

(2014) 11 GUJ CK 0033
In the Gujarat High Court

Case No : Letters Patent Appeal No. 185 of 2013 in Special Civil Application No. 21824 of 2006

Dakshin Gujarat Vij Company Ltd.

APPELLANT

Vs

Amardeep Association

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Companies Act, 1956 — Section 391, 394
Electricity Act, 2003 — Section 126, 173, 174, 181, 181[2](x)
General Clauses Act, 1897 — Section 6, 6(c)
Income Tax Act, 1961 — Section 72A
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 26, 32

Citation : (2014) 11 GUJ CK 0033

Hon'ble Judges : R.R. Tripathi, J;R.D. Kothari, J

Bench : Division Bench

Advocate : Shalin Mehta, Senior Advocate and Lilu K. Bhaya, Advocate for the Appellant; S.I. Nanavati, Sr. Advocate, Sangeeta N. Pahwa, Advocate and Rashesh Rindani, Assistant Government Pleader, Advocate for the Respondent

Judgement

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R.D. Kothari, J.—In the present case, the scheme framed by BIFR failed to revive the sick unit and also failed to satisfy the said unit's creditors. Appellant is one of the creditor. Nice questions of applicability of scheme - on the handy plea of natural justice - and usual question of principle of statutory construction do not solve the problem. Appellant's dues are locked since so many years and respondent - auction purchaser of the said unit is inter-alia praying for electricity connection. Going through the record gives impression that hotly debated issues before the Court alleviate the problems of the parties only partly. Where lay the solution? Leaving that for the parties to search for the answer, case presented by learned advocates for the parties is considered.

2. Facts are, thus;

"One Navsari Cotton and Silk Mills Ltd. (for short "NCSML") was established in 1936. It appears that HT electric connection was granted to it by respondent in 1955 then was known as GEB. In its good days, it was producing 50,000 mtrs. (yarn) per day. About 2000 workers were working in the Mill. Presumably, its working was normal till it became "sick". It became sick in 1989. Reference was made to BIFR in 1990. Rehabilitation scheme was sanctioned in 1991. IDBI; was appointed as Operating Agency (OA). The scheme was to complete by March, 1992. It could not be completed even after 4 years. Company's "financial condition deteriorated". Meanwhile, the company also stopped its operation in July, 1994. In its meeting held in the month of October, 1994, BIFR observed that sanctioned Rehabilitation scheme has failed. It directed IDBI/OA to advertise for take over/merger/OTS since promoters were not able to bring in additional fund to revive the unit. An advertisement in this regard was issued in December, 1994 but no viable proposal came forward. BIFR, in its meeting held on 15.6.1995, formed prima facie opinion that company is required to be wound up. At this stage, workers of the Mill took initiative and they came in picture. They formed co-operative society called "The Morarji Desai Textile Labour Co-operative Industries Ltd." (for short "MDTLCIL"). They submitted rehabilitation proposal. BIFR, in its meeting held on 15.3.1996, directed OA to consider the proposal submitted by the workers' cooperative society. Rehabilitation scheme with some modification was approved by BIFR in its meeting held on 14.10.1996. Under the scheme, 1400 workers were to be retrenched and 600 workers were to be retained. The scheme was sanctioned on 5.12.1996. It appears that MDTLCIL took over the management of the company in January, 1997 and Mill started its operation in April, 1997.

Again, draft Rehabilitation scheme was introduced. It was at the instance of MDTLCIL. One Major proposal was to sell the land of the Mill and to pay the debts of the Mill. BIFR directed disposal of the surplus land. The Asset Sale Committee was constituted, the said committee had nominees of IDBI, other banks, one Sub-Divisional Revenue Officer nominated by the Collector etc. Fairly big area of open land i.e. 11 lacs sq. ft. was put in auction. M/s. Amardeep Association Navsari (AAN) - respondent No. 1 - had placed a bid at Rs. 47/- per sq. ft. In the meeting, AAN had acceded to the request of the Authority and price of the land was fixed at Rs. 51/- per sq. ft. AAN had purchased the land at Rs. 561/- lacs. It was on 29.5.2003.

