

(1991) 04 AP CK 0008

In the Andhra Pradesh High Court

Case No : Appeal against Order (C.M.A.) No's. 1545 of 1990 and 161, 214, 223 and 224 of 1991 and C.M.P. No's. 16555 of 1990 and 1702, 2224, 2247 and 2248 of 1991

Andhra Cement Co. Ltd.

APPELLANT

Vs

Andhra Pradesh State Electricity Board

RESPONDENT

Date of Decision : 04-04-1991

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 16, 16(2), 16(4), 17

Citation : (1992) 75 CompCas 454

Hon'ble Judges : M. Jagannadha Rao, J;J. Eshwara Prasad, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; R.C. Mishra, for the Respondent

Judgement

Jagannadha Rao, J.—These five civil miscellaneous applications are connected and can be disposed of together. Among them, C.M.A. Nos 1545 of 1990, 214 of 1991, 223 of 1991 and 224 of 1991 all arise out of interlocutory applications filed by the plaintiffs in O.S. No. 841 of 1990 in the court of the Fifth Additional Judge, City Civil Court, Hyderabad, whereas C.M.A. No. 161 of 1991 arises out of an interlocutory application filed in O.S. No. 2 of 1991 on the file of the Subordinate Judge's Court, Narasaraopet.

2. O.S. No. 841 of 1990 is a suit filed by the Andhra Cement Company Limited against the A.P. Electricity Board [hereinafter called "the Board"] and its officers for a declaration that the defendants are not entitled to take any coercive steps like disconnection of power to the plaintiff's factories at Nadikudi, Vijayawada and Vishakhapatnam, either under the Indian Electricity Act, 1910, or under the Electricity Supply Act, 1948, or under the conditions of supply, pending the settlement of claims between the plaintiff and the Board and in view of the provisions of the Sick Industrial Companies [Special Provisions] Act, 1985, and for issue of consequential permanent injunction restraining the Board from disconnecting the power supply to the plaintiff's factories at Nadikudi,

Vijayawada and Vishakhapatnam and also from taking any coercive steps for realisation of the amount due as per the notices until the claims between the plaintiff and the defendant are settled, and until prior permission of the Board for Industrial and Financial Reconstruction [hereinafter called "the BIFR"] is obtained u/s 22 of the Sick Industrial Companies [Special Provisions] Act, 1985 [hereinafter called "the SIC Act, 1985"]. The suit was filed in August, 1990. In I.A. No. 743 of 1990. The plaintiff claimed a temporary injunction against the Board and its officers for restraining them from adopting any coercive measures against the company including disconnection of power for non-payment of instalments falling due on August 30, 1990, as per its demand notices Nos. R/2/A6/2722/90, dated May 16, 1990, R2/A/2705/1990, dated May 16, 1990, REV/HT/D No. 881, dated May 23, 1990, and L.R. No. 4359, dated July 9, 1990, No. 5120, dated August 16, 1990, and No. 1241, dated July 23, 1990, and the bill dated July 26, 1990, in respect of Nadikudi Unit (DCW). The Fifth Additional Judge, City Civil Court, Hyderabad, granted an ad interim injunction on August 28, 1990. I.A. No. 812 of 1990, was filed for a temporary injunction in respect of consumption charges for the month of August, 1990, and the arrears of instalments falling due on September 15, 1990. I.A. No. 859 of 1990 was filed in respect of arrears of consumption charges as well as additional charges due on September 30, 1990, and subsequently as fixed by the demand notices. In I.A. No. 812 of 1990 and 859 of 1990 notices were ordered. Thereafter counters were filed. The learned Fifth Additional Judge, City Civil Court, Hyderabad, took up I.A. Nos. 743 of 1990, 812 of 1990 and 859 of 1990 together and passed final orders on November 14, 1990.

3. In the I.As., the court below framed three points for consideration :

1. Whether the petitioner-plaintiffs have shown a prima facie case and balance of convenience in their favour;
2. Whether the petitioners/plaintiffs would suffer irreparable loss if the relief prayed hereunder is not granted;
3. To what relief.

4. Under point No. 1, it held "For all the aforesaid reasons, the petitioner-company fails in all its fronts to establish prima facie case and balance of convenience" (para 37). On point No. 2, the court held "I am of the view that the plaintiff-company is not entitled for grant of a temporary injunction as prayed for" (para 38). Under point No. 3, the court dismissed all the three petitions filed by the plaintiff. Thereafter, the lower court referred to certain material relating to the case of the plaintiffs being before the BIFR and observed that, having regard to the present plight of the plaintiff which is under the process of rehabilitation, it felt it desirable to give some accommodation in the payment of dues. It held that the plaintiff-company shall pay arrears of consumption charges [balance instalments] and arrears of additional charges [balance instalments] in six equal monthly instalments commencing from on or before December 10, 1990. So far

as the current consumption charges for the months of July and August, 1990, are concerned, it granted ten equal monthly instalments commencing from December 10, 1990. The respondent-Board is to adjust the amount due for cement supplied towards arrears. Failure to pay any two instalments would entitle the Board to demand the amount due at a time. There would be no disconnection of power supply during the period of the aforesaid concession in the payment of dues.

5. Not satisfied with the instalments granted, the plaintiff preferred C.M.A. No. 1545 of 1990 in this court and the learned single judge of this court ordered notice before admission on December 5, 1990, and in C.M.P. No. 16555 of 1990 passed an interim order on December 5, 1990, and again modified the same on December 7, 1990, granting interim stay of disconnection of supply of power on condition that the arrears of additional charges and tariff charges due from the plaintiff are paid in ten equal monthly instalments commencing from January 10, 1991. Likewise, the first instalment of payment of consumption charges for the months of July and August, 1990, should commence from January 10, 1991. The Board preferred C.M.A. Nos. 214, 223 and 224 of 1991 against the abovesaid order in the three I.As., i.e., I.A. Nos. 743, 812 and 859 of 1990. That is how all the four C.M.As. have been taken up together.

6. O.S. No. 2 of 1991 out of which C.M.A. No. 161 of 1991 arises was filed by the company in the sub-court at Narasaraopet. The suit was filed for a permanent injunction restraining the Board from disconnecting power supply to the plaintiff factory at Dachepalli in Guntur District for non-payment of consumption charges for the month of December, 1990, as per their bill dated December 26, 1990, in view of the provisions of section 22 of the Sick Industrial Companies [Special Provisions] Act, 1985. The suit was filed in January, 1991. I.A. No. 15 of 1991 was filed by the plaintiff in the said suit for grant of ad interim injunction against the Board and its officers restraining them from disconnecting the power supply to the plaintiff's factory at Dachepalli in Guntur District for non-payment of their consumption bill for the month of December, 1990, dated December 26, 1990, and subsequent bill for further consumption charges. On January 17, 1991, the Additional subordinate Judge, Narasaraopet, observed that there was a prima facie case and also balance of convenience in favour of the plaintiff and that the relief claimed in the application would be defeated if notice was ordered and, therefore, he granted interim injunction directing that there should not be disconnection of power "till disposal of the suit", and it further directed the plaintiff to pay the consumption charges for December, 1990, in ten equal monthly instalments, the first instalment to start on March 17, 1991. He posted the matter to February 18, 1991, under Order 39, rule 3, Civil Procedure Code, C.M.A. No. 161 of 1991 has been filed by the Board against the above order dated January 17, 1991. C.M.A. No. 1545 of 1990 was filed by the company. We shall briefly refer to the allegations in the plaint filed in O.S. No. 841 of 1990, Fifth Additional Judge's Court, Hyderabad.

