the petitioner. Reliance was placed on condition No. 10.5 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005.

11. It is also argued that it is nothing but an attempt on the part of the Directors of M/s Amar Amit Company to get back the property and avoid payment of dues to the respondent. It is, therefore, argued before that this Court should invoke the doctrine of lifting the corporate veil.

12. The learned advocate for the petitioner argued that the petitioner has taken loan of Rs. 50,00,000/ from the Central Bank of India and she is income tax payer. She is owner of the factory. As such she has every right to pursue her occupation and business. Reliance was placed on the sale certificate produced on record which is dated 15.5.2006. It is argued that it is specifically mentioned therein that the sale of the scheduled properties was made free from all encumbrances known to the secured creditor. The buyer is not liable for any liability to Central Excise, Sales Tax, M.S.E.B., P.F., M.D.C. incentives, income tax dues and any creditors and as such the purchase was without encumbrances and

the respondent is not entitled to deny new electricity connection to the petitioner. Reliance was also placed on Section 43 of the Electricity Act, 2003, which lays down that 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. It is argued that the case does not fall under any of the exceptions.

13. The learned advocate for the petitioner has also relied upon the case of ETCO Spinners Private Limited and Another Vs. State of Maharashtra and Others, . In that case the Division Bench of this Court considered the liability to pay the arrears incurred by previous owner of the property in respect of power supplied to such property. In that case, the petitioner purchased the property of a Co-operative Spinning Mill in public auction consequent to its liquidation. There were arrears of electricity consumption charges of erstwhile Mill. The petitioner was called upon to pay the outstanding electricity dues payable by erstwhile consumer at the premises for grant of electricity connection by the Maharashtra State Electricity Board (M.S.E.B.) It is held that the M.S.E.B. has a statutory duty to supply electricity to the petitioner and the petitioner cannot be saddled with liability to clear arrears of electricity charges payable by erstwhile consumer. It may be noted that in the case before Their Lordships the petitioner had nothing to do with erstwhile owner of the Mill and the petitioner had purchased the property in a public auction consequent to the liquidation of the Cooperative Spinning Mill. Moreover, Their Lordships have considered the provisions of the Electricity Act, 1910 and the Electricity (Supply) Act, 1948 and Regulation thereunder. It is argued before us that the provisions of the Electricity Act, 2003 and Regulation thereunder are different and, therefore, the case is not applicable. It is also argued before us that here is a case where lifting of corporate veil is necessary and it is necessary to find out the real purchaser.

14. The learned advocate for the petitioner also relied upon two more cases. The first is SICOM Ltd. Vs. The Union of India (UOI) and Others, . In that case u/s 32G of the State Financial Corporation Act, 1951, it is held that the claim of secured creditor will have a priority over the dues of customs. Since the petitioner SICOM is secured creditor, claims of Customs Department cannot rank higher than that of secured creditor and in that case the impugned seizure of properties by Customs Department was quashed and set aside.

15. In The Thane Janata Sahakari Bank Ltd. Vs. The Commissioner of Sales Tax, Asstt. Commissioner of Sales Tax, The Office of the Assistant Commissioner (Assessment) and The State of Maharashtra, , this Court while considering the Securitisation Act, 2002 and the Bombay Sales Tax Act, 1959 has considered whether the sales tax will be a first charge on the assets of a company even if property is mortgaged by owner as security for loan from a Bank and even where Bank is authorised to take over and sell secured property without intervention of Court or help of Debt Recovery Act. Section 39 of the Bombay Sales Tax Act provides that tax will be a first charge on assets of company. But such is not the

case with Section 13 of the Securitisation Act, 2002. The said section only provides an expeditious way of recovery of Bank loans/dues but nowhere states that such dues will be first charge on property under Central Act. Both Acts were enacted by competent legislations for different purposes and there is no conflict between the two. It is also held that the Bank's right to recover amount by sale of mortgaged property is a right created under the Contract Act and does not create any charge on property under the Securitisation Act, 2002. Hence Section 35 of the Securitisation Act, 2002 does not override the provisions of Section 38 of the Bombay Sales Tax Act. In fact this case lays down that if law creates any charge on the property, in that case the sale proceeds must be applied for satisfaction of the same. In that case, the Division Bench also considered Section 169 of the Maharashtra Land Revenue Code. So, this case in fact helps the respondent. It is held in para 33 that even before the Bank initiated process u/s 13 of the Securitisation Act the sales tax authorities had already attached the property of the company for recovery of the sales tax dues. In the circumstances, the Bank in grossly illegal manner proceeded u/s 13 of the Securitisation Act, 2002 and sold the property of the company for recovery of its outstanding dues. The action of the Bank was wholly illegal and unauthorised.

