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**(2010) 06 GUJ CK 0004**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 21824 of 2006**

Amardeep Association, Navsari

APPELLANT

Vs

Dakshin Gujarat Vij Co. Ltd. and Others

RESPONDENT

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**Date of Decision : 14-06-2010**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 18, 19

**Citation : (2010) 3 GLH 431**

**Hon'ble Judges : K.A. Puj, J**

**Bench : Single Bench**

**Advocate : N.K. Pahwa with Mrs. Sangita Pahwa, for the Appellant; M.D. Pandya for Respondent No. 1, Government Pleader for Respondent No. 2 and None, for the Respondent**

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**Judgement**

Mr. K.A. Puj, J.—The petitioner has filed this petition under Article 226 of the Constitution of India praying for the direction to the respondent No. 1 -Electricity Company to grant power connection in respect of the lands and properties covered by Navsari Survey No. 336/1 (336, 336/P and 336/3 - Hissa No. 1), (C.S. No. 1714, Tika No. 36) and Vejalpur Survey No. 311/P, 310/1, 310/ 2, 310/5, 310/7, 307/1, 308/1, 301/A/2 and 301/B. The petitioner has also prayed for the direction to the respondent No. 1 - Electricity Company to grant provisional power connection in respect of the above referred lands and properties, on such terms as may be deemed fit by this Court. This Court has issued notice on 12.10.2006. Further order was passed on 21.12.2006 directing the petitioner to join the Secretary, State of Gujarat, Department of Energy, Sachivalaya, Gandhinagar as party - respondent and issuing notice to the newly joined party. The Court has also observed that the respondent No. 1 - Electricity Company should explore the possibility of challenging the order dated 21.07.2006 passed by BIFR. The petition was admitted on 02.05.2007.

2. The brief facts giving rise to the present petition are that the Company, namely, Navsari Cotton and Silk Mills Limited having become sick in terms of the

provisions contained in Sick Industrial Companies (Special Provisions) Act, 1985, a reference was made to BIFR in the year 1990. The BIFR sanctioned a rehabilitation Scheme in the year 1991 which was expected to be completed by the end of March, 1992. However, the Scheme could not be implemented on account of further losses suffered by the said Company. A revised Scheme was, thereafter, proposed in the year 1996 for rehabilitation of the said Company. The BIFR vide order dated 05.12.1996 sanctioned the revised Scheme for rehabilitation of the said Company. This Scheme amongst other directions also considered the direction granting permission for sale of the surplus land of the said Company at Navsari. The BIFR by a specific order dated 09.01.2003 directed to disburse the surplus land of the said Company by constituting Assets Sale Committee consisting of nominees of IDBI, Banks, BIFR, Company and one of the Sub-Divisional Revenue Officers to be nominated by the Collector.

3. The Asset Sale Committee, as directed came to be constituted and issued advertisements for the sale of the subject lands in local daily "Sandesh" dated 21.04.2003, "Gujarat Samachar" dated 20.04.2003 and "Gujarat Mitra" dated 21.04.2003. Pursuant to the said advertisement, the petitioner made its offer to purchase the subject lands at Rs. 48 per Sq. Ft. The petitioner also deposited an amount of Rs. 57 Lacs as per the terms of the offer with the Asset Sale Committee. On 29.05.2003, the petitioner was called upon to appear before the Asset Sale Committee. The authorized representative of the petitioner appeared before the Assets Sale Committee wherein the petitioner increased its offer to Rs. 51 per Sq. Ft. The total consideration thus was fixed at Rs. 561 Lacs. The offer made by the petitioner was finally concluded and accepted by the Assets Sale Committee in its meeting held on 29.05.2003.

4. As per the terms of the sale, the petitioner deposited Rs. 57 Lacs in May 2003. Rs. 100 Lacs in July 2003, Rs. 120 Lacs in September 2003. Rs. 73 Lacs in November 2003, Rs. 2 Lacs in March 2004 and Rs. 2.20 Lacs in May 2004 aggregating to Rs. 354.20 Lacs. Upon receipt of this amount, the petitioner was handed over the possession of the land admeasuring about 6,63,822.48 Sq. Feet. The title of this parcel of land also came to be transferred in favour of the petitioner by executing three sale documents in favour of the petitioner.