7. The plaintiff-company in O.S. No. 841 of 1990 manufacturers cement in its three factories, at Vijayawada, Vishakhapatnam and Nadikudi (Dachepalli). The plaintiff in the present suit O.S. No. 841 of 1990 seeks a relief [in para 9] in respect of Rs. 103.77 lakhs which is the subject-matter of O.S. No. 797 of 1989, Additional Sub-Court, Vijayawada, it is necessary to refer to the details of that suit also. Initially, the plaintiff claimed Rs. 2.38 crores odd towards amounts allegedly refundable, Rs. 23.81 lakhs for cement supplied to the Board under purchase orders dated September 27, 1989, October 27, 1989, October 27, 1989, and June 23, 1988. The plaintiff also contended that Rs. 66.11 lakhs bill for September, 1989, and Rs. 14 lakhs bill for October, 1989 for consumption charges and also Rs. 62 lakhs [previous outstanding consumption charges] all amounting to Rs. 1.42 crores cannot be collected by the Board. It is said that the defendants are also holding consumption deposit of Rs. 2.62 crores. The plaintiff filed O.S. No. 797 of 1989 in the Sub-Court, Vijayawada, on November 23, 1989, valuing the suit for purposes of jurisdiction at Rs. 1.37 crores and paid a court-fee of Rs. 1.39 lakhs. The plaintiff claimed a declaration that it is not liable to pay the bills dated October 18, 1989, October 27, 1989, and November 13, 1989, and sought for a consequential permanent injunction restraining the Board from disconnecting the supply. I.A. No. 5337 of 1989 was filed for a temporary injunction and the Second Additional Sub-Judge, Vijayawada, ordered notice on November 24, 1989. Against the said order directing notice, the plaintiff filed C.M.A. No. 1752 of 1989 on November 27, 1989. In the C.M.A. and in C.M.P. No. 17716 of 1989, the learned single judge issued notice. In the C.M.P., he granted a temporary injunction on November 27, 1989, without imposing conditions and later the C.M.A. was disposed of by the same learned judge on December 22, 1989, "setting aside" the impugned order of the lower court ordering notice and directing I.A. No. 5357 of 1989 to be disposed of in four weeks. No directions for deposit of any amounts were issued. Later, the direction to dispose of the I.A. in four weeks was deleted by the learned judge. The I.A. is said to be pending.

8. In the plaintiff in the present suit, O.S. No. 841 of 1990, filed in Guntur the plaintiff has referred elaborately to [i] the Vijayawada suit O.S. No. 797 of 1989, I.A. No. 5357 of 1989 and C.M.A. No. 1752 of 1989 and to the amount covered therein as Rs. 1.0377 crores; [ii] The plaintiff is claiming Rs. 34.35 lakhs towards supplies of cement; [iii] The plaintiff also referred to W.P. Nos. 16651 of 1987 and 16653 of 1987 filed by it against the Board, challenging the consumption deposit. The order of the Division Bench dated April 28, 1989, of this court in the said cases and batch dismissing the W.Ps. and the SLP Nos. 4793 and 4794 of 1990 and orders of the Supreme Court dated April 19, 1990, directing the Board to accept consumption deposit for two months in cash. In this court, the plaintiff seeks of Rs. 1.81 crores and stated that in view of certain orders of High Court in C.C. No. 310 of 1990 and C.A. No. 313 of 1990, dated June 15, 1990, adjustment was allowed partly and that still Rs. 42.23 lakhs is to be adjusted. [iv] It is stated that the trivector-meter at Nadikudi became defective, the disputed amount for October, 1988, to April, 1990, was jointly referred to the

arbitrator, the Chief Electrical Inspector of Government and it is said that he granted an order dated February 19, 1990, against disconnection for non-payment of the said disputed consumption charges. On this account, the plaintiff claimed that Rs. 74.40 lakhs was collected in excess and is liable to be refunded. [v] Again in W.P. No. 16947 of 1989, the plaintiff questioned the imposition of 18% interest [in addition to 24% additional charges for belated payment] and it is said that such imposition is stayed. For the back period, the plaintiff claims a refund of Rs. 75.41 lakhs. [vi] Towards the award of low interest at 3% on consumption deposit, the plaintiff claimed that it is to get Rs. 36.91 lakhs if another pending case in the Supreme Court is decided. Thus, on these counts [i] to (vi), it is claiming Rs. 3.67 crores. It is also stated in the plaint that the demand notices L.R. No. R2/A6/2722/90, dated May 16, 1990, for Rs. 1.41 crores, L.R. R2/A/2705/90, dated May 16, 1990, for Rs. 23.77 lakhs, L.R. No. REV/HT/D No. 881, dated May 23, 1990, for Rs. 37 lakhs, in all Rs. 2.02 crores cannot be collected. These amounts are the balance consumption charges payable from 1987 onwards in view of the Division Bench judgment in W.A. dated July 2, 1990, and the said amounts are payable in six monthly instalments from August 1, 1990. Again, notices dated July 9, 1990, August 16, 1990, and July 23, 1990, claiming additional charges of Rs. 10,22,37.92, 13.44 lakhs have been issued. The plaintiff claims that these amounts are also payable in its monthly instalments from August 31, 1990. It is said that the plaintiff requested - in respect of these two arrears items - to adjust them out of the excess consumption deposit available. Therefore, the first instalment is to be treated as paid. The defendants also issued notice for the instalment of Rs. 33.72 lakhs and instalment of additional charges of Rs. 43.99 lakhs as also July, 1990, consumption charges of Rs. 64.85 lakhs. While so, the plaintiff contending that it has become a sick industry, applied to the BIFR under the Sick Industrial Companies [Special Provisions] Act, 1985, and the case was registered as Case No. 33 of 1990 and a special director was appointed u/s 16[4] for preparing a report and hence section 22 of that Act applies and, therefore, coercive steps of disconnection, it is claimed, cannot be resorted to in view of section 22 of that Act. The plaintiff is also claiming Rs. 1.13 crores in the Vijayawada suit as refund. On these grounds O.S. No. 841 of 1990 is filed before the Fifth Additional Judge, City Civil Court, Hyderabad, valuing the suit at Rs. 1 lakh for purpose of jurisdiction and court-fee, and the relief, earlier mentioned, of declaration and a permanent injunction are claimed. We have already set out the reliefs claimed in the three I.As. and as to now the learned judges, while holding that there was no prima facie case of balance of convenience in favour of the plaintiff, still granted six monthly instalments for payment of the consumption charges [balance instalments] and arrears of additional charges (balance instalments), the first instalment to start from December 10, 1990, and how he also granted ten equal monthly instalments for the consumption charges for July and August, 1990, the instalments to commence from December 10, 1990. The electricity board filed the three C.M.As. Nos. 214, 223 and 224 of 1991 while the plaintiff filed C.M.A. No. 1545 of 1990. In C.M.P. No. 1655 of 1990, the learned single judge granted

an ex parte order on December 5, 1990, permitting 10 equal monthly instalments commencing from January 10, 1991, for the additional charges.