It appears that on 1.12.2004, AAN had applied for electric connection. The GEB/DGVCL did not grant the reconnection mainly on the ground that there is a huge outstanding amount of electricity of the Mill. On 14.5.2006, AAN moved BIFR for this purpose. It appears that BIFR had directed to release the power connection to the respondent No. 1. Thereafter, respondent No. 1 had filed SCA No. 21824 of 2006 against the GEB/DGVCL for suitable direction about power connection. It was filed on 11.10.2006. The said writ petition came to be allowed on 14.6.2010. Present LPA arises from the said writ petition."

3. Heard learned Senior Advocate Mr. Shalin Mehta with learned advocate Ms. Lilu K. Bhaya for the appellant, learned Senior Advocate Mr. S.I. Nanavati with learned advocate Mrs. Sangeeta Pahwa for respondent No. 1 and learned AGP Mr. R.A. Rindani for respondent Nos. 2 and 3.

4. Learned Senior Advocate Mr. Shalin Mehta for the appellant has at the time of hearing placed emphasis on the plea that GEB/DGVCL was not a party to the scheme sanctioned by the BIFR. That being so, direction given pursuant to the provision made in the scheme is not binding to the GEB/DGVCL. The other principal submission of Mr. Shalin Mehta is based on Clause 2(j) of Conditions of Supply. It was submitted that assuming for the sake of argument that scheme is binding also to the GEB/DGVCL, even then appellant is obliged to provide electricity only in accordance with law. The law as prevailing and applicable, in substance, provides that unless the previous debts of the premises are paid up, the successor cannot ask for a new connection. Much of the argument at the time of hearing centered around Clause 2(j). Attention was also drawn to a decision of the Supreme Court in the case of Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. Paramount Polymers Pvt. Ltd., . Learned advocate for the appellant also submitted written submissions.

5. On the other hand, learned Senior Advocate Mr. S.I. Nanavati for the respondent No. 1 has submitted that reliance placed on Clause 2(j) is misplaced. That Clause 2(j) was brought into force in 2001, by taking aid of Electricity Act, 1910 and 1948. It was submitted that on coming into force of Electricity Act, 2003, both the above earlier Acts stand repealed. In any case, it was submitted, overriding provision of SICA, would prevail over the other laws. It was also submitted that in the circumstances of the case, granting or refusing writ remedy, equity would be relevant consideration. In this regard, it was pointed out that conduct of GEB/DGVCL is such that it can be said that equity is not in favour of the appellant. Mr. S.I. Nanavati has also drawn attention to relevant material on record. Attention was also drawn to Tata Motors Ltd. Vs. Pharmaceutical Products of India Ltd. and Another, , Torrent Power AEC Ltd. Vs. Shreeji (Rakhial) Commercial Co-Operative Housing Soc. Ltd., . Written submissions were submitted by respondent No. 1 also.

6. Learned Senior Advocate Mr. Shalin Mehta, in reply, has submitted that comment on the conduct of GEB/DGVCL is uncalled for in the circumstances of the case. The submission that GEB/DGVCL had opportunity to challenge the order or a scheme earlier ought not to be considered for the simple reason that GEB/DGVCL was not a party to the scheme. It was pointed out that precisely the grievance of the GEB/DGVCL is that the scheme is made applicable to GEB/DGVCL without giving opportunity to it to participate in the scheme. Therefore, comment on conduct of appellant is misconceived. It was submitted that filing of LPA after delay of fairly long time ought not to be considered by the Court because the delay is already condoned by the Court. It was submitted that it is erroneous to say that once the Electricity Act, 1910 and 1948 are repealed,

Clause 2(j) also goes with that. Referring and relying on Sections 173, 174 and 185 of the Electricity Act, 2003, it was asserted that Electricity Act has overriding effect and Clause 2(j) is saved. Referring and relying on Section 6 of the General Clauses Act, it was urged that liability once incurred would be saved under the said provision in the circumstances of the present case. Attention was drawn to a decision of the Supreme Court in the case of Bank of India Vs. Ketan Parekh and Others, .