The details of the document number, survey number and the area of the land in Sq. Ft. transferred in favour of the petitioner are as under :-

Sr. No. Document No. Revenue Survey No. Area in Sq. Feet

1. 4069 of 2003 336, 336 paiki, 532034.00

New No. 2338 336/2, 336/3

Dated 14.05.2004 Hissa No. 1 and

Tika No. 36

C.S. No. 1714

(Navsari R. S.

No.336/1)

2. 4484 of 2003 301 A/2 and 120685.23

New No. 2339 301B paiki

Dated 14.05.2004

3. 4485 of 2003 301 B paiki 11103.25

New No. 2430

Dated 14.05.2004

5. The petitioner, having purchased the subject lands, intended to develop the same for the purpose of residence, industrial and commercial accommodation. The petitioner accordingly applied for LT/HT power connection from the respondent No. 1 Company. The said application was essentially for the purpose of supplying water to the residents. In one of the buildings transferred to the petitioner, there are 74 occupants residing along with their family members. The respondent Board granted power connection in respect of 74 houses forming part of the premises sold by the Assets Sale Committee to the petitioner. These residential houses do not have separate water bore and, therefore, the petitioner requested the respondent to grant power connection. The petitioner also deposited the amount required by the respondent. Subsequently, detailed representation was made by the petitioner on 12.08.2005 for granting power connection. The respondent Company, however, refused to grant power connection to the petitioner on the ground that there were arrears of electricity from the erstwhile Mills Company. Several correspondence was exchanged between the petitioner and the respondent Company in connection with the grant of power connection. The respondent Company, however, had not granted the power connection. While refusing to grant such power connection, the respondent Company relied on the Division Bench judgment of this Court in respect of Condition No. 2 (j) of the Conditions of Supply.

6. Since the power connection was not granted by the respondent Company, the petitioner made an application to BIFR seeking appropriate directions against the respondent Company for grant of power connection in respect of the subject parcels of land and further reliefs by modifying the Scheme as per the provisions of Section 18 and 19 of SICA. Pursuant to the said application, the BIFR has again revised Scheme by order dated 12.06.2006 and directed amongst other things, the respondent Company to release LT/HT power connection in respect of the subject lands. Mr. Pahwa has submitted that the word "may" used in Clause 7(b)(8) of the sanctioned Scheme is in the form of command and it is the direction issued by BIFR to the respondent Board/ Electricity Company to release LT/HT power connection/supply to the petitioner or to any person to whom any land situated at Navsari Revenue Survey Number and Vejalpur Survey Number is

sold. In support of this submission, he relied on the decision of the Apex Court in the case of State of Uttar Pradesh Vs. Jogendra Singh, wherein it is held that the word "may" generally does not mean "must" or "shall". It is well settled that the word "may" is capable of meaning "must" or "shall" in light of the context. Where a discretion is conferred upon a public Authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command. Sometimes, the Legislature uses the word "may" out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed.

7. Despite the fact that the directions issued by the BIFR are binding on the respondent Company and that the respondent Company is obliged to grant the power connection to the petitioner, the same was not granted and hence, because of the inaction on the part of the respondent Company, the petitioner has no other alternative but to challenge the said inaction before this Court by way of the present petition.

8. During the pendency of this petition, Apex Coordination Committee of the respondent in its meeting held on 22.11.2006 has resolved that the old dues cannot be recovered from the incoming parties for release of new connection for the same premises. It was further resolved that certain other measures should be initiated including filing of civil suits against old outgoing consumers for recovery of old bills. The petitioner has, therefore, asked for the power connection even on this ground.

9. Mr. N. K. Pahwa with Mrs. Sangita Pahwa learned Advocate appearing for the petitioner has submitted that BIFR has issued specific directions to the Authority to grant power connection in respect of subject parcels of land. The petitioner has also produced copy of the order dated 12.06.2006 to the respondent Authority along with the application dated 05.08.2006. The petitioner has also pointed out the binding effect of the Scheme which is sanctioned by the BIFR upon the respondent. The relevant portion of the Scheme shows that the directions contained in the Scheme are binding on the Authority and is obligatory on the part of the respondent to grant power connection to the petitioner. The directions issued by the BIFR have the overriding effect over any other statute or an instrument. Considering the legal effect of the directions issued by BIFR, the inaction on the part of the respondent is absolutely unreasonable, arbitrary and is violative of Article 14 of the Constitution of India.