9. It will thus be noticed that even though the Fifth Additional Judge, City Civil Court, Hyderabad, held that no prima facie case was made out by the plaintiff in the I.As. in O.S. No. 841 of 1990 and that the balance of convenience was not in favour of the plaintiff and, therefore, no temporary injunction could be granted, he still granted instalments and granted an injunction and this court in C.M.Ps. further modified the orders granting ten instalments and postponing the date of commencement of the first instalment. On the other hand, the Additional Sub-Judge, Narasaraopet, in the I.A. in O.S. No. 2 of 1991, held that there was also a prima facie case and the balance of convenience was in favour of the plaintiff and he granted an ad interim temporary injunction "pending the suit" and posted the I.A. beyond 30 days.

10. In these appeals, counsel for the appellant, Sri. T. Ananta Babu, has contended that, in view of the object and purpose of the provisions of the Sick Industrial Companies [Special Provisions] Act, 1985, and in particular section 22 thereof, the electricity board cannot seek to disconnect the supply of power. It is said that the exercise of the power of disconnection falls within the prohibition contained in section 22[1]. Reliance is placed for this purpose on the recent judgment of the Supreme Court in *The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others*, . It is also contended that, to the extent of the amount in dispute before the Electrical Inspector u/s 26[4] of the Indian Electricity Act, 1910, there is a bar in section 24[2] of the said Act, and no action for disconnection of power can be taken u/s 24[1]. The electricity board is barred from supply power under the existing contract. It is contended that the plaintiff has approached the electricity board on February 20, 1991, for grant of instalments under condition 34 of the conditions of supply of power [after the suit] and the same was arbitrarily rejected by an order dated February 20, 1991. The power under condition 34 is said to be a power coupled with a duty and the same has not been exercised properly. It is also argued that the plaintiff is entitled to adjust the security deposit of one month of Rs. 1.81 crores which is lying with the electricity board, in view of the case SLP Nos. 4793 and 4794 of 1990 pending in the Supreme Court and the orders dated April 19, 1990, therein. The plaintiff also claims adjustment for cement supplied amounting to Rs. 34.35 lakhs outstanding on the date of suit and also in respect of further supplies for about Rs. 25 lakhs as on date. It is claimed that penal interest which is stayed in W.P. No. 7939 of 1990 is also included in these demands.

11. On the other hand, it is contended by the learned Advocate-General, Sri V. R. Reddi, and by learned Standing Counsel, Sri C. V. Nagarjuna Reddi, that section 22[1] of the Sick Industrial Companies [Special Provisions] Act, 1985, is not attracted. The electricity board has not proposed to take any action or proceeding against the properties of the company and "disconnection" of power amounts to a refusal to supply power in future and that the company cannot

insist on increasing its liabilities to the electricity board on account of further supplies while the company has not paid the arrears due. It is also pointed out that, to the extent of the amount in dispute before the Electrical Inspector, the prohibition contained in section 26[2] ceases to apply inasmuch as, under the proviso to section 26[2], the electricity board has made a request to the company, on April 2, 1990, for a deposit with the Electrical Inspector in respect of the amount in dispute and for the future demands as they accrue and the company has failed to comply with such a request and has, in fact, resorted to filing Writ Petition No. 4981 of 1990 and also a spate of suits in respect of every future monthly demand on untenable grounds, viz., O.S. No. 841 of 1990, Fifth Additional Court, Hyderabad, in respect of arrears outstanding plus both for July and August, 1990, nearly Rs. 4.02 crores; O.S. No. 1016 of 1990, Second Additional Judge, Hyderabad, in respect of September, 1990, demand of Rs. 51 lakhs; O.S. No. 557 of 1990 Sub-Court, Vijayawada, in respect of October, 1990, dues of Rs. 60 lakhs; O.S. No. 2 of 1991, Sub-Court, Narasaraopet, in respect of December, 1990, dues of Rs. 1.02 crores; and O.S. No. 30 of 1991, Additional Sub-Court, Narasaraopet, in respect of January, 1991, dues for Rs. 85 lakhs. So far as the application under condition No. 34 is concerned, it is said that it is rejected by was of an elaborate and reasoned order and the refusal to grant instalments is correct and cannot be agitated when the company has obtained stay against imposition of penal interest under the same condition and has also obtained various orders from courts before submitting the application on February 20, 1991. In regard to adjustment for one month's security deposit allegedly of Rs. 1.81 crores, it is argued for the Board that the periodical review by the Board has revealed that the one month's security deposit even after review is adjustable only up to Rs. 1.41 crores and not up to Rs. 1.81 crores, and that the amount has already been adjusted pursuant to directions in C.C. No. 310 of 1990 and C.A. No. 313 of 1990 dated June 15, 1990, and there can be no further adjustment for Rs. 42.43 lakhs as claimed. In other words, according to the Electricity Board, the amount of one month security deposit is not Rs. 1.81 crores but only Rs. 1.41 crores and, on that basis, there is no balance of Rs. 42.23 lakhs remaining to be adjusted. Coming to cement supplies, the electricity board had agreed for adjustment for cement supplies of Rs. 34.35 lakhs. In the later contracts for supply of cement by the company to the electricity board, the relevant clause in the contract did not permit a claim for adjustment towards electricity dues but cash, if not paid, had to be separately claimed or sued. Lastly, it is claimed that, as a fact, no penal interest of the type stayed in W.P. No. 7939 of 1990, has been included in any of the subsequent bills.

12. On the basis of the above contentions, the following points arise for consideration :

(1) Whether "disconnection" of supply of power by the electricity board and consequent refusal to make further supplies of electricity would come within the prohibition u/s 22[1] of the Sick Industrial Companies [Special Provisions] Act, 1985 ?

(2) Whether, in respect of the particular amount in dispute before the Chief Electrical Inspector u/s 26[6] of the Indian Electricity Act, 1990, the prohibition contained in section 24[2] against disconnection applies to the facts of the case and whether the prohibition has ceased to apply under the proviso to section 24[2] in view of the request in writing made by the electricity board to pay the amount in dispute and future demands and the context of the attitude of the company in not paying the same and in resorting to a spate of suits ?

(3) Whether the order of the electricity board dated February 20, 1991, passed pending the suit, refusing to grant instalments under condition 34 of the conditions of supply is arbitrary ?

(4) Whether the plaintiff is entitled to set off Rs. 42.43 lakhs as stated in the plaint towards balance of excess security deposit of one month or whether the one month deposit works out only to Rs. 1.41 crores and not Rs. 1.81 crores and even Rs. 42.43 lakhs do not remain to be adjusted ?

