IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No.2639 of 2025

M/S Mangalam Ispat having its works at Plot no. IV-A/5(P), Industrial Area, Balidih, Bokaro Steel City, P.O & P.S- Balidih, District- Bokaro, through its partner Vinay Kumar Agrawal, aged about 53 years, S/O Mahabir Prasad Agarwal, R/O L T- 53 A, Agrasen Path, Near Panchmukhi Mandir, P.O.&P.S.- Ramgarh, District- Ramgarh, Jharkhand.

… … **Petitioner**

Versus

1. Damodar Valley Corporation having its registered office at DVC Towers, VIP Road, Kolkata, P.O., P.S.- Airport Road, District- Kolkata through its Chairman-cum-Managing Director.
2. The Chief Engineer-I (Commercial), Damodar Valley Corporation having its registered office at DVC Towers, VIP Road, Kolkata, P.O., P.S. Airport Road, District-Kolkata.
3. The Senior General Manager (Commercial), Damodar Valley Corporation having its registered office at DVC Towers, VIP Road, Kolkata, P.O., P.S.- Airport Road, District-Kolkata.
4. The Deputy General Manager (Commercial), Damodar Valley Corporation having its registered office at DVC Towers, VIP Road, Kolkata, P.O., P.S.- Airport Road, Dist. - Kolkata.

… … **Respondents**

W.P.(C) No. 2089 of 2019

M/S Mangalam Ispat having its place of business at TTT/20, Ground Floor, Civil Township, Rourkela, Orissa, P.O.- Civil Township S.O., P.S.- Raghunathpalli & District- Rourkela, through its partner Ankur Kumar Agrawal, aged about 21 years, S/O Shri Kamal Kumar Agrawal, R/O Phase 4A, Plot 5 (P), Balidih Industrial Area, Bokaro Steel City, P.O., P.S.- Balidih & District- Bokaro.

… … **Petitioner**

Versus

1. Damodar Valley Corporation having its registered office at DVC Towers, VIP Road, Kolkata, P.O., P.S.- Airport Road, District- Kolkata through its Chairman-cum Managing Director.

2. The Chief Engineer-I (Commercial), Damodar Valley Corporation having its registered office at DVC Towers, VIP Road, Kolkata, P.O., P.S.- Airport Road, District- Kolkata.
3. The Senior Divisional Engineer, Damodar Valley Corporation having its registered office at DVC Towers, VIP Road, Kolkata, P.O., P.S.- Airport Road, District Kolkata.

CORAM : SRI ANANDA SEN, J.

For the Petitioners : Mr. Ajit Kumar, Sr. Advocate.
Mr.Dhananjay Kumar Pathak, Advocate.
Mr. Akash Ajit Kumar, Advocate.

For the Respondents: Mr. M.S. Mittal, Sr. Advocate.
Ms. Khushboo Kataruka, Advocate.
Ms. Ushma Pandey, Advocate.

O R D E R

RESERVED ON 13.07.2026 **PRONOUNCED ON 04.08.2026**

Both these writ petitions are filed by the petitioner M/S Mangalam Ispat, a partnership firm. In W.P.(C). No. 2089 of 2019, the petitioner has prayed for grant of fresh electric connection at its premises, which it has acquired through auction, from Punjab National Bank. The petitioner has also prayed to quash the demand notice contained in letter dated 24.04.2019, wherein the respondent-Damodar Valley Corporation (DVC) demanded Rs.4,92,51,765/- towards the outstanding electricity bills of the erstwhile consumer. In W.P.(C). No. 2639 of 2025, the petitioner has prayed to quash the demand notice dated 01.02.2025, issued by the respondent, for arrear of bill for the period 2006-2012. Petitioner has further prayed to quash the letter dated 07.04.2025 by which representation of the petitioner has been rejected. Since facts of both these applications are intertwined, both are heard together and are being disposed in a common judgment.

PRAYER MADE IN THE WRIT PETITIONS

2. For better appreciation, prayer made in both the writ petitions are quoted hereinbelow: -

IN W.P.(C) No. 2089 of 2019

a. For issuance of appropriate writ(s)/order(s)/direction(s) commanding upon the Respondents to grant fresh electrical connection to the petitioner at its premises which the petitioner has acquired on auction through Punjab National Bank vide sale certificate dated 12.09.2018.

b. For quashing the letter dated 24.04.2019 (Annexure 13) whereby and whereunder the Respondent has made a demand of Rs.4,92,51,765/- towards the outstanding bill dues in respect of the acquired premises from the Petitioner and to declare the same as illegal and arbitrary.
c. For commanding upon the respondent to grant the petitioner compensation for each day's delay in granting fresh electrical connection to the petitioner as per the statutory provisions of Section 43 of the Electricity Act, 2003.

IN W.P.(C) No. 2639 of 2025

a. For showing the respondents cause as to why and under what circumstances the respondents have claimed the arrear for the period 2006 to 2012 from the petitioner specially when they have entered into agreement with the petitioner for supply of power and have commenced the supply to the petitioner in the year 2019 itself.
b. For quashing of Demand Notice contained in letter No. Coml./arrear/JH/2006-2012/340308 dated 01.02.2025 (Annexure 8) issued under the signature of respondent No.4 whereby the concerned respondent has claimed the arrear bill for the period April 2006 to March 2012 on account of the Tariff order for F.Y 2006 to 2012 published on 23rd July 2024 to the tune of Rs.1,34,03,401/- from the petitioner ignoring the fact that the petitioner had no concern or connection with the respondent during the relevant period. Neither the petitioner has availed any power from the respondents nor there had been any agreement for supply of power between the petitioner and the respondents during the period in question.
c. For quashing of letter dated 07.04.2025 issued by Respondent No.3 (Annexure 10) whereby the concerned respondent has rejected the representation of the petitioner and has claimed that the arrear is tied with premises. Hence being the current owner of the premises, the petitioner is liable to pay the arrears of erstwhile consumer.
d. For commanding upon the respondents not to debar the petitioner from allowable rebates due to non-payment of the arrears for F.Y. 2006-2012 accrued against the erstwhile consumer of the

respondents.