10. Mr. Pahwa has further submitted that even the earlier stand of the respondent before BIFR issued directions as are contained in the modified Scheme dated 12.06.2006 was unjustified and arbitrary in as much as there is no analogous power as that of Clause 2 (j) with the respondent Company under the Electricity Act, 2003 which has come into force from December, 2003. The Electricity Act, 2003 does not confer any power over the respondent to claim dues of the earlier owner as a condition precedent for grant of power connection to the petitioner which has purchased the assets from BIFR under sanctioned

Scheme under the provisions of Section 18 read with Section 19 of SICA. The BIFR, in its revised Scheme, has not imposed any condition with respect to payment of dues of the predecessor of the petitioner. Even while executing Sale Deeds in respect of the subject parcels of land, no condition was stipulated for payment of the arrears of electricity dues of the predecessor of the petitioner. He has further submitted that the predecessor of the petitioner is not wound up and is still operational under the Scheme of rehabilitation sanctioned by BIFR. It is settled law that if there was no condition precedent for payment of arrears of electricity dues of the predecessor, the successor in interest cannot be held liable for payment of electricity dues. The impugned inaction is absolutely arbitrary, illegal, unjustified, contrary to the binding decision of this Court and also violative of Article 14 of the Constitution of India.

11. On behalf of the respondent No. 1 Company, an affidavit-in-reply is filed by the Executive Engineer (legal cell) on 08.05.2007. Mr. M. D. Pandya, learned Senior Advocate appearing for the respondent No. 1 Company has strongly opposed this petition. He submitted that no authority can saddle liability on any person without following rules of natural justice. The minimum expectation of authority exercising the powers to effect rights and obligations of others, is to give to the party likely to be affected, the notice of proceedings, notice of what relief is sought against the party with grounds thereof and opportunity to that party to have a say in the matter, to afford hearing and serve upon the copy of any order passed. If this is not done, there is fragrant violation of elementary rules of natural justice and getting an order in ex-parte proceedings without previous notice and opportunity to other side clearly violates natural justice. He has further submitted that in the proceedings of BIFR, neither GEB/DGVCL was the party nor notice has been issued to GEB/DGVCL nor heard nor orders were served by the authority to the GEB/DGVCL. He has, therefore, submitted that the respondents are not bound by the said order. Mr. Pandya in support of his submission that the BIFR's order giving direction to the respondent Company to grant power connection even without making payment of the previous owner's dues, is in violation of the principles of natural justice, has relied on the decision of the Apex Court in the case of R.B. Shreeram Durga Prasad and Fatechand Nursing Das Vs. Settlement Commission (It and Wt) and Another, wherein the assessee's application for settlement of his case was rejected by the Commission on Commissioner's objections without giving opportunity of hearing. In the meantime, sub-Section 1A came into force by amendment. In this context, the Apex Court held that the order rejecting application being a nullity due to non-observance of principles of natural justice, the application would be pending and the amended provision being procedural would govern the pending proceedings and the Commission would have the power to overrule Commissioner's objections.

12. Mr. Pandya has further submitted that the BIFR vide its order dated 12.06.2006 issued certain directions to the State Government. However, the State Government has not given any directions to the respondent No. 1 Company

in line with the order of BIFR dated 21.07.2006 and hence, the respondent No. 1 Company is not bound to follow the BIFR order. He has further submitted that the proceedings of BIFR were not initiated by the petitioner and hence, the petitioner cannot seek implementation of any order that has been passed by BIFR and that too, without issuance of any notice to the respondent No. 1 Company or even hearing the respondent No. 1 Company. The relief and concession granted under BIFR Scheme and resolution passed by the Government has not been complied with either by Navsari Cotton and Silk Mills Limited or Morarji Desai Textile Labour Cooperative Industries Limited and hence, the petition filed by the petitioner deserves to be dismissed. He has further submitted that BIFR order dated 21.07.2006, in sub-paragraph 3 of paragraph 7 (b), contains a provision to accept the payment of original consumption charges of electricity bill pertaining to the period before 1994 for 5 years equal quarterly installments commencing after six months from the year of sanction of the Scheme by BIFR. This condition becomes operative since 21.01.2007. However, no payment has been made either by Navsari Cotton and Silk Mills Limited or Morarji Desai Textile Labour Cooperative Industries Limited or by the petitioner as per the order of the BIFR. Condition No. 2 (j) of the Conditions of Supply empowers the respondent No. 1 Company to recover the outstanding dues of predecessor of the premises. The Division Bench of this Court in its judgment dated 18.07.2005 upheld Condition No. 2 (j) of the Conditions of Supply and the action of erstwhile GEB for recovering of old dues from the prospective consumers.