(5) Whether the plaintiff is entitled to set off of any amounts over and above Rs. 34.35 lakhs [as conceded for the Board in the court below] towards supply of cement to the electricity board ?

(6) Whether any penal interest is covered by the demands impugned in these petitions and is not recoverable in view of stay orders in respect of past penal charges as granted in W.P. No. 7934 of 1990 ?

13. Learned counsel for the company, Sri T. Ananta Babu, submitted that though these points arise in the suit, this court could, in these C.M.As., decide these questions without any reservation and the plaintiff is not raising any objection that these are matters to be decided only in the suit and not in interlocutory proceedings. The said statement is hereby recorded.

14. Point No. 1 : This is the main point that is argued for the company. It is said that "disconnection" of power is one of the modes of recovery of arrears due to the electricity board and that it squarely falls within the prohibition contained in section 22[1] of the Sick Industrial Companies (Special Provisions) Act, 1985.

15. It is not in dispute that the company has filed Form A before the BIFR as required u/s 15 of the Sick Industrial Companies [Special Provisions] Act, 1985; the inquiry was commenced and as case was registered as case No. 33 of 1990 and the BIFR appointed a special director in the board of directors of the company u/s 16[4] of that Act. The BIFR also appointed the Industrial Development Bank of India as the "operating agency" for preparation of a report for suggesting various measures regarding revival/rehabilitation of the unit under the Sick Industrial Companies [Special Provisions] Act, 1985. The question is whether the plaintiff can take advantage of section 22[1] of the Act. Section 22[1] read as follows :

"22. Suspension of legal proceedings, contracts, etc. - (1) Where in respect of an industrial company, an inquiry u/s 16 is pending or any scheme referred to u/s

17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956, or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

16. It is contended for the plaintiff by Sri T. Ananta Babu that the above provision must be considered in the light of the Preamble and Statement of Objects and Reasons and other provisions in section 3[1](b), (n), (o), sections 4, 16(2), 17(2), (3), 18[2](e)(f) and sections 19, 20 to say that the purpose of the Sick Industrial Companies [Special Provisions] Act, 1985, is to see that the sick industry is kept running and is not closed. Reference is also made to sections 18, 26 and 49 and clause IV of the Second Schedule as well as to conditions 26.8, 32.3, 33 and 34 of the conditions of supply to say that the board is bound to supply power under the contract, that the power to disconnect supply is a coercive method of recovery of arrears and cannot be resorted to in the face of section 22[1] of the Sick Industrial Companies [Special Provisions] Act, 1985. It is said that "colloquial words of a statute have not the fixed and artificial content of scientific symbols, they have a penumbra, a dim fringe, a connotation, for they express an attitude or will into which our duty is to penetrate and which we must enforce when we ascertain it, regardless of any imprecision in its expression (G. P. Singh's Principal of Statutory Interpretation, fourth edition 1988, quotation from Learned Hand J.)". Reliance is also placed on the observation of the Supreme Court in *Navnit R. Kamani v. R. R. Kamani* [1989] 66 Comp Cas 132, to say that the Sick Industrial Companies (Special Provisions) Act, 1985, is a piece of benevolent legislation meant to provide preventive, ameliorative and remedial measures and should be construed liberally to achieve those purpose. Reliance is also placed on *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama*, AIR 1990 SC 981, to say that the court must give effect to a beneficent legislation.

17. It is true that the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, are a piece of benevolent legislation and are to be construed by courts to see that the purposes of the said Act are achieved and are not defeated. But, in this context, two other principles are also to be borne in mind. Firstly, when we come to section 22[1] of the Act, the provisions thereof impose certain restrictions on rights of third parties in respect of institution or continuation of legal proceedings such as winding up, execution, distress or the like against the properties of the industrial company or by way of appointment of a receiver. Therefore, the purposes of the Act have also to be harmonised with the legal rights of others and the restrictions imposed on such others have to be

limited to the extent intended by the Legislature and cannot be extended further. Secondly, the jurisdiction of courts or other bodies or authorities cannot be unduly curtailed beyond what the Legislature has intended. We have, therefore, to give effect to the benevolent purposes of the Act and, at the same time, see to it that the legal rights of third parties against the company and the jurisdiction of the courts or other bodies to take action against the company at the instance of third parties are curtailed only to the extent intended by the Legislature and not beyond what is actually intended. The principle that a liberal construction must flow from the language used does not mean the raising of any presumption that protection of the widest amplitude must be deemed to have been conferred upon those for whose benefit the legislation may have been enacted *Mangilal Vs. Suganchand Rathi*, . It is also clearly laid down by the Supreme Court in *Yudhishter Vs. Ashok Kumar*, , that the rule of beneficent legislation has to be read reasonably and justly and without interfering with the right to hold property or other rights of other persons which may expose it to the vice of unconstitutionality.

18. Bearing these principles of interpretation in mind, we shall interpret the scope section 22[1] of the Sick Industrial Companies [Special Provisions] Act, 1985. It deals with "suspension of legal proceedings, contracts, etc." It states that if, in respect of an industrial company, certain conditions stated by it are satisfied, then, notwithstanding the provisions of the Companies Act, 1956, or any other law or the memorandum and articles of associates of the industrial company or any other instrument having effect under the said Act or other law "no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, of the Appellate Authority."

19. The question is to what extent the Legislature has given protection to the company and to what extent it has curtailed the rights of third parties or restricted the jurisdiction or powers of courts or other bodies or authorities.

20. A careful reading of the provisions of sub-section [1] of section 22 reveals that certain "proceedings for the winding up" and again certain "proceedings for execution, distress or the like" which are taken against any of the properties of the industrial company or "proceedings for appointment of a receiver" are the three types of proceedings specified. These proceedings do not lie nor can they be proceeded with. Here, we are not concerned with a winding up proceeding or one for appointment of a receiver. We are concerned with the proposed action of the electricity board for "disconnection" of future supply of electricity.

21. If the electricity board had resorted to a suit for recovery or execution of a decree or action by distress or the like for recovery of arrears due to it, against the properties of the company, it could be said that section 22[1] is attracted. Non-supply of further goods under a contract cannot, in our view, be equated

with the kind of proceeding contemplated by section 22[1]. Further, the words "against the properties" of the company clearly imply that the action must be against the property of the company. Non-supply of goods in future cannot amount to action against the property of the company.

22. It is argued for the company that the words "legal proceedings" used in the heading to section 22 cannot be given much importance and that read with the word "proceeding" used in the body of the section, it would include "disconnection" of electrical supply by the electricity board. On the other hand, the learned Advocate-General has stressed that the body of the section uses the words "proceedings" and the words "lie or be proceeded with" and that the proceedings prohibited are necessarily against the properties of the company. Both sides have placed reliance on several dictionaries as to the meaning of the words "legal proceedings" and "proceedings". We do not think it necessary to refer to those dictionaries. On a plain reading of section 22, we are of the view stated above, namely, that the section contemplates that no proceedings either for winding up or for execution, distress or the like against any of the properties of the company or for appointment of a receiver in respect thereof shall "lie or be proceeded with" and if the electricity board, by itself, refuses to supply its product, namely, electricity in future, it cannot be brought within the abovesaid prohibition.