7. After recording elaborate submissions of learned advocates for the parties, the learned Single Judge found that controversy between the parties centers around two issues; (1) (i) applicability of provisions of SICA and (ii) effect of direction issued by the BIFR and (2) Applicability of Clause 2(j) of Supply Code.

8. The findings of the learned Single Judge on the above points are, thus; After briefly referring the facts that had led to formation of the scheme by BIFR, the Court has referred material provisions of the last scheme i.e. scheme framed on 5.12.1996. The scheme sanctioned on 5.12.1996. The Court referred Para. 7(b) and also Para. 8 and 11. Last referred paragraph gives overriding effect to the scheme. The Court has held that under the scheme GEB is directed to grant connection without insisting for payment of previous owners' dues. The Court has also held that, "such dues" are unenforceable and direction issued by BIFR is binding to GEB. The Court has referred to the factum of challenging the scheme in question unsuccessfully by the State. It reiterates that scheme is final and binding to the parties.

9. The learned Single Judge also found that petitioner before it has purchased the land which is sold in auction pursuant to rehabilitation scheme framed by the BIFR. The said BIFR scheme provides for mode of payment of electricity dues and also granted exemption from power cut. That in view of the fact that MDTLICIL is going concern and on the other hand, following the BIFR scheme, recovery cannot be made from the petitioner. If the relevant clauses of Para. 7 is read together, it would appear that scheme provides for payment of dues by MDTLICIL. That the use "may" in clause-7(b)(8) should be read as "shall".

10. The learned Single also held that the appellant has denied new connection because there are electricity dues in respect of which new connection is sought. That in this regard reliance placed on clause 2(j) of "conditions of supply" is misplaced. So also reliance placed on the judgment of this Court in LPA No. 693 of 2003 is misplaced. Clause 2(j) is not applicable because MDTLICIL and NCSML are going concern and GEB can recover its dues from them. It is also pointed out that scheme provides that dues are payable by MDTLICIL within 5 years from 31.3.2006. That as per the submission of petitioner, electricity dues of period prior to 1994 is not payable by MDTLICIL also. That being so, as dues are not the dues of previous owner, clause 2(j) is not applicable.

11. Lastly, the Court has also referred to the fact that attempt was made by GEB to recover its dues from the Mill. GEB had issued notice for that. NCSML has filed

SCA No. 4951 of 1999 wherein NCSML was granted interim relief. GEB has made no recovery from NCSML. If it is so, no recovery can be made from the petitioner of the said petition.

12. The dispute between the parties centers around the scheme and Clause 2(j). While appellant says that respondent is liable to pay dues in view of Clause 2(j). On the other hand, it is the say of the respondent that in view of the scheme, respondent is not liable and appellant is required to grant connection pursuant to the scheme.

13. Submissions on the scheme are, thus : it is the say of the appellant that scheme is not binding to it as the appellant was not a party to the scheme. The appellant claims that objection of this nature, viz., scheme came to be framed without giving opportunity to the appellant is such that it vitiates the order to supply electricity and the scheme. That such objection goes to the root of the case and therefore, same can be raised even in collateral proceeding or in the proceeding where such order or a scheme sought to be enforced. It was also urged that assuming for the sake of argument that scheme is binding to GEB/DGVCL, even then appellant is required to grant electric connection only in accordance with law and that being so, new connection cannot be granted without payment of previous dues.

14. The submission though appears as "attractive" in abstract, has hardly any substance. In the scheme, in respect of electricity dues, it has addressed the said subject to the Government of Gujarat (GOG). The grievance that the appellant was not a party to the scheme becomes, more or less, technical if one bears in mind that GOG has taken steps to agitate against the relief and concession granted under the scheme. Before referring to it, it may be noted that under the scheme, so far as granting of exemption under the Income-tax Act and other reliefs under the said Act are concerned, the scheme has addressed for the same to the Central Government.

15. Against the Scheme, it is on record that the Government of Gujarat had filed an appeal before AAIFR being Appeal No. 318/2006 challenging the reliefs and concession granted under the scheme. However, later on, i.e. 1.2.2007, the said appeal was disposed of as "not pressed". Thereafter, Government of Gujarat had filed Special Civil Application No. 12213/2007 before this Court, which came to be dismissed on the ground of jurisdiction. So, Government of Gujarat had filed a petition before Delhi High Court. At the time of hearing it was pointed out that the said petition came to be dismissed, as the petitioner has not pressed the order under challenge before the Appellate Authority.