FACTS OF THE CASE

3. The petitioner is a registered partnership firm that purchased the movable and immovable assets of M/s Shree Hanuman Alloys Pvt. Ltd. through an e-auction conducted by Punjab National Bank in 2018. The property originally belonged to M/s Shree Hanuman Alloys Pvt. Ltd, which had taken loan from a financial institution. The loan became an NPA, thus, in a recovery process, the assets were put to auction. After acquiring the property, on auction, the petitioner applied for a fresh electricity connection from Damodar Valley Corporation (in short, DVC). However, DVC refused to grant a fresh connection till the petitioner cleared the previous owner's outstanding electricity dues. The respondent DVC issued a letter dated 24.03.2019 to the petitioner demanding the outstanding dues of the erstwhile company i.e. M/S Hanuman Alloys Pvt. Ltd. in respect of the premises, which the petitioner had purchased in auction, which was to the tune of Rs.4,92,51,765/- as arrears. Despite the petitioner informing DVC that it is only an auction purchaser with no connection whatsoever with the previous owner, DVC continued to insist on payment and delayed the grant of the electricity connection. Being aggrieved the petitioner has filed W.P.(C). No. 2089 of 2019 and prayed to quash the impugned letter dated 24.03.2019 and prayed for grant of fresh electric connection. In the aforesaid writ proceeding on showing willingness by the petitioner with respect to making payment of the amount by way of monthly installments against the demand of Rs.4,92,51,765/-, a Coordinate Bench of this Court vide order dated 23.09.2019 fixed the monthly installment of Rs.25,00,000/-, however, the same was dependant upon the final outcome of the writ petition. The petitioner paid the demanded amount in installments and was granted a fresh electricity connection under a separate agreement in 2019. However, in 2025, DVC raised a fresh demand of Rs.1.34 crore towards electricity arrears relating to the period 2006–2012 on account of revision of tariff for financial year 2006 to 2012. The petitioner also challenged the aforesaid demand in W.P.(C). No. 2639 of 2025.

ARGUMENTS ON BEHALF OF THE PETITIONER

4. Mr. Ajit Kumar, learned Senior Counsel for the petitioner submitted that the petitioner had purchased only the assets of the erstwhile consumer in e-auction sale and has no connection with either the business or liabilities of the earlier consumer. He further submitted that the sale certificate of the immovable property (Annexure-4 to the writ petition) clearly states that there are no pending encumbrances on the property so auctioned. The List-I & List-II of the sale certificate was later brought on record through supplementary affidavit which suggests that the property is free from all encumbrances. He further submitted that the respondent DVC did not choose to take action of disconnection of power supply of the erstwhile M/S Hanuman Alloys for a long time and allowed the dues to accumulate and also did not take steps to recover the said charges through other means. He argued that Clause 6.10(a) of the of the Jharkhand State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2015 (hereinafter referred to as the Regulations) is applicable to the petitioner on the facts of the case, which bars recovery of dues of erstwhile consumer. As per him, the Regulations does not empower Damodar Valley Corporation (DVC) to recover the outstanding dues of the erstwhile owner. While relying on the judgment of Hon'ble Supreme Court in ***Isha Marbles v. Bihar SEB, (1995) 2 SCC 648***, the petitioner submitted that an auction purchaser cannot be compelled to pay the previous consumer's electricity dues to obtain a fresh connection. He further relied on the judgments of the Hon'ble Supreme Court in ***Paschimanchal Vidyut Vitran Nigam Ltd. v. DVS Steels and Alloys (P) Ltd. [(2009) 1 SCC 210]; Haryana State Electricity Board versus Hanuman Rice Mills, Dhanauri and Others [(2010) 9 SCC 145]; K.C. Ninan v. Kerala SEB [(2023) 14 SCC 431]*** and judgment of this Court in ***Om Prakash Garg v. Jharkhand Bijli Vitran Nigam Limited, Ranchi (L.P.A No. 748 of 2019), Shivam Builders and Developers v. Jharkhand Urja Vikas Nigam Limited [W.P.(C) No. 3650 of 2020]*** and submitted that the respondents cannot legally force the petitioner to pay the previous consumer's outstanding dues. Lastly he prayed for refund of the amount which was deposited with DVC to get the electricity connection.

5. In relation to W.P.(C) No.2639 of 2025, he submits that the Damodar Valley Corporation (DVC) has raised bills to the petitioner for the period prior to auction sale. As the tariff was revised, the said demand was raised, but, admittedly, the same relates to the period prior to the auction sale, when admittedly, the property was in ownership and possession of the defaulter erstwhile consumer. Since the Damodar Valley Corporation cannot recover any amount of outstanding dues, of the defaulter erstwhile consumer, from the petitioner, this due is also not recoverable from the petitioner.

ARGUMENTS ON BEHALF OF THE RESPONDENTS-DAMODAR VALLEY CORPORATION

6. Per contra, Mr. M.S. Mittal, learned Senior Counsel for respondent-DVC submitted that the petitioner is responsible for paying the outstanding electricity dues because it purchased the property on an "as is where is" basis with full knowledge of the existing terms and liabilities. He referred to Clause 5.3.3 of the Jharkhand State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2015 and submitted that it is the responsibility of consumer to check the electricity dues before purchasing any property and to obtain a "No Dues Certificate" from Damodar Valley Corporation. He further submitted that by letter dated 14.11.2018, DVC has categorically informed the applicant that as per Clause. 5.3.3 of the Regulations, 2015 the applicant is required to pay the outstanding electricity dues to the tune of Rs.4,92,51,765/-, of the erstwhile consumer i.e., M/S Hanuman Alloys Pvt. Ltd. within one month from the date of application dated 31.10.2018 in accordance with the above clause of the regulation. It is his contention that the liability of the electricity connection of the premises is not merely attached to the previous owner, but any subsequent purchaser also must clear such outstanding dues. He disputes the contention of the petitioner that Clause 6.10 of the Regulations is applicable in the facts of this case. He contends that the appropriate clause of the Regulations applicable on the facts of this case is Clause 5.3.3 of the Regulations. The learned Senior Counsel also relied on the judgments of the supreme court in **K.C. Ninan v. Kerala SEB, (2023) 14 SCC 431**, and submitted that both the writ petitions being devoid of merit, are liable to be dismissed.

ADMITTED FACTS

7. From the arguments of the parties and on going through the pleadings and records, I find that the following facts are admitted: -

(a) The moveable property earlier belonged to M/s. Shree Hanuman Alloys Pvt. Ltd.

(b) The said asset became non-performing and was put to auction by the bank.

(c) In an auction, this petitioner participated and on being successful bidder, the property was transferred to the petitioner as an auction purchaser.

(d) There were electricity dues in respect of the property, which dates prior to the date of auction and taking over of possession of the property by the petitioner. Thus, the dues are of the erstwhile owner.