16. The learned advocate for the petitioner also relied upon the case of Suraj Vs. K.S.E.B., . Their Lordships considered provisions of the Electricity (Supply) Act, 1948 and Regulations thereunder. It is held that the Board was entitled to insist on payment of arrears of electricity charges as pre-condition for supply of electricity to same premises to prospective consumer. In that case also the purchaser had purchased the premises in public auction. Purchaser was not consumer, but a prospective consumer.

17. Reliance was also placed on the case of Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. Paramount Polymers Pvt. Ltd., . In that case the previous consumer of the appellant, a distributing company, fell in arrears towards consumption charges of electricity. Power was disconnected and the undertaking of previous consumer was taken over by the Financial Corporation, mortgagee. The undertaking was offered for sale and was purchased by the respondent. The appellant company was seeking to recover the dues of the previous consumer from purchaser respondent by inserting clause to that effect in terms and conditions of supply of electrical energy for giving fresh connection to respondent purchaser. It is held that there was no illegality. The respondent - purchaser having applied for fresh connection after insertion of said clause, his application would be governed by such clause. In para 4 decision in Isha Marbles Vs. Bihar State Electricity Board and Another, was referred for proposition that in absence of there being a charge over the property and the premises comes to be owned or occupied by the auction purchaser and the auction purchaser seeks supply of electrical energy by way of a fresh connection, he cannot be called upon to clear past arrears. In this case the respondent has come with a case that by change in law and regulation, charge has been created on the property in respect of dues towards electricity arrears. Reference was also made to para 9 to show that as

observed in that case, here also the petitioner with reasonable enquiry could have known about dues to the respondent.

18. It is argued before us that under the Electricity Act, 2003 and the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other Conditions of Supply) Regulations, 2005, there is change in the position of law and the Division Bench Ruling in ETCO Spinners Pvt. Ltd (supra) is not applicable.

19. The petitioner relies on two documents viz. Assignment Agreement dated 17.1.2007 and the sale certificate dated 15.5.2006 produced with the petition. So it is necessary for us to examine them to ascertain what rights they confer on the petitioner. The petitioner has produced the Assignment Agreement executed on 17.1.2007 between Asset Reconstruction Company (India) Limited (ARCIL) and M/s Akanksha International which is the present petitioner. It is stated in the preamble that the State Bank of India had granted to M/s Amar Amit Jalna Alloys Private Limited, D-52/5, Additional M.I.D.C., Jalna-431 203 (hereinafter referred to as, "the borrower") the financial accommodation or banking facility of the aggregate limit of Rs. 3,67,94,628/- as detailed in Schedule 1. The State Bank of India vide Assignment Agreement dated 29.3.2004 assigned inter alia financial assets in favour of ARCIL; whereas the purchaser (the present petitioner) has approached ARCIL and expressed its desire to purchase the loans together with all the rights, title and interest of the seller (ARCIL) in the financing documents and any underlying security interests, pledges and/or guarantees in respect of such loans (hereinafter referred to as the financial assets). The ARCIL wishes to assign to and in favour of the purchaser the loans disbursed under the aforesaid financing documents together with all its rights, title and interest in the financing documents and any underlying security interests, pledges and/or guarantees in respect of such loans, (hereinafter referred to as the financial assets). So, this preamble clearly shows that what was attempted to be sold was "rights of creditor" and not the property of the debtor in auction sale.

20. Following three clauses from para 2 are also relevant:

(a) The seller, in consideration of the purchaser paying the full purchase consideration to the Seller and upon terms and condition set forth herein, hereby irrevocably agrees to sell, assign and transfer to and unto the purchaser the Financial Asset TO THE END AND INTENT THAT the purchaser hereby would become the full and absolute real owner and the only person legally entitled to the Financial Asset or any part thereof.