13. Mr. Pandya further relied on the decision of this Court in the case of Atul Mittal Concast Private Limited v. Official Liquidator of M/s. Jalan Forgings Limited (in Liquidation) rendered in Misc. Civil Application No. 58 of 2009 on 11.01.2010 wherein all the submissions in respect of applicability of Clause 2 (j) of the Conditions of Supply Code were taken into consideration and after discussing the entire case law on the subject and the provisions of the Electricity Act, 2003, the Court came to the conclusion that Clause 2 (j) was treated as "saved" and there is no inconsistency between the provisions of Clause 2 (j) and the provisions of the Electricity Act, 2003 and the Supply Code specified under the regulations by GERC. The Court further observed that Clause 2 (j) provides for reconnection of power to the premises whereas Act 2003 read with the Supply Code provides for a power to a person. However, supply of power to a person must be in relation to the premises.

14. Mr. Pandya has further submitted that Navsari Cotton and Silk Mills Limited had closed its unit on failure to comply with the sanctioned Scheme of BIFR, and relief and concession availed from Govt. of Gujarat. For revival of the unit, the workers Industrial Cooperative Society submitted a draft for rehabilitation Scheme before BIFR through the Navsari Cotton and Silk Mills Limited in July 1994. Due to non-payment of outstanding dues of GEB, notice for temporary disconnection and agreement termination was issued to M/s. Navsari Cotton and Silk Mills Limited on 07.10.1994. The connection was permanently disconnected

on 05.10.1995. The net outstanding dues were of Rs. 416.36 Lacs after adjustment of security deposit of Rs. 2.46 Lacs on the date of permanent disconnection.

15. Mr. Pandya has further submitted that BIFR has passed an order dated 05.12.1996 in the rehabilitation Scheme submitted by Workers Industrial Cooperative Society through Navsari Cotton and Silk Mills Limited and Government of Gujarat passed the G.R. dated 29.08.1997 agreeing to extend the relief and concession. Pursuant to the said Scheme, Morarji Desai Textile Labour Cooperative Industries Limited had applied for reconnection by demanding 1700 KVA load on 04.01.1997 and thereafter, applied for reduction in their power demand from 1700 KVA to 950 KVA. The consumer availed concession from 01.01.1988 to 30.06.1999 under G.R. Dated 29.08.1997. Shri Morarji Desai Textile Labour Cooperative Industries Limited, Navsari which was formed by Workers Co-operative Society of Navsari Cotton & Silk Mills Limited had requested GEB vide letter dated 14.09.1997 for paying total security deposit amount in monthly installments of Rs. 1 Lac and amount of arrears at Rs. 266.40 Lacs to be paid as per the BIFR order. GEB had issued release order 4950 KVA power supply vide letter dated 15.09.1997 and granted installments for payment of pending dues and payment of security deposit vide letter dated 06.10.1997. For recovery of outstanding dues of Rs. 266.40 Lacs, the GEB had asked to pay Rs. 13.32 Lacs being the first quarterly installment as per BIFR order dated 05.12.1996 and thereafter, granting permission to pay dues of Rs. 266.40 Lacs in monthly equal installments of Rs. 4.08 Lacs. The consumer had paid security deposit amount in regular monthly installments, but had not paid the installments of pending dues of Rs. 266.40 Lacs granted by GEB. Hence, 10 days notice was issued by GEB to Shri Morarji Desai Textile Labour Cooperative Industries Limited on 10.03.1999 drawing attention to make payment of installments as granted. The said Morarji Desai Textile Labour Cooperative Industries Limited has, therefore, filed Special Civil Application No:4951 of 1999 before this Court for review of extension of time limit in payment of installments of outstanding dues of M/s. Navsari Cotton & Silk Mills Limited amounting to Rs. 266.40 Lacs. This Court vide its order dated 13.07.1999 restrained the GEB from disconnecting the power supply of M/s. Navsari Cotton & Silk Mills Limited. The installments fixed as per BIFR order were to be recovered within five years from November, 1997.