16. In view of the above, the appellants cannot urge that the scheme does not bind them, as they are not party to the scheme. In this regard, it is interesting and important to note that this Court had earlier given opportunity to the appellant to challenge the scheme. At the stage of admission of Special Civil Application No. 21824/2006, from which the present Letters Patent Appeal

arises, this Court had passed an order on 21.12.2006 as under:--

"Looking to the order passed by the Board for Industrial and Financial Reconstruction dated 21st July, 2006, it is submitted by the learned counsel for the respondent that the State Government will be a necessary party as the present respondent is a Government owned company. Some concession has been given by the State Government before BIFR for giving electricity connection to the petitioner. The dues of the petitioner to be paid to the respondent are approximately to the tune of Rs. 15 crores. Therefore, the respondent may initiate action to challenge either auction or the order dated 21st July, 2006 passed by BIFR or both of if the State Government is joined as party respondent No. 2 or if some loan, grant or subsidy is given to the respondent, the amount of Rs. 15 crores may be paid. In view of this submission, the petitioner is hereby directed to join The Secretary, State of Gujarat, Department of Energy, Sachivalaya, Gandhinagar as party respondent. Notice to newly added party returnable on 16th January, 2007. Meanwhile, this time will be encashed by the respondent company in further deliberations of challenge of the order or auction or order of BIFR. S.O. to 16th January, 2007."

17. It is not in dispute that after the above order also, the appellant did not opt to challenge the scheme. It appears that appellant had sought legal opinion that judgment of learned single Judge should be challenged or not. In detailed written opinion after considering the judgment of learned single Judge, expert has advised not to file LPA and accept the judgment of learned single Judge.

18. There is also another aspect to this plea. Learned advocate for the respondent No. 1 in written submissions has drawn attention to one letter written by the appellant's General Manager (Comm.). This letter is addressed to MDTLCIL. The subject of the letter is BIFR scheme dated 5.12.1996. This letter is in response to MDTLCIL's letter dated 4.9.1997. In the end, the General Manager has forwarded copy of this letter to;

"(1) Chief Engineer (Dist.), GEB H.O., Baroda

(2) Additional C.E. (Zonal), GEB, Surat

(3) S.E. (ONM) CEE, Valsad and

(4) E.E. (ONM) GEB, Navsari."

A note is placed at the end of the letter, that reads, thus;

"You are requested to accept the installment of outstanding dues as per BIFR order dated 5.12.1996 and security deposit under intimation to this office. You are also requested to take necessary steps (sic.) as per resolution of the Government dated 29.8.1997, copy of the said resolution is enclosed for your ready reference."

19. In the circumstances of the case, plea of the appellant that scheme does not bind to the appellant as it came to be framed without hearing the appellant,

cannot be accepted.

19.1 In the written submissions, appellant has also urged that scheme of 2006 has failed in view of BIFR order dated 29.9.2011 and also in view of AAIFR order dated 15.5.2013. It is the say of the appellant that if the scheme has failed then it fails as a whole and it cannot be urged that it has failed in part. Line of submission is, - as the scheme has failed, the respondent cannot claim any benefit of concession, exemption or direction under the scheme. This submission also has no substance. The scheme of 2006 was not under consideration and more than that the Court was not considering the viability of scheme framed by the BIFR. Conclusion of BIFR in its order dated 29.09.2011 namely "adequate time" and "ample opportunities" were given to the Company to revive the Unit, even then it failed, - relates and concerns to NCSML. BIFR orders winding up of the said mill. This has hardly any relevance to the issue which is under consideration herein. Finding fault with the scheme by taking shelter of BIFR order dated 29.9.2011 is not possible to accept. Further, it would appear from the brief order of AAIFR dated 15.5.2013 that original dues were of Rs. 92 lakhs and that has grown to over Rs. 21 crore, by passage of time on account of addition of penalty, interest etc. This submission based on scheme read with BIFR and Appellate Authority's order, also has no substance. No interference is called for in the order of the learned single Judge.