23. The words "the like" in section 22[1] cannot also help the company. The said words only mean "similar" and not the "same". Stroud's Judicial Dictionary [fifth edition] says that the word "the like" are not equivalent to "the same". "Like" may not import identity as definitely as the use of the word "same" would have done. But, at least, it connotes a resemblance in its main features (Venkataramaiya's Law Lexicon, second edition quoting words and phrases, volume III, page 262). In Ramanatha Aiyar's Law Lexicon [1987], it is said that "like" means "equal to quantity, quality, or degree; exactly corresponding; so that "in like manner" means "with same force or effect". Webster's Dictionary is quoted as follows : "While the context of the term determines its significance, the term is generally defined to mean analogous, resembling; having the same, or nearly the same, appearance, qualities, or characteristics, resembling, similar to, equal in quantity, quality, or degree; exactly corresponding".

24. While it is true that the words "the like" do not mean "the same", can it be said that non-supply of electricity in future is an action similar to a proceeding for winding up, execution or distress against the properties of the company or for appointment of a receiver ? In our opinion, it is not. Take the case of supply of some other essential goods like steel by a steel plant under a contract. If the steel plant decides - in the context of large arrears by the purchasing company - not to make further supplies of steel in future, it cannot, in our opinion, be said that future non-supply of good under the contract is similar to a proceeding for winding up, execution or distress against the properties of the company or to appointment of a receiver.

25. The decision of the Supreme Court in *The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others*, on appeal from the decision of the Bombay High Court in *Shree Vallabh Glass Works Ltd. Vs. State of Maharashtra and others*, strongly relied upon for the company, is clearly distinguishable. There the Gram Panchayat, Salwad, initiated coercive proceedings u/s 129 of the Bombay Village Panchayats Act, 1958, for recovery of Rs. 9.47 lakhs odd towards property tax and costs of an appeal due from the company. If the company did not pay the amounts, the Gram Panchayat was entitled to resort to the provisions of sub-section [7] and sub-section [8] of section 129 of the Bombay Gram Panchayats Act, 1958. In that context, the Supreme Court observe [see page 173] that it may be against the principles of equity if the creditors are not allowed to recover their dues from the company, but such creditors may approach the Board for permission to proceed against the company. In our view, the above observations made in the context of recovery of property tax and other dues by coercive processes of recovery against the properties of the company cannot be applied to a case of non-supply of electricity in the future by the electricity board.

26. It has also been alternatively argued by the learned Advocate-General that the words "lie or be proceeded with" would indicate that the proceedings are to be taken before some other body or authority or court and that action by the third party all by itself so stop future supply of goods may not come within the meaning of the words "proceedings" which are pending before any court, body or authority. We do not, however, think it necessary to express any final opinion on this alternative submission that proceedings prohibited must necessarily be proceedings which are taken before some other body or authority or court.

27. A learned single judge of this court, Syed Shah Mohd. Quadri J. has held in *Texmaco Ltd. [Cement Division] v. A.P. State Electricity Board* [W.P. No. 12059/90 - 22-8-90] that section 22 "is not applicable to a case where a facility is threatened to be disconnected for non-payment of charges for the service". The learned single judge observed :

"No action is being taken for the recovery of those arrears by initiating winding-up proceedings or proceedings for execution, distress and the like or by initiating proceedings for appointment of a receiver. Only the supply of electricity is threatened to be disconnected for non-payment of arrears" and "section 22 has no application". We respectfully agree with the said view of Quadri J.

Now, the electricity board is supplying electricity to the company under a contract entered into therefor. Supply of electricity is like supply of any other goods essential for the sustenance or existence of the company. The supply is no doubt under the terms and conditions of a contract. The electricity board can, if past supply of electricity has not been paid for, decide to stop further supply electricity to minimise its future losses. Non-supply of electricity has the objective of preventing the recipient company from incurring further liability when it, as a sick industry, is not able to pay for its existing liabilities. One of the

purposes of stoppage of further supplies is to see that the existing liability of the consumer to the electricity board is not further increased. In other words, "disconnection" of power is the result of a decision not to make "further supplies" which may increase the liability of the recipient of the goods. Therefore, the contention that non-supply is only a method of recovery of arrears is not correct. It may have the said effect indirectly or simultaneously.

For all the abovesaid reasons, we hold that threat of disconnection or disconnection of supply of power by the electricity board and consequent refusal to make further supplies of electricity are not hit by the prohibition contained in section 22[1] of the Sick Industrial Companies [Special Provisions] Act, 1985. We hold point No. 1 accordingly against the company and in favour of the electricity board.

Point No. 2. - Accordingly to the company, this court defective meter covers Rs. 74.40 lakhs [as per the amended claim from October, 1988, to April, 1990, for 19 months]. But according to the electricity board, u/s 24 of the Electricity Act, 1910, the disputes cannot exceed six months backwards from the date of testing of the meter, i.e., October, 1989, and it will be a mere Rs. 24 lakhs. Be that as it may, in view of the default of the company pursuant to notice under the proviso to section 24[2], the main contention of the company itself, as shown below, is liable to be rejected.

The company, in its letter dated September 14, 1989, complained that the meter was observed to show excess consumption and requested the electricity board to test the meter. The company states that accordingly, the meter was tested on September 28, 1989, and it was found that the percentage of error was +3.72% as against the permissible error of +3% mentioned in the Electricity Rules. The case of the company was that due to the increase in the permissible error from October 1, 1988 [the date on which the meter is tested on complaint], the amount in dispute is liable to be refunded. The Superintending Engineer, in his letter dated January 22, 1990, addressed to the Arbitrator [the Chief Electrical Inspector to Government, Hyderabad], that the said trivector meter was tested again on November 9, 1989, that the percentage error is well within limits and that the company filed W.P. No. 16621 of 1989 and filed an additional affidavit for appointment of a competent Electrical Inspector, that the company, in its letter dated January 16, 1990, has offered willingness for reference of the matter to the Chief Electrical Inspector to Government u/s 26[6] of the Indian Electricity Act, 1910, and that the said Inspector should decide the question by way of arbitration. Thereupon, the said Inspector passed orders on February 19, 1990, under sections 26[6] and 24(2) of the Act that he had asked the Board on January 31, 1990, to intimate a convenient date in consultation with the consumer, for testing the meter, that in the meanwhile, the company had submitted an application on February 16, 1990, complaining that, when the dispute was still pending, the Board had issued seven days' notice on February 14, 1990, threatening disconnection for non-payment of Rs. 31 lakhs towards the

consumption bill for January, 1990. He, therefore, directed the Board not to disconnect the power supply for non-payment of consumption charges "in dispute". By letter dated March 31, 1990, the company wrote to the Inspector saying that the earlier statement included dispute up to December, 1989, and now they are disputing the excess up to March, 1990. The Inspector then stated that, u/s 24[2], he was directing the Board not to disconnect the power supply for non-payment of consumption charges "in dispute", until further orders. In his further letter dated June 12, 1990, the Inspector informed the company that the meter was tested on April 23, 1990, in the presence of the parties, that the relevant data is being analysed and asked the company to send their log book from 10 of 1988 to 4 of 1990. On October 19, 1990, the Chief Inspector issued a notice under rule 9 stating that the meter was found to be defective and that the available information was insufficient and that further inquiry is necessary and asked the parties to be present on October 29, 1990. There has been no progress thereafter.