(e) The petitioner does not have any connection with M/s Shree Hanuman Alloys Pvt. Ltd. nor any one from the petitioner firm has got any concern with M/s Shri Hanuman Alloys Pvt. Ltd.

(f) On the ground that there are electricity dues over the said property, which is admittedly prior to the date of auction, respondent-DVC has refused to grant electricity connection to the petitioner and had demanded dues of erstwhile owner.

(g) Both the learned counsel appearing on behalf of the petitioner and the DVC admit that electricity connection is supplied in accordance with the Jharkhand State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2015 and the refusal can also be in terms of the said Regulations. The conditions, which need to be fulfilled prior to grant of electricity connection are also enumerated in the said Regulations. Applicability of the said Regulations, on the facts of the case is not disputed by any of the parties. The only dispute is about the clause of the said Regulations, which would be applicable on the facts of this case. The respondents-DVC, who has refused electricity connection, is relying on Clause 5.3.3 of the said Regulations, whereas the petitioner is relying on Clause 6.10(a) of the Regulations.

(h) As there was urgency and the petitioner was desperately in need of electric connection, they had deposited the said amount, in installments, pursuant to the order dated 23.09.2019 passed in W.P.(C) No. 2089 of 2019. However, the said deposit was subject to the final outcome of the writ petition.

RELEVANT PROVISIONS OF JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION (ELECTRICITY SUPPLY CODE) REGULATIONS, 2015

8. The main contention of both the parties relate to applicability of two distinct clauses, i.e., Clause 5.3.3 and Clause 6.10 of the Regulations. The petitioner relies upon Clause 6.10(a) of the Regulations whereas the Damodar Valley Corporation relies on Clause 5.3.3 of the Regulations.

9. Considering the submissions of the parties, it is necessary to quote both the Clauses, i.e., Clause 5.3.3 and Clause 6.10(a) of the Regulations, which are as under: -

> ***"5.3.3 Purchase of existing property: Where the applicant has purchased an existing property whose electricity connection has been disconnected, it shall be the applicant's duty to verify that the previous owner has paid all dues to the Distribution Licensee and obtained a "no-dues certificate" from him. In case such "no-dues certificate" has not been obtained by the previous owner before change in ownership of property, the new owner may approach the Distribution Licensee for such a certificate. The Distribution Licensee shall acknowledge receipt of such request and shall either intimate in writing the dues outstanding on the premises, if any, or issue a "no-dues certificate" within 1 month from date of receipt of such application. In case the Distribution Licensee does not intimate the outstanding dues or issue a "no-dues certificate" within this time, new connection to the premises shall not be denied on grounds of outstanding dues of the previous consumer. In such an event, the Distribution Licensee shall have to recover his dues from previous consumer as per provisions of law.***
>
> ***6.10 During the inspection, the Distribution Licensee shall: (a) verify that there is no outstanding due in the applicant's name or for the premise for which the new connection is being applied for. If the applicant, in respect of an earlier agreement executed in his name or in the name of a firm or company with which he was associated either as a partner, director or managing director, has any arrears of electricity dues or other dues for the premises where the new connection is applied for and such dues are***

> ***payable to the licensee, the requisition for supply may not be entertained by the licensee until the dues are paid in full. But if the erstwhile consumer defaulted payment of dues and left the premises for good and the concerned premises has come in legal possession of a new occupant through transferor a decree / order of the court/authority and who has no nexus with the previous owner / occupant in any manner, applies for connection of the electrical line in the same disconnected premises, the distribution licensee shall provide electrical connection without realization of the arrear/dues of the premises payable by the erstwhile consumer, from the subsequent transferee of the premises and he shall not be held liable to pay / discharge the liability of the previous consumer for securing a fresh connection ...."***

THE RULE OF HARMONIOUS INTERPRETATION

10. It is well settled that there should be harmonious consideration of two or more provisions of the statute or amongst the provision interse. A provision cannot be interpreted in such a manner, which will make the other provision or a part of the same provision nugatory.

11. It is also necessary to note that while interpreting two clauses/sections of any statute or provisions of law, the cardinal principle is that if two interpretations are possible, one which leads to a harmonious reading of the entire provision is to be accepted. Any interpretation, which renders a portion of any provision or statute, nugatory, should not be accepted. [Reference : Paragraph 7 of the judgment of the Hon'ble Supreme Court in the case of ***Borosil Glass Works Ltd. Employees' Union versus D.D. Bambode,*** reported in ***(2011) 1 SCC 350].*** Attempt should be made to harmonise the conflicting entries, if any. The harmony should not be limited within the same provision, but also amongst the other provisions of the same statute or instructions or regulations. The Hon'ble Supreme Court has held that there should be rejection of that construction, which will rob one of the entries of its entire content and make it nugatory. The Hon'ble Supreme Court in the case of ***CIT versus Hindustan Bulk Carriers*** reported in ***(2003) 3 SCC 57*** has held as under: -

> ***14. A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and***

***operative on the principle expressed in the maxim** ut res magis valeat quampereat **i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties.** [See Broom's Legal Maxims (10th Edn.), p. 361, Craies on Statutes (7th Edn.), p. 95 and Maxwell on Statutes (11th Edn.), p. 221.]*

***15. A statute is designed to be workable and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable.** (See Whitney v. IRC [1926 AC 37 : 10 Tax Cas 88 : 95 LJKB 165 : 134 LT 98 (HL)] , AC at p. 52 referred to in CIT v. S. Teja Singh [AIR 1959 SC 352 : (1959) 35 ITR 408] and Gursahai Saigal v. CIT [AIR 1963 SC 1062 : (1963) 48 ITR 1] .)*

***16. The courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used.** (See Salmon v. Duncombe [(1886) 11 AC 627 : 55 LJPC 69 : 55 LT 446 (PC)] AC at p. 634, Curtis v. Stovin [(1889) 22 QBD 513 : 58 LJQB 174 : 60 LT 772 (CA)] referred to in S. Teja Singh case [AIR 1959 SC 352 : (1959) 35 ITR 408] .)*

***17. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result.** (See Nokes v. Doncaster Amalgamated Collieries [(1940) 3 All ER 549 : 1940 AC 1014 : 109 LJKB 865 : 163 LT 343 (HL)] referred to in Pye v. Minister for Lands for NSW [(1954) 3 All ER 514 : (1954) 1 WLR 1410 (PC)] .) **The principles indicated in the said cases were reiterated by this Court in** Mohan Kumar Singhania v. Union of India [1992 Supp (1) SCC 594 : 1992 SCC (L&S) 455 : (1992) 19 ATC 881 : AIR 1992 SC 1] .*