20. Much argument centered around Clause 2(j). While it is the say of the appellant that Clause 2(j) operates and applies in the facts of the present case also. On the other hand, it is the say of the respondent that it ceased to be operative and it is repealed. In any case, it does not apply to the facts of the present case. Learned advocate for the appellant has quoted Clause 2(j) in written submissions. It reads, thus;

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

21. Clause 2(j) framed under Electricity Supply Code. Clause 2(j) came into force on 10.9.2001. It was submitted that by virtue of notification issued under Section 49 of the Electricity Act, 1948, same was brought into force. The Electricity Act, 1910 and 1948 came to be repealed and new Act of 2003 came into force w.e.f. 10.6.2003 and new Act is made applicable in Gujarat on 10.12.2004. The controversy between the parties centers around these submissions; (I) effect of overriding provision in SICA and in Electricity Act and (II) Clause 2(j) not being inconsistent with the provisions of the new Act, it would be saved by the saving clause.

22. Taking second point first, submission of learned advocate for the appellant is, Section 185 of the Electricity Act saves Clause 2(j). Reliance was also placed on Section 6 of the General Clauses Act. On the other hand, learned advocate for the respondent disputes this submission. It was submitted that in the circumstances of the case, Clause 2(j) is not saved.

23. Section 6(c) of General Clauses Act saves rights etc. acquired or liability etc. incurred under the repealing Act. Section 185 is usual saving and repealing provision. Generally, in order to seek answer that provision framed under the repealed Act is inconsistent with the provision of new Act or not, reference to saving provision of the new Act is to be made. It is a preliminary principle. The question herein is somewhat different. The question is not - say, for instance - that whether typical or restrictive language of saving provision (Section 185) has potency to save the provision in question or not. In other words, it is not the say of the respondent that because of the typical or limited operation of saving clause i.e. Section 185, Clause 2(j) is not saved and hence, cannot be relied on. Applicability of Clause 2(j) is not to be tested in that way. In abstract and as general statement, it can be said that Clause 2(j) framed under the repealed Act is saved under the new Act, as it does not come into, "direct conflict" in any way with the new Act. In other words, sans other considerations in abstract and in general, it can be said that new Act i.e. Section 185 is not vitiating allergic to Clause 2(j).

24. At the time of hearing, attention was drawn to judgment of the Division Bench of this Court wherein validity of Clause 2(j) was upheld by this Court (Krishna Industries v. GEB in LPA No. 1484 of 2004, decided on 18.7.2005). At the time of hearing, learned advocate for the respondent has drawn attention to Regulation 4.1.11. Referring to the said Regulation, it was submitted that provision analogous to Clause 2(j) is subsequently framed by the Authority. Regulation 4.1.11 is identical to Clause 2(j). It was submitted that in view of Regulation 4.1.11, now the Clause 2(j) no longer survives. It is to be noted that validity of Regulation 4.1.11 was challenged in case of Sanjay Balvantray Desai v. DGVCL - SCA No. 2582 of 2012. The question was considered by the Full Bench. The Hon'ble the Chief Justice speaking for the Bench has held that, "Regulation 4.1.11 is inconsistent and therefore, ultra vires the provisions of Sections 43, 50, 56 and 181 of the Electricity Act, 2003." This conclusion qua Regulation 4.1.11 is not irrelevant for consideration of point herein but it has some bearing on the point under discussion. Clause 2(j) was framed under the Electricity Supply Act, 1948 r/w 1910 Act. It is true that the Full Bench in the above case has considered the validity of Regulation 4.1.11 with reference to 2003 Act, however, this may not be of much significance and consequence in view of the fact that Section 19 in 1948 Act is replaced by Section 43 and Section 79 is replaced by Section 181 of the new Act. Sections 50 and 56 appear to be new provisions. In this regard, it has to be conceded that provisions of new Act are neither verbatim reproduction of the old provision, nor they are bodily lifted from the old Act. But it cannot be disputed that these provisions of the old Act and new Act are

analogous. On the other hand, we are not considering the validity of clause 2(j). Reference and context herein is different. Sanjay Balvantray Desai's case (supra) opens up door for the argument that Clause 2(j) is inconsistent with couple of provisions of the Act. In above-referred decision, the Full Bench has held in Para. 16, 17, 19 and 21 as under:

"16. Therefore, when in the Act itself, the Parliament has not imposed any condition for paying of dues of an earlier consumer in a building upon a purchaser from the old consumer for getting a new connection although there are provisions of taking security or imposing other additional conditions for supply of electricity to a consumer, by taking aid of Section 50, the Regulatory Commission, a delegated authority prescribed under the Act, is not authorized to specify in the Electricity Supply Code a condition, of deposit of arrears of a previous consumer whose electricity has already been disconnected, for grant of new connection in the same building. We are unable to accept the contention of the learned counsel for the respondents that the condition impugned herein comes within the purview of "such other matters" appearing in Section 50 of the Act when the Parliament consciously did not specifically authorize such power in Section 50 and at the same time, in the entire Act itself, it has also made no such provision of recovery although the provision of security and other additional conditions to be fulfilled by a consumer have been imposed. Similarly, Section 181[2][x] merely authorizes the Regulatory Commission to include in the Electricity Supply Code any provision relating to the subject-matter of Section 50.

17. If we go through the provision contained in Section 43 of the Act, it expressly gives a mandate upon the distribution licensee to give supply of electricity to the premises on an application by an owner or occupier of such premises within one month after receipt of application subject to the proviso of the said provision. In Section 43 itself, no condition has been imposed that in order to get supply of electricity, the dues of the previous consumer in respect of the electricity consumed in that premises should also be paid.

19. We find that in the Electricity Act, 2003, there is a specific provision for giving security as a condition of taking benefit of electricity consumption and even there is a provision of imposing additional terms of supply as provided in Section 48. But in Chapter VI of the Act starting from Section 42 and ending with Section 60, no power has been conferred to impose a condition of payment of arrears due in respect of consumption by a former consumer in the premises from a person who has purchased the premises where the electricity was supplied to the defaulted consumer.

21. We, therefore, find that by virtue of a delegated legislation, the Regulatory Commission has not only overstepped the limit of Sections 50 and 181[2][x] of the Act, but has also acted in violation of Section 56[2] of the Act by giving a scope of making a legally irrecoverable amount provided under the Act as a recoverable one. It is needless to mention that the power of the State Commission to make a regulation must be consistent with the Act and not

inconsistent with any part thereof. We, therefore, find that the first part of the provision contained in the amended Regulation 4.1.11 authorizing a licensee to demand the arrears amount of consumer from the subsequent purchaser of the premises as condition of grant of new electricity connection is violative of the provisions contained in Sections 43, 50, 56, 126, and 181[2][x] of the Act."

24.1 It may also be noted that LPA No. 1484 of 2004 i.e. Krishna Industries" case (supra) - wherein this Court had upheld the validity of clause 2(j) - was referred to by the Full Bench in Sanjay Balvantray Desai's case (supra).

24.2 The view taken by the Full Bench on Regulation 4.1.11 can be read in favour of respondent while appreciating clause 2(j).

24.3 One more distinguishing feature may be noted. It may be stated that unlike the earlier Act of 1948, in 2003 Act "premises" is defined under Section 2. In Torrent Power Limited's case - 2006 (3) GLR 1944, the Division Bench of this Court has while dismissing the Torrent Power Company's Appeal, held in Para. 7, as under:

"7. On a conjoint reading of the provisions it is not possible to accept the case of the respondent - Company. Section 43 of the Act deals with "duty to supply power on request". Under sub-section (1) of Section 43 of the Act it is provided that on an application by the owner or occupier of any premises the distribution licensee is bound to give supply of electricity to such premises, within one month of the receipt of the application for such supply. The emphasis on behalf of the respondent company that the electricity is required to be supplied "to such premises" is misplaced. In the first instance, the application is by the owner or occupier of any premises, and hence, the phrase "such premises" takes meaning from the preceding portion viz. owner or occupier of the premises. This becomes abundantly clear when one reads the definition of the term "consumer" which talks of any person who is supplied electricity and includes any person whose premises are for the time being connected for the purpose of receiving electricity. In other words, the consumer is one who receives, or is supplied electric power and the premises are of the consumer. Section 2(70) which defines "supply" specifically states that supply means sale of electricity to a consumer. The definition does not talk of supply of electricity to the premises."