When the Board threatened to disconnect supply of electricity for non-payment of consumption charges, pending proceedings before the Inspector, the company filed a petition before the Chief Inspector and the latter passed another order on December 10, 1990, directing the board not to disconnect power subject to certain conditions. The company deposited a sum of Rs. 7 lakhs odd and furnished a bank guarantee to the Inspector in sum of Rs. 27.50 lakhs. Thereafter, the Board issued statutory notices on March 12, 1990, and March 15, 1990, and again on April 2, 1990, stating that the furnishing of the bank guarantee does not satisfy the requirements of the proviso to section 24[1] (vide paras 6, 7 of the company affidavit dated April 9, 1990 in W.P. No. 4981 of 1990). Thereupon, the company filed W.P. No. 4981 of 1990 in April, 1990, referring the statutory notice dated April 2, 1990, and sought stay of deposit of consumption charges for January, 1990, and February, 1990, in cash. The writ petition was disposed of at the stage of admission on April 10, 1990, directing the company to deposit Rs. 27.35 lakhs and the petitioner filed W.P.M.Ps. Nos. 6929 of 1990 and 6930 of 1990 for modification for paying the same in instalments. The High Court then passed orders on April 23, 1990 [after hearing counsel for the Board], and directing the company to pay Rs. 7.35 lakhs as the first instalment before the first week of May, 1990, and the second instalment of Rs. 10 lakhs by a demand draft on or before the end on May, 1990, and the third instalment of Rs. 10 lakhs on or before June 15, 1990. It is not denied before us by company's counsel that only the first instalment dated May 1, 1990, was paid and that the second instalment payable before May 31, 1990, and the third instalment payable by June 15, 1990, were not paid.

It is on these facts that we have to consider the question arising under the proviso to section 24[2] and section 26[6] of the Indian Electricity Act, 1910. It is necessary to refer to these provisions. Section 26 of the Act deals with meters and the errors in their readings and provides for reference to the Electrical Inspector and the "Inspector shall estimate the amount of energy supplied to the

consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; . . ."

28. Section 24 deals with "discontinuance of supply to consumer neglecting to pay charge". Sub-section [2] of section 24 and its proviso, read as follows :

"24. [2] Where any difference or dispute which by or under the Act is required to be determined by an Electrical Inspector, have been referred to the Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision :

Provided that the prohibition contained in this sub-section shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request."

29. It will be noticed that once the dispute is referred to the Inspector u/s 24 in respect of defects in the meter, the Board cannot exercise its power to disconnect the supply until the Inspector has given a decision as to defects in the meter. The proviso to section 24[2], however, lifts the ban and states that the prohibition against disconnection does not apply if [i] the Board has made a request in writing to the consumer for a deposit with the Inspector in respect either of the amount in dispute or if the Board has made a request for deposit of the further electricity charges as they accrue, and [ii] the consumer has failed to comply with such a request.

30. In the present case, it is admitted as stated above, that the Board has issued the statutory notice under the proviso to section 24[2] more than once for deposit of the disputed consumption charges with the Inspector. Instead of doing so the company filed a writ petition and obtained an order for payment of Rs. 27.50 lakhs in instalments and paid one instalment of Rs. 7.35 lakhs before the first week of May, 1990, and committed default of the second and the third instalments of Rs. 10 lakhs each, which were to be respectively paid before the end of May, 1990, and before June 15, 1990. It is, therefore, clear that the proviso to section 24[2] came into operation the moment the Board issued the statutory notices thereunder and the company failed to deposit the sums in dispute. Therefore, the amount in dispute due to alleged error in the meter should have been paid and the Board is entitled to disconnect the power supply for non-fulfilment of the condition of cash deposit by the company as per the proviso to section 24[2] of the Indian Electricity Act, 1910. Point No. 2, relating to the disputed amount covered by arbitration, is decided accordingly against the company and in favour of the Board.

31. Point No. 3. - The contention under this point is that the electricity board's rejection on February 20, 1991, of the request of the company to permit

payment of dues in instalments under condition 34 of the conditions of supply is arbitrary.

32. This point, in fact, does not arise in the suit nor did it arise in the I.As. The suit O.S. No. 841 of 1990 and the I.A. No. 743 of 1990 were filed in the Court of the First Additional Judge, City Civil Court, Hyderabad, in August, 1990. The I.A. was disposed of on November 14, 1990. The suit O.S. No. 2 of 1991 and I.A. No. 15 of 1991 were filed in the Sub-Court, Narasaraopet, in January, 1991. This I.A. was disposed of on January 17, 1991. It is only, thereafter, that the company filed an application before the Board on February 20, 1991, for grant of instalments. The contention is that the Board rejected the application on the same day and the power to grant instalments is a power coupled with a duty and cannot be exercised arbitrarily. This point is raised for the first time in appeal and without any pleadings, and need not be considered in this appeal. But, inasmuch as it has been raised, we shall deal with the same.

33. Condition 34 of the conditions of supply issued by the Board in the exercise of its powers u/s 49 of the Electricity (Supply) Act, 1948, reads thus :

"34. [a] Payment of dues of the Board in instalments. - The Board may permit a consumer when he so requests, to pay charges for electricity supplied, consumption deposit or any other charges in instalments provided that, where such request is granted, the consumer shall, in addition to any additional charges leviable due to belated payment as per the clause 32.2 hereof under the other terms and conditions of supply, pay interest charges at 18% per annum, on the amount outstanding out of the charges allowed to be paid in instalments."

34. In the present case, the company applied by a letter dated February 20, 1991, stating that the company has been declared a sick unit by the BIFR by order 33 of 1990 dated July 23, 1990, that, in view of the irregular supplies of coal from WCL and SCCL, due to labour unrest, massive power cuts, poor realisation of cement and other natural calamities - such as cyclones/riots, etc., the company has been facing financial difficulties in payment of the outstanding dues in a lump sum and that hence they have been asking for payment in instalments and were paying instalments promptly.

35. The company offered a proposal stating that all outstanding dues should be allowed to be cleared by "supply of cement" to the Board to an extent at least of 10,000 tonnes per month, if full rakes are made available by the Railways. The second proposal is that the company will be in a position to pay an amount of Rs. 25 lakhs per month towards outstanding dues, over and above the cost of cement supplies. The third proposal is that the "future" consumption charges will be paid in six monthly equal instalments - each instalment, being paid by the end of every month.

36. The Board replied, on the same day, i.e., February 20, 1991, stating that, firstly, the Board is unable to accept supplies of cement in lieu of electricity dues, since cement of that magnitude is not required by the Board and that, in fact,

the Board's requirement of cement is already arranged for separately. The Board then stated that instalments of Rs. 25 lakhs can be considered only for arrears but not for current consumption charges. So far as current consumption charges are concerned, they have to be paid regularly as they are being used for production of cement. They stated that the arrears as on date amounted to Rs. 8.54 crores and that the Board can consider payment in instalments only if the company is prepared to furnish a bank guarantee assuring the due and prompt payment of all these arrears. It is stated that as the company has not indicated its willingness to provide bank guarantee during the oral hearing, the Board is unable to accept the proposals of the company.