(b) The purchaser hereby becomes the lender to the Borrower for and in relation to the financial Asset

(c) From the date of the Assignment Agreement, the purchaser shall have the sole right of collecting from the Borrower any monies pertaining to the Financial Asset, enforcing the underlying securities interests, pledges and/or guarantees, in whatever manner it may consider necessary and prudent, in its absolute

discretion.

Para 8 is as follows:

The Purchasers hereby confirm that it has done its own due diligence in respect of the financial asset and financing documents and is aware of all facts and circumstances in relation to the financial asset and financing documents including but not limited to all litigation, defaults etc. The purchaser has satisfied itself about its decision of carrying out transactions in the assignment. The purchaser hereby further agrees and confirms that, it shall not have any recourse against the Seller in respect of the transactions contemplated herein, on account of any reason whatsoever including but not limited to

- (a) any breach of any covenant (including but not limited to the representations, warranties and indemnities) by the borrower under the financing documents and/or any default or non payment of any amount due by the borrower;
- (b) the financial condition or creditworthiness of the borrower or any other third person;
- (c) any shortfall in the amounts due by the borrower whether arising out of inadequate, realizations or lack of recovery or realization of the amounts due or otherwise; and
- (d) any of the obligations of the borrower or any person under or pursuant to any of the financing document being or becoming void, voidable, unenforceable or ineffective for any reason whatsoever.

The above said paragraph clearly shows that the purchaser has confirmed that it has shown due diligence in respect of financial assets and is aware of all facts in relation to financial assets and financing documents including but not limited to all litigation, defaults, etc. This admission clearly shows that the petitioner was aware of the dues to the M.S.E.B. Here we have to note that the petitioner is wife of one of the Directors and this Court in previous litigation has come to a conclusion that M/s Amar Amit Company is nothing but family concern. Para 8 also discloses that the agreement was nothing but a transfer of all rights of creditor. It is nothing but assignment of rights of creditor by ARCIL to the petitioner. Thus the document Exh. "A" produced on record which is a registered document places the petitioner into the position of a creditor of M/s Amar Amit Company and not in position of the purchaser of the property. Here Schedule II annexed to the said Assignment Agreement Exh. "A" is worth considering. It includes details of loan, various agreements entered into between the State Bank of India and M/s Amar Amit Company including the deeds of mortgage, deeds of guarantee and the immovable property. It may be noted that the details of security interest given in Schedule I of the document shows that aggregate outstanding amount as on 30.4.2005 was Rs. 3,67,94,628/ and the assignment of rights was for consideration of Rs. 75,00,000/-. Thus by the Assignment Agreement dated 17.1.2007 the petitioner has entered into the shoes of the

State Bank of India which was creditor of M/s Amar Amit Company.

21. There is the sale certificate which is dated 15.5.2006. In the sale certificate it is stated as follows:

The property sold on behalf of the Asset Reconstruction Company of India Limited in favour of Akanksha International through proprietor Mrs. Anju Suryaprakash Demda, the immovable property shown in the Schedule below is secured in favour of the Asset Reconstruction Company of India Limited by the Promoters/Directors/Guarantors, of M/s Amar Amit Jalna Alloys Private Limited towards various financial facility such as Demand Cash, Credits, Hypothecation Limit, Letter of Credits and Bank Guarantee offered initially by State Bank of India. The undersigned acknowledge the receipt of the sale price in full and handed over the delivery and possession of the schedule "property.

This sale certificate will have to be read in the light of the Assignment Agreement, as the Assignment Agreement is the main and earlier document.

22. The question that immediately comes to mind is, can the petitioner who has stepped into the shoes of the secured creditor in place of ARCIL on 17.1.2007 by the Assignment Agreement become owner-purchaser of the secured assets by the sale certificate executed on behalf of ARCIL by its constituted Attorney M/s Usha Martin Finance Limited on 15.5.2006. After the agreement of assignment on 17.1.2007 the ARCIL ceased to have any right as secured creditor and could not have issued sale certificate on 15.5.2006 in respect of secured properties. All that can be said is that if any further steps under the Securitisation Act, 2002 were to be taken after 17.1.2007, they could have been taken perhaps by the petitioner herself and not by ARCIL and in that case the purchaser under the Securitisation Act, 2002 could have been person other than the petitioner. Under the circumstances, the petitioner being creditor could have purchased the secured assets only from the original owners.