16. On behalf of the respondent Company, further affidavit-in-reply was filed on 25.02.2008 which deals with the amendment made by the petitioner. Based on this affidavit, Mr. Pandya has submitted that the Government of Gujarat decided to restructure erstwhile GEB under the provisions of the Gujarat Electricity Industry (Reorganization and Regulation) Act, 2003 and for that purpose, has framed Gujarat Electricity Industry Organization and transfer of Godhra Thermal Power Stations Scheme 2003 and the Gujarat Electricity Industry Reorganization and Comprehensive Transfer Scheme 2003 vide Govt. Notifications dated 25.09.2003 and 24.10.2003. In exercise of powers under the aforesaid Act and

the aforesaid Schemes, the Government of Gujarat has reorganized the GEB and all the functions, assets, liabilities and proceedings of the said Board stand transferred to and vest in the different corporate entities which includes the respondent No. 1 Company which is engaged in distribution and retail supply of electricity as specified in Schedule to the transfer Scheme. On transfer and vesting, all assets, liabilities and proceedings in terms of the provisions of the Scheme, the transferee independent legal corporate entities became responsible for all functions, contracts, rights, debts, Schemes, bonds, agreements and other instruments to whatever nature relating to respective assets, liabilities and proceedings transferred to it and that had been subsisting and are in force and in fact, against or in favour of the transferee. The respondent No. 1 Company being a distinct and independent corporate legal entity, has become vested with powers and functions in exercise of which it is acting in so far as the consumer and intended consumers of electricity falling under its control. It is independent to take decisions pertaining to its functioning and is not subordinate to in any way under the control of any one else. For a very limited purpose of smooth implementation of the transfer Scheme and only for the limited purpose to coordinate inter-se affairs of the Board and the transferee companies, the Government had constituted a Coordination Committee which is popularly known as the Apex Committee. The said Committee is neither entrusted nor possessed any power or jurisdiction either under any legislation or any executive or administrative order in any way to direct any of the corporate Companies in the matters pertaining to running its Company taking decisions or actions in connection with its business. Under the circumstances, any decision of such Committee has no binding force upon the respondent No. 1 nor can it confer any right upon the petitioner against the respondent No. 1 Company and the respondent No. 1 Company is not required to implement the decision and release the power connection as claimed, more particularly, when the legal position is that unless outstanding dues are discharged, release of power connection can be legitimately and legally withheld.

17. The petitioner has filed detailed rejoinder to both the affidavits-in-reply filed on behalf of the respondent No. 1 Company. Based on this rejoinder affidavit, Mr. Pahwa, in rejoinder, has submitted that the BIFR under the Scheme provided for various measures/ concessions to be given by the Govt. of Gujarat including GEB in respect of dues of electricity. A perusal of the Scheme clearly demonstrates that the protection available to the Company, i.e. Navsari Cotton & Silk Mills Limited is valid upto March, 2014. This is evident from Clause 8 (3) of the Scheme which says that protection available to the sick Units under SICA is available to the Unit till March 2014 i.e. till the net-worth turns positive. In view of this Clause, no action can be taken by the respondent Electricity Company for recovery of its dues against the Company. There cannot be any claim by the respondent Company even against the petitioner for the similar reason since the respondent -Electricity Company has no legal right to recover against the Company which is before BIFR. It is not permissible for the respondent Company

to take any action against the petitioner and also cannot deny to give power connection to the petitioner on the ground that the electricity dues are not paid by the Company which is before BIFR.

18. Mr. Pahwa has further submitted that as per the draft projected case law statement which is produced at Annexure J to the Scheme, it is clear that BIFR has already made provision for payment of the deferred electricity dues which are upto the extent of Rs. 175 Lacs. These dues are payable upto the financial year 2013 - 2014. If the respondent Electricity Company has any grievance with regard to the provision as contained in the Scheme or any other issues related to the provision/payment thereof, the respondent Electricity Company has to approach the BIFR as required under the provisions of Section 19 of SICA. As a matter of fact, the State of Gujarat unsuccessfully objected before the BIFR on the various concessions including the concession with respect to the electricity dues. He has further submitted that the State of Gujarat had challenged all the concessions as recorded in paragraph 7 of the Scheme sanctioned on 12.06.2006 by the BIFR by filing Appeal No. 318 of 2016 before the Appellate Authority for Industrial & Financial Reconstruction. The challenge included the concessions to be given by the respondent - Electricity Company. The concessions to be given by the then GEB formed part of paragraph 7 of the order made by BIFR on 12.06.2006. Appeal No. 318 of 2006, however, came to be dismissed as not pressed, vide order dated 01.02.2007 of AAIFR.