37. It is this order of the Board that is questioned as being arbitrary. It will be noticed that, under condition 34, whenever instalments for existing dues are granted, the consumer will have to pay [a] additional charges under condition 32.2 for belated payment, and [b] also interest at 18% per annum on the amount outstanding.

38. Now, apart from there being no undertaking to pay additional charges and further interest at 18% the company has already gone to court contending that additional charges and interest at 18% cannot both be collected by the Board and filed W.P. No. 1697 of 1989 and in W.P.M.P. No. 22488 of 1989 an order was passed by a learned single judge on December 6, 1989, directing that the Board will not levy or collect additional charges and interest on the consumption charges for the bill for September, October, 1989, "and future bills", pending writ petition.

39. From the above facts, it is clear that the company is not allowing the Board to exercise its discretion under condition No. 34 one way or the other but wants that the Board should grant instalments thereunder. It can, therefore, be argued for the Board legitimately that the company cannot attack condition No. 34 and at the same time try to fall back upon the same. Nor can the company seek to have the benefit of the court's interlocutory orders to some extent and complain of arbitrariness on the part of the Board.

40. The company has already obtained an order for six instalments from this court in the judgment of the Division Bench in W.A. No. 1427 of 1989, etc., dated April 2, 1990. The company filed a SLP and, by an order dated July 2, 1990, the Supreme Court postponed the date of commencement of the instalments by one month.

41. In spite of the above orders, the company is still in arrears according to the Board, in a sum of Rs. 8.54 crores, after taking into account the stay in regard to interest granted in W.P.M.P. No. 22488 of 1989 in W.P. No. 16947 of 1989 dated December 6, 1989, referred to above. By the time of submission of the application on February 20, 1991, for instalments, the company has filed a spate of suits in respect of monthly bills right from 1989 - with small gaps - some at Vijayawada, some at Guntur and Narasaraopet and some at Hyderabad and

obtained various orders of unconditional stay or interim orders as to instalments. The present appeals before us arise out of two such suits. These are O.S. No. 797 of 1989, Sub-Court, Vijayawada, O.S. No. 557 of 1990, Sub-Court, Vijayawada, O.S. 557 of 1990, Sub-Court, Vijayawada, O.S. 1016 of 1990, IInd Additional Judge, City Civil Court Hyderabad, O.S. No. 2 of 1991, Sub-Court, Narasaraopet, O.S. No. 30 of 1991, Additional Sub-Court, Narasaraopet, O.S. No. 11 of 1991, Additional Sub-Court, Narasaraopet and C.M.A. No. 1752 of 1989 and C.R.P. No. 2133 of 1990. Thus, it will be seen that the company has filed a petition under condition No. 34 before the Board and has also, at the same time, filed suits or writ petitions covering part of the subject-matter of the said petition. In fact O.S. No. 11 of 1991 is a peculiar suit filed in Sub-Court, Narasaraopet, for stay and for supply of power notwithstanding the default of the very second instalment payable according to the orders of the Fifth Additional Judge, City Civil Court, Hyderabad in O.S. No. 841 of 1990. In other words, after obtaining an order for payment in instalments from a court at Hyderabad, the company has chosen to commit default of the very second instalment and filed another suit at Narasaraopet in Guntur District to ward off the effect of the said default.

42. In the above background, we do not find anything unreasonable or arbitrary on the part of the Board in rejecting the application of the company filed under condition No. 34. In the light of the various orders the company has obtained from this court in W.As., W.Ps., C.M.As. and C.R.Ps. or in the various suits referred to above, the company cannot commit default even of these orders of instalments granted by the courts and again move the Board independently at a later stage for instalments and still complain. In the circumstances, the Board was justified in saying that no instalments can be granted for current consumption charges and that, so far as arrears are concerned, the company must furnish bank guarantee.

43. Surely, the company cannot say, "you go on supplying electricity in future in spite of our arrears of Rs. 8 crores odd. We shall produce cement, and you take all that cement - whatever may be your need - and adjust the same". Nor can they say that they will pay only Rs. 25 lakhs per month in cash towards the arrears and that the rest could be paid in instalments. The company, as already noticed, has obtained stay from the High Court in respect of levy of interest by the Board. We, therefore, hold that the rejection of the company's letter dated February 20, 1991, cannot be treated as arbitrary. Point No. 3 is decided accordingly.

44. Point No. 4. - The company filed W.P. No. 16651 of 1987 and W.P. No. 16653 of 1987, as stated in the plaint in O.S. No. 841 of 1990 that the demand by the Board for consumption deposit equivalent to three months average consumption charges of 1989-90 is bad. A Division Bench of this court dismissed the writ petitions and the company filed S.L.Ps. Nos. 4793, 4794 of 1990. The Supreme Court passed an interim order on April 19, 1990, stating that the Board accepts

consumption deposit in cash for two months rather than three. Under the terms and conditions of supply, it is said, the Board is bound to review the position each year, in April, as regards the consumption deposit. The company claims refund of Rs. 1.81 crores under this head but, according to the Board, the difference come only to Rs. 1.41 crores being the amount arrived at on review, and not Rs. 1.81 crores. This, in our view, is a matter to be decided in the suit.

45. In the meantime, the company obtained certain orders in Contempt Case No. 310 of 1990 an Contempt Application No. 313 of 1990 dated June 15, 1990, seeking adjustment of arrears and it is stated in the plaint in O.S. No. 841 of 1990 that such adjustment was allowed. On the basis that the adjustable amount is Rs. 1.81 crores, the company contends that still Rs. 42.23 lakhs is to be adjusted. But, according to the Board, the adjustable amount is Rs. 1.41 crores and not Rs. 1.81 crores and, therefore, there is no scope for further adjustment of Rs. 42.23 lakhs. Now, the security deposit amount is liable to review by the Board every year in April and the Board stated that, on such view, the one month's figure comes only to Rs. 1.41 crores and not Rs. 1.81 crores as contended by the company. If it is Rs. 1.41 crores only, the adjustment towards one month's consumption charges - being the difference between the deposit for three months as required by the contract and two months, as per orders in the S.L.Ps. - there will be no further amount to be adjusted. Neither in the plaint, nor in the I.A., nor before us, any attempt has been made to show that prima facie the computation by the Board is not correct. Therefore, this will be a matter to be dealt with in the suit on evidence. For the present, we hold that the company cannot seek adjustment of any further amounts as contended in the plaint. Point No. 4 is decided, accordingly, against the company.