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs.** (See R.S. Raghunath v. State of Karnataka [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81].) **Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the

> ***same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act.*** *(See Sultana Begum v. Prem Chand Jain [(1997) 1 SCC 373 : AIR 1997 SC 1006] .)*
>
> ***20. Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.***
>
> ***21. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a "useless lumber" or "dead letter" is not a harmonised construction. To harmonise is not to destroy.***

ANALYSIS AND INTERPRETATION OF CLAUSE 6.10 AND CLAUSE 5.3.3 OF THE REGULATIONS

12. Now, it is necessary to analyse the aforesaid two Clauses of the Regulations to arrive at a conclusion that on what facts and circumstances, these two clauses operate and which one is applicable in the facts of this case. This is being done considering the aforesaid judgments of the Hon'ble Supreme Court. The analysis of the two clauses relevant for purposes of the present case is being dealt with hereinafter.

13. From perusal of Clause 5.3.3 of the Regulations, it is clear that the said clause is applied when an applicant has purchased an existing property from the seller, whose electricity connection had been disconnected. As per the said clause, if a purchaser wants to purchase such type of property from the seller, where there are electricity dues and the connection has been disconnected, then the purchaser is duty bound to verify that the previous owner had any outstanding dues or not. As per the aforesaid clause, if a purchaser wants to purchase a property directly from the seller, he has to ensure that electricity dues in respect of the property is fully paid. He has to obtain a "No Dues Certificate" from the Distribution Licencee to the effect that there is no electricity dues in respect of the property, which he is purchasing. Before the change of ownership by direct sale, this formality has to be completed and only after a "No Dues Certificate" is issued, the new purchaser can apply for fresh electricity connection. In this scenario, if there are dues and "No Dues Certificate" is not granted by the Distribution Licencee and the Distribution Licencee, on request, does not intimate about the outstanding dues within the timeframe mentioned therein, then the Distribution Licencee cannot refuse fresh electricity connection. The dues, in that case, will be recovered from the erstwhile owner.

Thus, from this clause, it is clear that this applies where a purchaser approaches the seller (erstwhile owner of a property) and buys the property directly from the seller, without any intervention of Court, Tribunal or other Authority or institution.

14. In Clause 5.3.3 of the Regulations, 2015, the word “transfer” will mean, transfer of the premises by the erstwhile owner to the present purchaser/owner. This transfer will be a mutual transfer between the two parties. In this situation, as stipulated by the Regulations, where the applicant has purchased an existing property, whose electricity connection has been disconnected, it shall be the applicant's duty to verify that the previous owner has paid all dues to the Distribution Licensee and then to obtain a "no-dues certificate" from the Distribution Licensee. In case such "no-dues certificate" has not been obtained by the previous owner before change in ownership of property, the new owner may approach the Distribution Licensee for such a certificate.

The Clause 6.10(a) of the Regulations operates on a different factual field. As per the first part of the said clause, if new applicant is related with the company, which was in default, or is associated as a Partner or Director or Managing Director of the defaulting company, then, if there are dues, application for fresh connection may not be entertained by the distribution licensee until the dues of the erstwhile consumer are paid in full.

The second part of this clause curves out an exception. The exception provides that if the erstwhile consumer has defaulted in payment of dues and left the premises for good and the premises, thereafter comes in legal occupation of the new occupant through a decree or order of any Court or authority and the new occupant applies for connection of the electrical line in the same premises, the **<u>distribution licensee shall provide electrical connection without realisation of the arrear/dues of the premises payable by the erstwhile consumer, from the subsequent transferee</u>**.

15. From perusal of Clause 6.10(a) of the Regulations, it is understood that the same operates in a situation where the property is transferred legally through Decree of a Court or order passed by any authority and thereafter the possession is given to the new transferee. In this scenario, the erstwhile consumer must be a defaulter and must have left the premises for good.

If the property is directly purchased from the erstwhile owner by the new purchaser, without any external intervention, this Clause 6.10 will not be applicable. In a situation where sale and purchase is directly between the erstwhile owner and the subsequent owner, without intervention of any Court or Authority or any Tribunal or Financial Institution, the same will fall within the purview of Clause 5.3.3 and not Clause 6.10(a). This is the difference in the field of operation of Clause 5.3.3 and Clause 6.10 of the Regulations.

Thus, this interpretation will give meaning and purpose to both Clause 5.3.3 and Clause 6.10, otherwise one of them will become nugatory.

<u>FACTS OF THE CASE IN LIGHT OF THE INTERPRETATION AND FINDINGS</u>

16. In this case, admittedly, the petitioner has come in lawful possession of the premises in question through a public auction as the erstwhile consumer had defaulted in payment of dues and left the premises for good. This is not a case where petitioner has purchased the property directly from the erstwhile owner by executing a sale deed. If the petitioner would have purchased the property from the erstwhile owner directly through a sale deed, which is a mutual transaction between buyer and seller, it could have been said that this petitioner is liable to pay the outstanding dues of the erstwhile owner in terms with Clause 5.3.3 of the Regulations. Since in this case, petitioner has got the property by way of auction and has admittedly got no relation whatsoever with the erstwhile owner or with the company of the erstwhile owner, in view of Clause 6.10(a), the petitioner being the subsequent transferee of the premises, cannot be held liable to pay the dues of the previous consumer.

<u>RELEVANT CASE LAWS / JUDGMENTS / GUIDELINES OF THE HON'BLE SUPREME COURT IN THE CONTEXT OF THIS CASE</u>

17. In **Isha Marbles Vs. Bihar State Electricity Board & Anr. (1995) 2 SCC 648,** wherein an auction purchaser had sought fresh electrical connection which was refused by the Electricity Board on the ground of past arrear of the erstwhile owner, the Hon'ble Supreme Court dealt with the legal position in the context of section 24 of the Electricity Act, 1910 and section 2(c) of Electricity Act, held that a 'consumer' means any person who is supplied with energy and since liability to pay electricity dues is fastened on the consumer at the relevant point of time, the purchaser was not the consumer. Paragraph No.63 the judgment reads as under:

> ***"63. We are clearly of the opinion that there is great reason and justice in holding as above. Electricity is public property. Law, in its majesty, benignly protects public property and behoves everyone to respect public property. Hence, the courts must be zealous in this regard. But, the law, as it stands, is inadequate to enforce the liability of the previous contracting party against the auction-purchaser who is a third party and is in no way connected with the previous owner/occupier. It may not be correct to state, if we hold as we have done above, it would permit dishonest consumers transferring their units from one hand to another, from time to time, infinitum without the payment of the dues to the extent of lakhs and lakhs of rupees and each one of them can easily say that he is not liable for the liability of the predecessor in interest. No doubt, dishonest consumers cannot be allowed to play truant with the public property but inadequacy of the law can hardly be a substitute for overzealousness......"***

18. Further, in **Paschimanchal Vidyut Vitran Nigam Ltd. v. DVS Steels and Alloys (P) Ltd., (2009) 1 SCC 210**the Hon'ble Supreme Court held as under:

> ***11. The supply of electricity by a distributor to a consumer is "sale of goods". The distributor as the supplier, and the owner/occupier of a premises with whom it enters into a contract for supply of electricity are the parties to the contract. A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of his predecessor-in-title or possession, as the amount payable towards supply of electricity does not constitute a "charge" on the premises. A purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises. The supplier can therefore neither file a suit nor initiate revenue recovery proceedings against a purchaser of a premises for the outstanding electricity dues of the vendor of the premises in the absence of any contract to the contrary.***

19. In the case of **Haryana State Electricity Board versus Hanuman Rice Mills, Dhanauri and Others [(2010) 9 SCC 145]**, the Hon'ble Supreme Court after referring to the decisions in the case of **Isha Marbles (Supra)** and **Paschimanchal Vidyut Vitran Nigam Limited (Supra)**summarized the position in the following manner at paragraph No.12, which reads asunder:

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

20. Further, the Division Bench of this Court in the case of **Om Prakash Garg v. Jharkhand Bijli Vitran Nigam Limited, Ranchi (L.P.A No. 748 of 2019)** wherein fresh electrical connection to the appellant was denied by JBVNL on the ground of outstanding electricity dues in the premises, the learned Division Bench having analyzed Clause 5.5 of the Regulations, 2005 vis-à-vis Regulations 5.3.3 & 6.10 of the Regulations, 2015 held that Regulation 6.10 of the Regulations, 2015 is a *parimateria* to Regulation 5.5 of the Regulations, 2005 and conjoint reading of both the provisions would indicate that in order to deny new connection to the premises of the transferee, there should be a nexus of the applicant with the previous owner/occupant. If the purchaser has come in legal possession through transfer or purchase of the concerned property and has no nexus with the previous owner/occupant or is not connected with it in any manner, the distribution licensee is under obligation to provide electrical connection without realization of the arrears/dues of the premises payable by the erstwhile lessee from the new incumbent. Paragraph Nos.20, 21 & 22 of the judgment reads as under:

> ***20. In the present case, the property in question was purchased without encumbrances, liens or charge and***

attachments of any kind whatsoever. Electricity arrears do not constitute a charge over the property so long notice in certificate proceedings are not served upon the Certificate Debtor in terms of section 8 of Bihar and Orissa Public Demands Recovery Act, 1914. At the time of sale of the property to the appellant on 29.03.2011, no such notice in the certificate proceedings were served upon the vendor / Certificate Debtor. Under Clause 5.5 of Electricity Supply Code Regulations, 2005 being statutory in character, electricity could not be denied to the new occupant or purchaser of a premises coming in legal possession through transfer or purchase of a property even if there were arrears of electricity dues of the previous owner and if there was no connection of the incumbent with the previous owner / occupant or any nexus with the previous owner / occupant in any manner. The appellant /purchaser was under no obligation to obtain no dues certificate from the previous owner or verify whether he had paid all dues to the Distribution Licensee before change in ownership of the property as Clause 5.3.3 of Electricity Supply Code Regulations, 2015 was not in existence at the time of purchase. Electricity Supply Code Regulations, 2015 was brought into force with effect from 07.09.2015.

21. It has been rightly held by the learned single Judge that Clause 5.3.3 did not have retrospective effect. As such, the purchaser of a property prior to coming into force of Electricity Supply Code Regulations, 2015 (with effect from 07.09.2015) could not be denied fresh electricity connection on the ground that he had not been able to obtain no dues certificate from the previous owner before change in ownership of the property. However, fresh connection could be denied if such a purchaser had any nexus with the previous owner / occupant in any manner or he was associated either as a partner, director or managing director in respect of earlier agreement executed in his name or in the name of a Firm or a Company. Considered thus, refusal of electricity connection to the appellant relying upon Clause 5.3.3 of Electricity Supply Code Regulations,2015 is unsustainable in law and on facts.

22. Accordingly, the impugned judgment dated 14.08.2019 declining to interfere in the order dated 31.05.2017 (Annexure-4) refusing fresh electricity connection in favour

> ***of the petitioner / appellant is set aside. Consequently, the order dated 31.05.2017 (Annexure-4), impugned in the writ petition, refusing fresh electricity connection in favour of the petitioner stands quashed. Matter is remitted to the Respondent Company to take a fresh decision in accordance with law within a period of four weeks from the date of receipt of a copy of this order. Appeal stands allowed.***

21. In a similar matter the Coordinate Bench of this Court in **Shivam Builders and Developers v. Jharkhand Urja Vikas Nigam Limited [W.P.(C) No. 3650 of 2020],** relied on judgments of Supreme Court and judgment of Division Bench of this court **Om Prakash Garg (supra)** held in paragraph Nos.28, 29 & 30 as under:

> ***28. In the case in hand, the specific claim of the petitioners is that the premises in question have been transferred to them by the erstwhile consumer by virtue of registered sale deeds and they have no nexus with the erstwhile consumer. The respondents have filed a supplementary counter affidavit in W.P.(C) No. 3650/2020 stating that erstwhile consumer i.e. M/s Pawan Biscuit Company Private Limited had four Directors, namely, Pawan Kumar Agarwal, Ramawtar Agarwal, Shraddhanand Agarwal and Puran Chand Agarwal. The said company was acquired by M/s Purbasha Foods Pvt. Ltd. w.e.f. 06.03.2021 and two Directors i.e. Pawan Kumar Agarwal and Ramawtar Agarwal were also the Directors of M/s Prubasha Foods Pvt. Ltd. The fact narrated in the supplementary counter affidavit does not suggest that the petitioner of the aforesaid case has any nexus either with the erstwhile consumer i.e. M/s Pawan Bis cuit Company Pvt. Ltd. or with M/s Purbasha Foods Pvt. Ltd. Thus, the respondents have failed to show any nexus between the petitioners and theerstwhile consumer so as to make them liable to pay its outstanding electricity dues in terms with Clause 6.10(a) of the Regulations, 2015.***
>
> ***29. Both the petitioners and the respondents have relied upon a judgment of learned Division Bench of this Court rendered in the case of Om Prakash Garg Vs. Jharkhand Bijli Vitran Nigam Limited, Ranchi (L.P.A No. 748 of 2019) wherein fresh electrical connection was denied to the appellant by JBVNL on the ground of outstanding***