19. Mr. Pahwa has further submitted that the State of Gujarat thereafter filed Special Civil Application No. 12213 of 2007 before this Court challenging the order made by AAIFR as also the order made by BIFR with regard to various concessions/reliefs granted by BIFR and more particularly, relief granted in relation to the electricity dues of the GEB. This Court has, however, not entertained the petition and gave liberty to the petitioner to file proceedings before the Delhi High Court. The State Government has thereafter filed petition before the Delhi High Court and the said petition came to be disposed of by Delhi High Court without interfering with the Scheme sanctioned by BIFR dated 12.06.2006. The Scheme thus has become final and binding on the parties.

20. From the above proceedings, Mr. Pahwa has submitted that the Scheme sanctioned by BIFR dated 12.06.2006 contains provision for settlement of dues of electricity. If the Electricity Company has any issues with respect to the provision made in the Scheme or payment thereof, it is open for the Electricity Company to approach the BIFR or to challenge the order before appropriate forum. The State of Gujarat objected to the Scheme with respect to the concessions including the concession in relation to dues of the electricity. However, the Scheme even then came to be sanctioned by the BIFR. The State of Gujarat challenged concessions and yet failed to get any order reversing the concessions granted by BIFR. The Scheme sanctioned by BIFR is binding on the electricity Company and all other concerned until reversed by the competent Court/forum. The Scheme even otherwise provides for protection against the sick

Company until the year 2014. The Scheme sanctioned by the BIFR in terms provide for giving power connection to the petitioner. Mr. Pahwa has, therefore, submitted that the Scheme is binding on the respondent Company and the respondent Company is obliged to give effect to the Scheme and grant power connection to the petitioner. He has, therefore, requested the Court to pass appropriate order directing the respondent Company to provide power connection to the petitioner forthwith.

21. Having heard learned Counsels for the parties and having considered their rival submissions in light of the statutory provisions contained in SICA as well as Electricity Act, 2003 and the Rules framed thereunder as well as in light of the directions issued by the BIFR and the orders passed by the Courts in different proceedings, the Court is of the view that the controversy between the parties center round only in respect of two issues, namely, the applicability of the provisions of SICA as well as the effect of the directions issued by BIFR and also the applicability of condition No. 2 (j) of Supply Code.

22. So far as the first issue is concerned, Navsari Cotton & Silk Mills Ltd., (NCML) a composite textile mill was incorporated in 1936. In view of erosion of net-worth, the Company made a reference to BIFR in 1989. BIFR at its meeting held on 3.5.1990 declared the Company as sick industrial Company and appointed IDBI as operating agency. In January, 1991, BIFR sanctioned a rehabilitation scheme with cost of the scheme estimated at Rs. 147 lacs. However, the scheme which was expected to be completed by the end of March, 1992 could not be completed even, after a lapse of four years. The Company's financial position deteriorated in the meanwhile and the Company stopped its operations in July, 1994. BIFR at its meeting held on October, 1994 observed that sanctioned rehabilitation scheme had failed and directed IDBI, OA to advertise for take over/ merger/ OTS due to promoters' inability to bring in additional fund to revive the unit. Advertisement was issued in December, 1994. However, as no viable proposal was received, BIFR at its meeting held on June 15, 1995 formed a prima facie opinion of winding up of the Company.

23. The workers of the Company meanwhile formed a workers cooperative society known as "The Morarji Desai Textile Labour Cooperative Industries Ltd.," and submitted a rehabilitation proposal at an estimated cost of Rs. 974 lacs for revival of the unit by way of take over. BIFR at its meeting held on March 15, 1996 directed the OA to examine the proposal submitted by Workers Industrial Cooperative (WIC). A joint meeting of institutions/Banks was convened on April 22, 1996 whereat all participating institutions/Banks agreed to support the proposal submitted by WIC. The rehabilitation scheme after some modifications was approved at BIFR's meeting held on October 14, 1996 and was sanctioned on December 5, 1996. The proposal cost of scheme was estimated at Rs. 974 lacs. WIC took over the management of the Company in January 1997 and restarted the operation in April, 1997.