23. Be that as it may, the above discussion raises question mark on the rights of the petitioner who claims to be exclusive owner of the movable and immovable assets of the original borrower M/s Amar Amit Company, and as such entitled to right to get new electricity connection. In these circumstances, the ratio of ETCO Spinners Pvt. Ltd. (supra) is not applicable to the facts of the present case.

24. It is argued before us on behalf of the respondent that in fact the purchase by the petitioner under the sale certificate is nothing but purchase by the original borrower M/s Amar Amit Company which is a family concern. Reliance was place on observations made in the judgment delivered by the Division Bench of this Court in Writ Petition No. 2090 of 2002 decided on 18.12.2003. That was writ petition between M/s Amit Products (India) Limited and the Chief Engineer, Maharashtra State Electricity Board, Aurangabad in respect of electricity connection to the factory of M/s Amar Amit Company at Selgaon, Taluka Badnapur, District Jalna. In that case it was argued on behalf of the respondents that M/s Amit Products (India) Limited was nothing but the company of same

persons who were owners of M/s Amar Amit Company. Some of the observations therein are very material for our purpose. In that case the High Court has lifted corporate veil and has come to a conclusion that the petitioner M/s Amit Products (India) Limited in that case was nothing but M/s Amar Amit Company. In para 20, facts and circumstances emerging from the material placed before the Court were stated. One of the important thing is that the present petitioner Mrs. Anju Demda is none other than wife of Suryaprakash who along with his brothers Bharatkumar, Bhagwani and father Teckchand were Directors of the old company. In that case it is observed that present petitioner Anju and one Anita had purchased the total land 8 Hectare 64 Are for Rs. 1,51,000/-, out of which Rs. 70,000/-were paid by present petitioner Anju and Rs. 81,000/-were paid by Anita. Anita is wife of Bharatkumar the Managing Director of old company. It is stated that present petitioner Anju sold portions in favour of old company i.e. M/s Amar Amit Company and new company which is M/s Amit Products (India) Limited by registered sale deeds dated 5.4.1997 and 4.4.2000 for consideration of Rs. 23,000/- and Rs. 2,37,000/-. After considering other circumstances, in para 20(9) the share holdings of M/s Amar Amit Company are stated as below:

AMAR AMIT JALNA ALLOYS (OLD COMPANY) S/Shri (1) Teckchand Demda Rs. 4,00,000/- (2) Bhagwani s/o Teckchand Rs. 2,00,000/- Demda (3) Bharatkumar s/o Rs. 58,85,000/- Teckchand Demda (4) Suryaprakash s/o Rs. 59,15,000/- Teckchand Demda (5) Sanjay Khirudkar Rs. 1,00,000/-

Thus it was observed that the old company (M/s Amar Amit Company) is a totally family affair of Teckchand Demda and his three sons. Out of share capital of Rs. 1,25,00,000/-except share of Rs. 1,00,000/-of other sharer were held by the family. Following conclusion was drawn in para 20(10):

Taking into consideration above details, we have no hesitation to observe that the old as well as new company are ventures of Demda family under the veil of different corporate bodies, and Bharat Demda is the person calling the shots. Application for energy connection for new company, is thus an application by defaulting consumer, whose supply is disconnected, either u/s 24 of the India Electricity Act, 1910 and/or under Condition No. 31(e) of "Conditions and Miscellaneous Charges for Supply of Electrical Energy.

It was finally stated that upon lifting the corporate veil it can be said that the new connection is being sought for same premises, by same consumer, under corporate veil of new corporate entity.

25. The above said judgment of the Division Bench was confirmed by the Honourable Supreme Court and the copy of the judgment is produced at Exh. "R-2" with affidavit in reply. In Civil Appeal No. 5461 of 2005 (arising out of SLP (Civil) No. 25222 of 2004) decided on 2.9.2005 the Supreme Court observed that after careful consideration of rival contentions of both sides, Their Lordships were unable to accept the contention of the appellant company that by changing the members of the Board of Directors of the Company or by changing the share

holding pattern, the appellant Company had undergone any change. The very same company wanted the electricity connection without making any payment towards the electricity charges payable by the previous consumer.