> ***electricity dues in the premises. In the said case, the property was purchased on 29.03.2011, during which the Electricity Supply Regulations, 2005 [hereinafter referred to as 'the Regulations, 2005] was in force. Clause 5.5 of the Regulations, 2005 did not speak about obtaining 'No Dues Certificate' from the distribution licensee. However, Clause 5.3.3 of the Regulations, 2015 which was enforced w.e.f. 07.09.2015, cast a duty upon the purchaser to verify that the previous owner had paid all the dues and obtained 'no-dues certificate' from the distribution licensee. Learned Division Bench held that the purchaser of a property prior to coming into force the Regulations, 2015 cannot be compelled to produce 'No Dues Certificate' which would amount***
> ***to do an impossible task.***
> ***30. Learned Division Bench having analyzed Clause 5.5 of the Regulations, 2005 viz-a-viz Regulations 5.3.3 & 6.10 of the Regulations, 2015 held that Regulation 6.10 of the Regulations, 2015 is a parimateria to Regulation 5.5 of the Regulations, 2005 and conjoint reading of both the provisions would indicate that in order to deny new connection to the premises of the transferee, there should be a nexus of the applicant with the previous owner/occupant. If the purchaser has come in legal possession through transfer or purchase of the concerned property and has no nexus with the previous owner/occupant or is not connected with it in any manner, the distribution licensee is under obligationto provide electrical connection without realization of the arrears/dues of the premises payable by the erstwhile lessee from the new incumbent. It was further held that the respondent-company had resorted to statutory remedy available to it to recover the past dues of the premises and on that basis also, it could not have refused to grant fresh electricity connection to the applicant.***

22. The Hon'ble Supreme Court in ***K.C. Ninan v. Kerala SEB, (2023) 14 SCC 431,*** has decided nineteen appeals arising from the State - Kerala, Maharashtra, Gujarat, Assam and West Bengal, wherein the Electric Utilities refused to provide an electricity connection unless the auction purchaser paid the dues of the previous owner.

23. The Hon'ble Supreme Court noticed the jurisprudence surrounding the liability of subsequent purchasers for electricity dues in India has undergone a significant transformation over the years. Initially, in ***Isha Marbles v. Bihar SEB, (1995) 2 SCC 648***, a three-Judge Bench of the Hon'ble Supreme Court had held that in the absence of a charge being created over the premises by a statutory regulation, an auction-purchaser cannot be asked to clear the past arrears of electricity dues as a condition precedent to the grant of electricity. However, this position was revisited in ***Ahmedabad Electricity Co. Ltd. v. Gujarat Inns (P) Ltd., (2004) 3 SCC 587*** while reaffirming the proposition that in a case of a fresh connection the auction-purchasers cannot be held liable to clear the arrears incurred by the previous owners in respect of power supplied to the premises in the absence of a specific statutory provision in that regard, the Court acknowledged the need to reconsider the broad principles laid down in ***Isha Marbles****(supra)*. Around the same time, in ***Hyderabad Vanaspathi Ltd. v. A.P. SEB, (1998) 4 SCC 470*** it was clarified that terms and conditions of supply framed under statutory authority were not merely contractual but carried statutory force. This recognition opened the door for Boards to impose liability through properly framed regulations. Subsequently, In ***Dakshin Haryana Bijli Vitran Nigam Ltd. v. Paramount Polymers (P) Ltd., (2006) 13 SCC 101***, the Apex Court upheld a clause in the conditions of supply that allowed recovery of dues from transferees seeking a connection, distinguishing ***Isha Marbles*** (supra) on the ground that it had not considered such statutory provisions. Similarly, in ***Paschimanchal Vidyut Vitran Nigam Ltd. v. DVS Steels and Alloys (P) Ltd., (2009) 1 SCC 210***, the Hon'ble Supreme Court held that a licensee or an electricity distributor can insist upon fulfillment of statutory rules, regulations or the conditions of supply so long as they are not arbitrary and unreasonable.

24. This line of reasoning has since been consistently followed. In ***Telangana State Southern Power Distribution Co. Ltd. v. Srigdhaa Beverages, (2020) 6 SCC 404***, the Hon'ble Supreme Court reaffirmed that subsequent purchasers could indeed be made liable for past dues under statutory regulations. The Hon'ble Supreme Court has observed as under:

> ***"16.1. That electricity dues, where they are statutory in character under the Electricity Act and as per the terms & conditions of supply, cannot be waived in view of the provisions of the Act itself more specifically Section 56 of the Electricity Act, 2003 (in pari materia with Section 24 of the Electricity Act, 1910), and cannot partake the character***

> ***of dues of purely contractual nature***
>
> ***16.2. Where, as in cases of the E-auction notice in question, the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on "AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS", there can be no doubt that the liability to pay electricity dues exists on the respondent (purchaser)***
>
> ***16.3. The debate over connection or reconnection would not exist in cases like the present one where both aspects are covered as per clause 8.4 of the General Terms & Conditions of Supply."***

25. The evolution thus reflects a clear doctrinal shift: from protecting new owners against inherited liabilities in ***Isha Marbles(supra)***, to recognizing the statutory authority of electricity boards to enforce recovery from subsequent purchasers, provided such conditions are reasonable and non-arbitrary.