24. As per the terms of the sanctioned scheme, the labour force was rationalized,

equity contribution was brought in by WIC, IDBI and Government of Gujarat, old scrap plant and machinery available in weaving and processing Section was sold and dues of workers were paid out of the funds collected by WIC. Subsequently, the Company submitted a revised draft rehabilitation scheme envisaging, inter alia, one time settlement of dues of several creditors out of the sale proceeds of land. The Company proposed to sell the entire land and shift the existing manufacturing operations to the same factory premises near to workers' chawl/ Sachin.

25. Para-7 of the Revised Sanctioned Scheme deals with reliefs and concessions. It prescribes the cut off date as 31.3.2006. Para-7(a) deals with financial institutions/Banks, whereas para 7(b) deals with Government of Gujarat. Sub-clause (3) of para 7(b) reads as under :-

"To accept the payment of the original consumption charges of electricity bill pertaining to the period before 1994 in 5 years in equal quarterly installments commencing after 6 months from the year of sanction of the scheme by the Hon"ble BIFR."

Sub Clause (5) of para 7(b) reads as under:-

"To grant deferment of electricity duty and sales tax for a period of 5 years and to accept the deferred amount already existing and future in equal quarterly installments in next 5 years, subsequent to the Company repurchasing shares allotted to GoG, without interest and to grant exemption from power cut."

Sub-clause (8) of para 7(b) reads as under :--

"GEB may release LT/HT Power connection/supply to Amardeep Association Navsari or any person to whom any land situated at Navsari revenue Survey Number 336/1 (336,336 Paiky, 336/2 & 336/3 Hissa No. 1) (C.S. No. 1714 Tika No. 36) and Vejalpore revenue survey No. 311 Paiky, 310/1, 310/2 310/5, 310/7. 307/ 1, 308/1, 301/A/2 and 301/B is sold."

Para-8 deals with other terms. Clause (3) of para-8 states that the protection available to sick units under SICA to be available to the Unit till March, 2014 i.e. till the networth terms positive.

Para-11 states that "the provisions of the scheme shall have effect notwithstanding anything inconsistent therewith contained in any other law (except the provisions of the Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling and Regulations) Act, 1976 for the time being in force or in the Memorandum and Articles of Association of the sick industrial Company or any other instrument having effect by virtue of any law other than the Sick Industrial Companies/Special Provisions) Act, 1985".

26. The above provisions contained in the revised sanctioned scheme make it abundantly clear that the BIFR has directed the respondent Company through State Government to grant power connection to the petitioner without insisting

for the payment of previous owners" dues. Even otherwise, such dues are not yet enforceable. The directions issued by the BIFR are binding on the respondent Company. Even if the respondent Company has any grievance against such directions, the appropriate remedy would be to challenge such directions before the appropriate forum. As a matter of fact, an attempt was made by the State Government to challenge such directions before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR). The challenge, inter alia, included the concession to be given by the respondent electricity Company. The Appeal No. 318 of 2006 preferred by the State Government came to be dismissed as not pressed vide order dated 1.2.2007 by AAIFR. However, liberty was reserved to the State Government to ventilate its grievance before the appropriate forum. The State Government, thereafter, filed Special Civil Application No. 12213 of 2007 before this Court challenging the order passed by AAIFR as well as the order passed by BIFR with regard to various concessions/relief granted by BIFR and more particularly the relief granted in relation to electricity dues of the Electricity Board. This Court has disposed of the said petition on 7.5.2007. This Court after considering the decision of the Apex Court in the case of Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, as well as Division Bench's judgment of this Court in the case of Textile Labour Union, Nadiad v. Union of India, 2007(1) GLII 617, held that this Court has no territorial jurisdiction to entertain the petition challenging the order passed by BIFR and AAIFR on the ground that the orders are passed at Delhi and, therefore, appropriate forum is Delhi High Court. This Court has further observed that it is open for the State Government to file appropriate proceedings before the Delhi High Court. The State Government, thereafter, filed petition before the Delhi High Court. The said petition also came to be disposed of by the Delhi High Court without interfering with the scheme sanctioned by the BIFR dated 12.6.2006. The scheme thus has become final and binding on the parties.