26. In the present case, it is argued relying on document produced at Exh. "R-2" that present petitioner Anju is wife of one of the Directors of M/s Amar Amit Company and the so called purchase is by same Demda family. In our opinion the application for new electricity connection is made by same family who had earlier formed a Private Company and now purchased property in the name of one of its Members. There is no change in the ownership in real sense.

27. Here we may refer to the case of Subhra Mukherjee and Another Vs. Bharat Coking Coal Ltd. and Others, . In that case, Their Lordships considered the doctrine of lifting of corporate veil. There was allegation of sham and collusive transaction by the company. The High Court was held justified in piercing the veil of incorporation to ascertain true nature of transaction, the identities of the parties involved, and whether the transaction was genuine and bona fide. In that case before the Supreme Court, the Directors of Private Coal Mining Company had executed a sale deed in respect of property (bungalow and lands) owned by company on 20.3.1972. The Coal Mines (Nationalisation) Act, 1973 vesting in the Central Government right, title and interest of owners of coal mines specified in Schedule, came into force on 1.5.1973. Admittedly the appellant purchasers of property were the wives of the two Directors of the Company having no independent income. The appellants refused to hand over possession of property to respondent Government company when ordered to do so and instead filed suit for title in respect of the property. It was held that the sale in favour of the appellants was not bona fide and thus conferred no rights on them. It is also held, when the question before the court was whether the transaction in question was bona fide or genuine one, that the party relying on the transaction had to prove its genuineness first.

28. So, in this case we can very well go behind the transaction to know who are the real parties entering into the transactions and as stated earlier, we are of the considered opinion that the same family which formed a Private Limited Company, has now claimed the right through one of its Members and the transactions were not bona fide on the face of record.

29. It is argued before us that u/s 50 of the Electricity Act, 2003, 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, etc. Accordingly, the Maharashtra Electricity Regulatory Commission has framed Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply Regulations, 2005. Regulation 10.5 is 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.

So, it is abundantly clear that after this Regulation came into force, any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by erstwhile owner/occupier of the premises, shall be a charge on the premises transmitted to the legal representative, successor-in-law or transferred to the new owner/occupier of the premises, as the case may be, shall be recoverable by the Distribution Licensee from such successor-in-law or new owner/occupier of the premises. However, proviso lays down that the liability of unpaid charges of electricity supply is restricted to maximum period of six months to such premises. It is stated before us that if the petitioner complies with this Regulation 10.5, the respondent would restore the electricity connection. These Regulations were published on 20.1.2005 and as stated in the affidavit-in-reply the same came into force before the petitioner was issued sale certificate on 15.5.2006. So, relying on Thane Janata Sahakari Bank Ltd. (supra), Suraj K.R. (supra) and Dakshin Haryana Bijli Vitran Nigam Ltd. (supra), the dues owed by M/s Amar Amit Company to the M.S.E.B. are charge on the property alleged to be purchased by the petitioner and as such the petitioner is bound to pay the same.

30. The above said discussion, particularly the case law cited clearly indicate that there would not be exemption or indemnity given in respect of taxes and other dues which are charge on the property. In this view of the matter, the indemnity given in the sale certificate regarding dues to M.S.E.B. is not valid in law. Moreover, as discussed above, the validity of sale certificate itself is in question in view of Assignment Agreement which was executed much earlier to it by same secured creditor.

31. So far as filing of Special Civil Suit by the respondent against erstwhile owners i.e. M/s Amar Amit Company is concerned, that is an alternate remedy provided by law and that will not come in the way of the respondent in insisting on clearing of arrears before the power supply is restored or new power connection is given.

32. It is argued before us that the order of the Debts Recovery Tribunal is without jurisdiction and was passed without hearing the respondent. In fact, there is no reference to the order of the Debts Recovery Tribunal in the writ

petition. No explanation is given for the omission. The point whether the Debts Recovery Tribunal has jurisdiction to direct the respondent to give electricity connection to the petitioner is itself questionable. Moreover, such order is passed ex-parte. In our opinion, such order cannot sustain in view of the view taken by us above. In the facts and circumstances of the case, the petition has no merits and same deserves to be dismissed.

33. The writ petition is, therefore, dismissed. The parties are directed to bear their own costs.