26. In essence, the law has moved from a narrow contractual view to a broader statutory framework, balancing consumer protection with the need to safeguard public resources and ensure financial discipline in the electricity sector. In ***K.C. Ninan*****(supra)** the Hon'ble Supreme Court has observed that a distribution licensee can require the subsequent owner to clear the arrears incurred by the previous owners in respect of power supplied to the premises. Such an action is permissible only where the statutory conditions of supply authorise the recovery of outstanding electricity dues from a subsequent purchaser claiming fresh connection of electricity, or if there is an express provision of law providing for creation of a statutory charge upon the transferee. At paragraph 107 in the case of ***K.C. Ninan (supra)*** the Hon'ble Supreme Court held as under:

> ***107. Consequently, in general law, a transferee of the premises cannot be made liable for the outstanding dues of the previous owner since electricity arrears do not automatically become a charge over the premises. Such an action is permissible only where the statutory conditions of supply authorise the recovery of outstanding electricity dues from a subsequent purchaser claiming fresh connection of electricity, or if there is an express provision of law providing for creation of a statutory charge upon the transferee.***

27. Further, the Hon'ble Supreme Court on the issues of whether arrears of electricity can become a charge or encumbrance over the premises or not, observed at paragraph 117 in the case of ***K.C. Ninan (supra)*** as under:

> ***117. In light of the above discussion, we are of the opinion that the electricity utilities can create a charge by framing subordinate legislation or statutory conditions of supply enabling recovery of electricity arrears from a subsequent transferee. Such a condition is rooted in the importance of protecting electricity which is a public good. Public utilities invest huge amounts of capital and infrastructure in providing electricity supply. The failure or inability to recover outstanding electricity dues of the premises would negatively impact the functioning of such public utilities and licensees. In the larger public interest, conditions are incorporated in subordinate legislation whereby the Electric Utilities can recoup electricity arrears. Recoupment of electricity arrears is necessary to provide funding and investment in laying down new infrastructure and maintaining the existing infrastructure. In the absence of such a provision, the Electric Utilities would be left without any recourse and would be compelled to grant a fresh electricity connection, even when huge arrears of electricity are outstanding. Besides impacting on the financial health of the Utilities, this would impact the wider body of consumers.***

28. The Hon'ble Supreme Court examined the facts and statute/rules/regulations applicable in the all the nineteen appeals individually and held in some of the cases that subsequent owner/purchaser is not liable to pay electricity dues of earlier owners as no such provision was found in these cases and in other cases affirmed the statute/rule/regulations which allows the electricity company to demand the electricity dues of erstwhile owner from subsequent owner/purchaser.

29. Finally, in ***K.C. Ninan*** (supra), following conclusions have been arrived at by the Hon'ble Supreme Court:

> ***342.1. The duty to supply electricity under Section 43 of the 2003 Act is not absolute, and is subject to such charges and compliances stipulated by the Electric Utilities as part of the application for supply of electricity;***
>
> ***342.2. The duty to supply electricity under Section 43 is***

with respect to the owner or occupier of the premises. The 2003 Act contemplates a synergy between the consumer and premises. Under Section 43, when electricity is supplied, the owner or occupier becomes a consumer only with respect to those particular premises for which electricity is sought and provided by the Electric Utilities;

342.3. For an application to be considered as a "reconnection", the applicant has to seek supply of electricity with respect to the same premises for which electricity was already provided. Even if the consumer is the same, but the premises are different, it will be considered as a fresh connection and not a reconnection;

342.4. A condition of supply enacted under Section 49 of the 1948 Act requiring the new owner of the premises to clear the electricity arrears of the previous owner as a precondition to availing electricity supply will have a statutory character;

342.5. The scope of the regulatory powers of the State Commission under Section 50 of the 2003 Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners;

342.6. The Electricity Supply Code providing for recoupment of electricity dues of a previous consumer from a new owner have a reasonable nexus with the objects of the 2003 Act;

342.7. The rule-making power contained under Section 181 read with Section 50 of the 2003 Act is wide enough to enable the Regulatory Commission to provide for a statutory charge in the absence of a provision in the plenary statute providing for creation of such a charge;

342.8. The power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery under Section 56 of the 2003 Act;

342.9. The implication of the expression "as-is-where-is" basis is that every intending bidder is put on notice that the seller does not undertake responsibility in respect of the property offered for sale with regard to any liability for the payment of dues, like service charges, electricity dues for power connection, and taxes of the local authorities; and

342.10. In the exercise of the jurisdiction under Article 142

> ***of the Constitution, the Electric Utilities have been directed in the facts of cases before us to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction-purchasers.***

30. Now, it is settled that if the Regulation and the Law provides for recovery of dues from the erstwhile owner, then only it can be recovered. Further, such recovery, if the law provides, should, absolutely, be in consonance with the provisions, conditions and procedure laid down in the law itself. In the instant case, the provision for recovery is Clause 5.3.3 and Clause 6.10(a) of the Regulations, that too on strictly fulfilling the conditions laid down thereunder. If the facts befits with the conditions of these two provisions, then only there can be recovery, otherwise not.

31. On the facts of this case, as held in the foregoing paragraphs, the petitioner is covered by Clause 6.10(a) of the Regulations, and Clause 5.3.3 is not applicable so far as this petitioner is concerned.

32. Further, there is no provision to recover the dues of the erstwhile owner from the auction purchaser, if the auction purchaser is not related to the erstwhile owner or the Directors of the erstwhile owner were also not related with the same (as per Clause 6.10).

33. Thus, it is concluded that on the facts of this case, applying Clause 6.10(a) of the Regulations, which is applicable in this case, no recovery of outstanding dues of the erstwhile consumer can be made from this petitioner.

<u>FINDINGS ON "AS IS WHERE IS" AND "NO ENCUMBRANCE" IN THE LIGHT OF JUDGMENTS OF HON'BLE SUPREME COURT</u>

34. Learned Senior Counsel for respondent-DVC contended that the petitioner is responsible for paying the outstanding electricity dues because it purchased the property on an **"as is where is"** basis with full knowledge of the existing terms and liabilities. In **K.C. Ninan (supra)** the Hon'ble Supreme Court held as under:

> ***146. To conclude, all prospective auction-purchasers are put on notice of the liability to pay the pending dues when an appropriate "as-is-where-is" clause is incorporated in the auction-sale agreement. It is for the intending auction-***

> ***purchaser to satisfy themselves in all respects about circumstances such as title, encumbrances and pending statutory dues in respect of the property they propose to purchase. In a public auction-sale, auction-purchasers have the opportunity to inspect the premises and ascertain the facilities available, including whether electricity is supplied to the premises. Information about the disconnection of power is easily discoverable with due diligence, which puts a prudent auction-purchaser on a reasonable enquiry about the reasons for the disconnection. When electricity supply to a premises has been disconnected, it would be implausible for the purchaser to assert that they were oblivious of the existence of outstanding electricity dues.***
>
> ***147. In terms of the legal doctrine of caveat emptor, it becomes the duty of the buyer to exercise due diligence. A seller is not under an obligation to disclose patent defects of which a buyer has actual or constructive notice in terms of Section 3 of the Transfer of Property Act, 1882. However, in terms of Section 55(1)(a), in the absence of a contract to the contrary, the seller is under an obligation to disclose material defects in the property or in the seller's title thereto of which he is aware and which a buyer could not with ordinary care discover for himself.***
>
> ***148. While examining the effect of an "as-is-where-is" clause, the facts and circumstances of each case individually, along with the terminology of the clauses governing the auction-sales must be taken into consideration, to arrive at an equitable decision.***

35. Learned counsel for the petitioner submitted that in the auction sale advertisement there is no averment suggesting that the auction sale is on **"as is where is"** basis, whereas in the Sale Certificate of the immovable property it is mentioned that there are **"no pending encumbrances"** on the property and in List-I & List-II of the sale certificate also mentioned that the **"property is free from all encumbrances"**.