27. In view of the above proceedings initiated by the State Government before different forums and culminated against the State Government, it is not now open for the respondent electricity Company to raise this dispute once again in the present proceeding by contending that the electricity connection cannot be granted to the petitioner Company unless and until the dues of the previous owners are paid by the petitioner.

28. Even otherwise, it is an admitted position that the petitioner had purchased the surplus land of Navsari Cotton & Silk Mills Limited in pursuance of the rehabilitation Scheme framed by BIFR. As per the sanctioned Scheme, paragraph 7 (b) (5), the Government was directed to grant deferment of electricity duty for a period of 5 years to Morarji Desai Textile Labour Cooperative Industries Limited (existing consumer of the premises whose dues are pending) and to accept the deferred amount already existing and future in equal quarterly installments next 5 years and the Government of Gujarat was also directed to grant exemption from power cut. Thus, BIFR in the Scheme has considered about the pending dues of Morarji Desai Textile Labour Cooperative Industries Limited and

Government was directed not to recover or not to disconnect the power supply from the existing consumer. When Morarji Desai Textile Labour Cooperative Industries Limited is a going concern and BIFR has made provisions for the dues from existing consumer, the same cannot be recovered from the petitioner Company. It is also found that the BIFR in the Scheme has made provisions for payment of dues from Morarji Desai Textile Labour Cooperative Industries Limited as in a manner provided in paragraph 7(b)(3) and 7(b)(5). As per paragraph 7(b)(8) of the Scheme, the Gujarat Electricity Board was directed to give power connection to the petitioner and to any person whom the subject land was given. Thus, paragraph 7(b)(3), 7(b)(5) and 7(b)(8) if were read together under the Scheme, it was envisaged that the dues would be payable by Morarji Desai Textile Labour Cooperative Industries Limited. When direction is given by quasi-judicial authority, the word "may" used in Clause 7(b)(8) should be read as "shall" as observed by the Apex Court in the case of *State of Uttar Pradesh v. Jogendra Singh* (Supra).

29. It is also found on record that the new connection of the petitioner was denied on the ground that the electrical dues of the premises are pending in which new connection was sought and, therefore, as per the judgment of Division Bench in Letters Patent Appeal No. 693 of 2003, new connection was not granted. Condition No. 2 (j) of the Conditions of supply was not applicable to the case of the petitioner as per the submission made by the petitioner. The bone of contention of the petitioner that if Condition No. 2 (j) is perused, it can be applicable if the dues of the previous consumer are pending. In the present case, consumer namely, Navsari Cotton & Silk Mills Limited/ Morarji Desai Textile Labour Cooperative Industries Limited is a going concern and Board can recover the dues from the consumer. Therefore, condition No. 2 (j) is not applicable in the present case. It is also found from the record that as per the Scheme, the cut off date is 31.03.2006 and, therefore, the dues are payable by the consumer i.e. Morarji Desai Textile Labour Cooperative Industries Limited within five years with effect from 31.03.2006. The electricity dues prior to 1994 were not payable by the consumer i.e. Morarji Desai Textile Labour Cooperative Industries Limited as per the submission of the petitioner. When the dues are not payable by the consumer i.e. the previous consumer, it cannot, therefore, be said that any dues pertaining to the premises are pending. In view of this submission that no dues are pending from the consumer/previous consumer regarding the premises, the condition No. 2 (j) about re-connection for any premises where there are arrears of dues pending from premises is not applicable.

30. It is also worthwhile to note that the respondent Company earlier had issued notice upon Navsari Cotton & Silk Mills for recovery of the electricity dues. The Company filed Special Civil Application No. 4951 of 1999 before this Court and this Court has granted interim orders in favour of the Company. Under these circumstances, no recovery was made by the respondent against NCML. If no recovery were made against the NCML, the demand of dues against the petitioner which is the purchaser of the portion of the land owned by the NCML is

not sustainable.

31. In view of the above discussion, the Court hereby allows this petition by directing the respondent - Electricity Company to grant electricity connection to the petitioner as prayed for without insisting for the payment of the previous owners' dues. It is, however, open for the respondent -Electricity Company to recover the outstanding electricity dues from the previous owners in accordance with law and in accordance with the provisions contained in the revised sanctioned scheme. This petition is accordingly disposed off. Rule is made absolute without any order as to costs.