24.4 It also held in Para. 8 as under:

"8. When one proceeds to read Section 56 of the Act in the aforesaid backdrop, it is apparent that supply of electric power can be dis-connected where any person neglects to pay any charge for electricity in respect of supply which was made to the said person. Section 56 of the Act does not talk of any premises neglecting to pay any charge for electricity. In fact premises cannot be a consumer and, therefore, the stand of the electricity company does not merit acceptance. It goes without saying that only a person can be the consumer viz. The user of the electricity power and premises, divorced of a person, cannot be user of the electricity power supply."

24.5. Referring different regulations including Regulation 4.1.11, in that case conclusion of this Court in paras 9, 10 and 11 is to the effect that. "... this Regulation also does not stipulate that supplier can withhold supply of power and reject an application for new connection in case of third party auction purchaser...."

25. In this regard, however, reference may be made to Dakshin Hariyana Bijli Vitran Nigam Ltd.'s case (supra), relied on by learned advocate for the appellant. Therein, predecessor of the respondent was "consumer" of electricity company. There were dues of electricity. As the said earlier company has also borrowed finance from the Hariyana Finance Corporation and has failed to pay the dues, said finance corporation has auctioned the property of earlier company. Respondent has purchased the property in auction. In that case, provision analogous to clause 2(j) was introduced i.e. Section 21(A) w.e.f. 27.11.2001 framed under terms and conditions of Supply in relevant statutory provisions. It is material to note that in that case validity of Section 21(A) was in issue. It was held:

"Though the main contention of the first respondent was that the condition incorporated on 27.11.2001 was not valid in the light of the ratio of the decision in Isha Marbles Vs. Bihar State Electricity Board and Another, , that question has not been decided by the High Court. The High Court has proceeded on the basis that there is no charge created on the undertaking for the consumer's dues and consequently, the incorporation of a condition on 27.11.2001 could not have operation in a case where the sale of the undertaking and purchase by the first respondent, were prior to the date of the amendment. What is the effect of the first respondent applying for a fresh connection only on 1.1.2002 after the amendment was incorporated, was not considered properly. The terms incorporated were also not scrutinised. The Court proceeded on the basis that the relevant date was the date of purchase of the undertaking by the first respondent."

(emphasis supplied)

25.1 Herein, we are not called upon to decide the validity of Clause 2(j).

25.2 Prima facie, in view of distinguishing feature of 2003 Act as noted in Torrent Power Ltd.'s case (supra) and in view of inconsistency noted qua 4.1.11 in Sanjay Balvantray Desai's case (supra) by this Court, case considerably lean in favour of respondent on this point. The submissions in favour of Clause 2(j) advanced by appellant in written submissions are not possible to accept in view of above discussion.

26. As to the question of overriding provision, submissions were made with equal vehemence by learned advocates for the parties. Both the sides urged that Act in respect of which they are advancing the case has overriding effect over the other Acts. Sections 173 and 174 of 2003 Act read, thus;

"173. Inconsistency in laws. Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989.

174. Act to have overriding effect. Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

Section 32 of SICA reads, thus;

"32. Effect of The Act on Other Laws.

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

(2) Where there has been under any scheme under this Act an amalgamation of a sick industrial company with another company, the provisions under section 72A of the Income-tax Act, 1961 (43 of 1961), shall, subject to the modifications that the power of the Central Government under that section may be exercised by the Board without any recommendation by the specified authority referred to in that section, apply in relation to such amalgamation as they apply in relation to the amalgamation of a company owning an industrial undertaking with another company."

27. In support of their respective assertions, on this point, two aspects were emphasized : (i) which of the two Acts can be said to be a special Act and (ii) which of the two Acts can be said to be a later Act. Learned advocates for the respective parties submitted that special Act would prevail over the general Act and in addition to it and in the alternate, Act which is later in point of time would prevail over the former Act. So, the debate was which one is the special Act and which Act is later in point of time.