46. Point No. 5. - Regarding adjustment of amounts due to the company towards supplies of cement already made, the position is that, in the lower court, the Board agreed, as a matter of concession, to adjust Rs. 34.35 lakhs. The company, however claimed in this C.M.A. that, on account of further supplies under existing contracts, a further amount of Rs. 25 lakhs has to be adjusted. The Board says that already it has agreed in the lower court for adjustment of Rs. 34.35 lakhs and that nothing more is adjustable - the reason being that, in the later contracts for purchase of cement by the Board, the relevant clause for adjustment as against consumption charges has been deleted and a new clause requiring the company to claim and receive cash from the Board has been incorporated. Copies of the earlier purchase order (No. CEP/122/STA-2/P.6970), dated December 21, 1989, and the later purchase order (P.O. No. CED/122/STB/1/90/P-7207), dated July 25, 1990, have been produced before us by the Board to substantiate this contention. Under the former, it was stated in para 7 that "payment of the bills for 100% cost of the cement delivered in any month will be adjusted against current consumption charges falling due immediately, provided you submit the invoice ..." But, under the later purchase order, it is now stated in para 7.

"Payment. - 100% of the due price will be said within 30 days time after receipt of the goods in good condition certified by the consignee [Form 13] and the receipt of the supplier's bills in duplicate whichever is later."

47. There is considerable force in the submission by the Board that the company cannot, as of right, claim adjustment of amount due under the head of cement supplies. However, inasmuch as the Board has accepted before us that the further amounts due to the company may be to an extent of Rs. 25 lakhs, we are inclined to direct adjustment in respect of a further amount of Rs. 25 lakhs subject to the observation that this direction of ours will not be treated as a precedent. This direction is also subject to the result of the suit. Point No. 5 is decided accordingly.

48. Point No. 6. - It is the contention of the company that the penal interest stayed in W.P.M.P. No. 7939 of 1990 is also included in the demands. On the other hand, it is stated by learned standing counsel for the Board that, after the stay orders were granted in W.P.M.P. No. 7939 of 1990, the Board has not included the penal interest in subsequent bills. Learned counsel for the company has not attempted to demonstrate before us that the above statement on behalf of the Board is incorrect. Point 6 is decided accordingly.

49. In view of the above findings given by us on the various points, we are of the opinion that the company has not made out any prima facie case whatsoever either for directing further supplies of electricity or for grant of instalments in respect of the arrears already due to the Board. The main point that is urged is with reference to section 22[1] of the Sick Industrial Companies (Special Provisions) Act, 1985. We have rejected the company's case on this point on merits. We have not also found any substance in the other contentions. We have only directed set-off of further sum of Rs. 25 lakhs under point No. 5.

50. So far as the balance of convenience is concerned, the position is as follows : This is a case where the company is not only seeking stay of collection of arrears due from it but is also seeking positive directions for payment in instalments and a further and more important direction for supply of electricity in future. It is to be noticed that the company has already obtained certain final orders in its favour regarding instalments granted by the Division Bench in W.A. No. 1427 of 1989 and batch. The Bench permitted six instalments, the first instalments to start on June 1, 1990. Their Lordships of the Supreme Court in the SLP postponed the commencement of the instalments by one month. The company obtained stay of penal interest under condition No. 34 in W.P.M.P. No. 22448 of 1989 in W.P. No. 16947 of 1989 on December 6, 1989. The company's claim that penal interest stayed in W.P. No. 7934 of 1990 has been included in the bills has not been proved. The company committed default in payment of the instalments granted by this court in respect of the amount covered by defective meter, as directed in W.P. No. 4981 of 1990 dated April 23, 1990. Though the company obtained an order of instalments in O.S. No. 841 of 1990, Fifth Additional Judge, City Civil Court, Hyderabad, it committed default of the very second instalment

then, to ward off the consequential effect, filed another suit O.S. No. 11 of 1991, Sub-Court, Narasaraopet, Guntur District, and obtained further orders.

51. The contention of the company that notwithstanding the huge arrears said to be about Rs. 8 crores, it should get further supplies of electricity continuously but that it would pay the arrears and bills for all future supplies in instalments cannot be accepted. The court cannot, while considering the problems faced by an industry, fail to consider the difficulties of the Board in having to maintain supply to a company which has been a continuous defaulter. The Supreme Court in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, , has given guidelines in regard to issuance of temporary injunctions against the State or public sector. For the reasons given under points Nos. 1 to 6, we do not, therefore, think that the balance of convenience is in directing future supplies of electricity or for granting instalments for the amounts due as on date.

52. In fact I.A. Nos. 743 of 1990, 812 of 1990 and 859 of 1990 in O.S. No. 841 of 1990 the Fifth Additional Judge, City Civil Court, Hyderabad (out of which C.M.As. Nos. 1545 of 1990, 214 of 1991, 223 of 1991 and 224 of 1991 arise), the court below has also found that the company has not made out any prima facie case and that the balance of convenience is also not in favour of granting an injunction. But, having said so, the lower court directed further supply of electricity and ordered instalments. Having held that there is no prima facie case and no balance of convenience, the lower court ought not to have granted the injunctions.

53. In I.A. No. 161 of 1991 in O.S. No. 2 of 1991, the learned Sub-ordinate Judge, Narasaraopet, without giving any valid reasons, granted an ex parte interim order stating that the plaintiff has a prima facie case and that the balance of convenience is in granting an injunction for supply of electricity and in granting instalments. For the elaborate reasons given by us, we set aside the ex parte order and remit the I.A. to the Sub-Court, Narasaraopet, for disposal in the light of judgment.

54. For all the aforesaid reasons, the C.M.A. No. 1545 of 1990 preferred by the company and C.M.P. No. 16555 of 1990 are dismissed. The C.M.A. Nos. 214, 223 and 224 of 1991 filed by the Board are allowed and the orders passed by the lower court are set aside except that the Board shall adjust the sum of Rs. 34.35 lakhs (as agreed to by the Board in the lower court), and a further sum of Rs. 25 lakhs towards cement supplies. C.M.A. No. 161 of 1991 is allowed and the I.A. No. 15 of 1991 filed by the company are remitted to the lower court for disposal in the light of this judgment. The C.M.Ps. filed by the company in all C.M.As. are also dismissed. There will be no order as to costs in these C.M.As.

55. An oral application has been made by learned counsel for the cement company (plaintiffs) for leave to appeal to the Supreme Court of India. We are of the view that the appeals do not involve any substantial question of law of

general importance which, in our opinion, needs to be decided by the Supreme Court of India. The oral application for leave is, accordingly, rejected.

56. So far as stay sought for is concerned, in view of the findings given by us in the body of the judgment and, in view of the conduct of the plaintiffs in filing suits, getting instalments, committing defaults and filing fresh suits to ward off the effect of the said defaults, we do not think that it is a fit case for grant of stay in favour of the plaintiffs. However, in terms of section 22[1] of the Sick Industrial Companies (Special Provisions) Act, 1985, the electricity board shall not take any proceedings for winding up of the company nor shall it take any proceedings for execution or distress or the like against any of the properties of the industrial company, nor seek appointment of a receiver as explained in the body of the judgment except with the consent of the BIFR or the appellate authority under the Act.

57. So far as further supply of electricity is concerned, we are not issuing any direction to the Board for making future supplies of electricity, but we leave the matter to the Board. The oral application for stay is disposed of accordingly.