28. Learned Senior Advocate Mr. Suhdir Nanavati has drawn attention to a decision of the Supreme Court in the case of Tata Motors Ltd. Vs. Pharmaceutical Products of India Ltd. and Another, . In that case, one of the main questions was, whether SICA would prevail over Companies Act, 1956 or not? The question arose in that case was, "... interpretation/application of provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) vis-?-vis Companies Act, 1956 (1956 Act) is in question in this Appeal..." It was held that SICA being special Act would override the provision of General Act i.e. Companies Act, 1956.

In that case, BIFR had framed the scheme and pending the appeal against the scheme framed by the BIFR, the Company Court was moved under Sections 391 and 394 of the Companies Act and order came to be passed by the Company Court. The Supreme Court - inter-alia - had held, thus;

"Thus, the jurisdiction of the Company Judge in a case where reference had been made to BIFR would be subject to the provisions of SICA. Section 26 of SICA bars the jurisdiction of the civil court. The jurisdiction of the civil court is barred in respect of any matter for which AAIFR or BIFR is empowered. The High Court may not be a civil court but its jurisdiction in a case of this nature is limited. What scheme should be prepared by the operating agency for revival and rehabilitation of the sick industrial company is within the domain of BIFR. That apart, it is not possible to harmonise the provisions of Sections 391 and 394 of the Companies Act with the provisions of SICA."

29. Question that whether SICA is a special Act or not, when raised with reference to Companies Act, it is perhaps easier to answer the same. In the present case, attempt was made to urge that Electricity Act is a special Act. It is not possible to agree with this submission. With relation to Electricity Act also, SICA can be said to be special Act. The later Act relates to companies only - rather sick companies - while former Act would apply not only to all kind of companies, including the sick companies, but to every kind of consumer - be it commercial and non-commercial entities. In fact, definition of "consumer" under the Act includes even the Government. "Any person", it says, who "receives electricity" comes within the sweep of the definition of "consumer", while the simple definition of "sick company", stated in short is, - a company whose accumulated losses of any given financial year exceeds its entire net worth. In short, while legislative net of consumer under the Electricity Act includes other than company or corporate sector also, while the wings of the SICA does not extend the area outside the sick company - the corporate world itself is much larger than the sick company. It may be noted that the Electricity Act is the only statute operating in the field and dealing with the subject and takes care of all and every kind of consumer, who receives electricity. It is not possible to agree with the submission that Electricity Act is a special Act with reference to SICA. Having said so, we may add that generally saying, neither the test that which of the two Acts are special Act nor the test that which of the two Acts is later in point of time, can be successfully applied in the present case. Both the tests can be more properly applied when both the Acts relate to or operate in, in the same field or the subject of both the Acts is analogous. Since the applicability of either of two tests is doubtful in the present case, we leave the question at that with the observation that if correct view is that, that the special Act versus General Act, test is applicable then application of such test would show that SICA is a special Act.

30. One more distinctive feature may also be noted. It is important and perhaps determinative. SICA gives overriding effect not only to its provisions but also to

the scheme framed under the special Act. Section 32 itself gives overriding effect to the scheme. Unlike that, Sections 173 and 174 do not refer or include conditions framed by the Board. It may be recalled that Clause 2(j) is framed by the Board i.e. GEB - it may have an effect of law but, so far giving of overriding effect is concerned, neither the conditions framed by the Board contain such provision nor Sections 173 and 174 take care of it. At the time of hearing, attention was not drawn to any such provision in conditions nor Sections 173 and 174 say so. Thus, Section 32 of SICA is apparently wider. When it comes to comparison, Sections 173 and 174 of Electricity Act cannot catch up or compete with Section 32 of the SICA. Further, still, scheme also contains clause giving overriding effect to the scheme. Overriding provision in the scheme has weighed with the learned Single Judge in the judgment under appeal. Learned Single Judge has not committed any error in relying on the said provision while considering the objection raised by the learned advocate for the appellant against the scheme.

31. In view of above, both the points raised by the appellant fail. The appeal has no substance. No interference is called for in the order of learned Single Judge. Letters Patent Appeal is dismissed. Notice is discharged with no order as to costs.