36. The Hon'ble Supreme Court in ***Sulochana Chandrakant Galande v. Pune Municipal Transport, (2010) 8 SCC 467*** explained that the word **"encumbrance"** actually means the burden caused by an act or omission of man and not that created by nature. It means a burden or charge upon property or a claim or lien on the land. It means a legal liability on property. Thus, it constitutes a burden on the title which diminishes the value of the land. It may be a mortgage or a deed of trust or a lien of an easement. At paragraphs 4 to 17 of the judgment, the Hon'ble Supreme Court has held as under:

> ***14. "Encumbrance" actually means the burden caused by an act or omission of man and not that created by nature. It means a burden or charge upon property or a claim or lien on the land. It means a legal liability on property. Thus, it constitutes a burden on the title which diminishes the value of the land. It may be a mortgage or a deed of trust or a lien of an easement. An encumbrance, thus, must be a charge on the property. It must run with the property.*** *(Vide Collector of Bombay v. Nusserwanji Rattanji Mistri [AIR 1955 SC 298], H.P. SEB v. Shiv K. Sharma [(2005) 2 SCC 164: AIR 2005 SC 954] and Al Champdany Industries Ltd. v. Official Liquidator [(2009) 4 SCC 486].)*
>
> ***15. In State of H.P. v. Tarsem Singh [(2001) 8 SCC 104], this Court held that the terminology "free from all encumbrances" used in Section 16 of the 1894 Act, is wholly unqualified and would encompass the extinguishing of "all rights, title and interests including easementary rights" when the title vests in the State.***
>
> ***16. Thus, "free from encumbrances" means vesting of land in the State without any charge or burden in it. Thus, the State has absolute title/ownership over it.***
>
> ***17. In Satendra Prasad Jain v. State of U.P. [(1993) 4 SCC 369: AIR 1993 SC 2517], this Court held that once land vests in the State free from all encumbrances, it cannot be divested. The same view has been reiterated in*** *Awadh Bihari Yadav v. State of Bihar [(1995) 6 SCC 31] , U.P. Jal Nigam v. Kalra Properties (P) Ltd. [(1996) 3 SCC 124 : AIR 1996 SC 1170] , Pratap [(1996) 3 SCC 1], Chandragauda Ramgonda Patil v. State of Maharashtra [(1996) 6 SCC 405], Allahabad Development Authority v. Nasiruzzaman [(1996) 6 SCC 424], State of Kerala v. M. Bhaskaran Pillai [(1997) 5 SCC 432: AIR 1997 SC 2703] , M. Ramalinga Thevar v. State of T.N. [(2000) 4 SCC 322] , Printers (Mysore) Ltd. v. M.A. Rasheed [(2004) 4 SCC 460] , Bangalore Development Authority v. R.*

Hanumaiah [(2005) 12 SCC 508] and Govt. of A.P. v. Syed Akbar [(2005) 1 SCC 558].

37. The Hon'ble Supreme Court in ***Saraswati Devi v. DDA, (2013) 3 SCC 571*** held as under:

> ***34. What is the effect of provisional possession which was given to the appellant's husband in 1960 on approval of his highest bid? Does it amount to creation of an encumbrance in the property? If the provisional possession given to the appellant's husband amounted to creation of an encumbrance, whether the said property could have been acquired under the LA Act although the ownership vested in the Central Government? The fate of the appeal significantly will depend upon answer to these questions.***
>
> ***35.Concise Oxford English Dictionary (10th Edn., Revised) defines "encumbrance":***
>
> ***"encumbrance.—(1) a burden or impediment. (2) Law a mortgage or other claim on property or assets."***
>
> ***36.Webster's Comprehensive Dictionary (International Edition, Vol. I) defines "encumbrance" as follows:***
>
> ***"(1) That which encumbers. (2) Law Any lien or liability attached to real property. (3) One's wife, child or dependant. Also spelled incumbrance. See synonyms under impediment, load [<OF encumbrance <encombrer. See encumber.]"***
>
> ***37. In P. Ramanatha Aiyar's The Law Lexicon (2nd Edn. Reprint 2000) with reference to a decision of the Patna High Court in Mahadeo Prasad Sahu v. Gajadhar Prasad Sahu [AIR 1924 Pat 362], the term "encumbrance" is explained as follows:***
>
> ***"Encumbrance. Burden or property; impediment; mortgage or other claim on property. Grant of lands rent free or the grant of the landlords zarait land to a tenant for the purposes of cultivation does amount to an encumbrance of the estate. Apart from mere dealings such as mortgages which create a charge upon the land, there are other dealings which amount to an encumbrance. Anything which interferes with the unrestricted rights of the proprietors as they then existed would be an encumbrance upon the land, even the granting of a lease of zarait lands, that is to say the lands which the landlord is entitled to***

hold in direct possession and to cultivate for his own purposes. A lease of such lands granted to an occupier in circumstances which would give him a right of occupancy over the land, would amount to an encumbrance."

38. In Collector of Bombay v. Nusserwanji Rattanji Mistri [AIR 1955 SC 298], the term "encumbrance" as occurring in Section 16 of the LA Act has been explained by this Court to mean interests in respect of which a compensation was made under Section 11 or could have been claimed thereunder.

39. In M. Ratanchand Chordia v. Kasim Khaleeli [AIR 1964 Mad 209], a Division Bench of the Madras High Court had an occasion to consider the meaning of the word "encumbrances" with reference to the 1954 Act and the LA Act in the context of the easementary right of way. The Division Bench considered the word "encumbrances" thus: (AIR p. 215, para 18)

"18. The word 'encumbrances' in regard to a person or an estate denotes a burden which ordinarily consists of debts, obligations and responsibilities. In the sphere of law, it connotes a liability attached to the property arising out of a claim or lien subsisting in favour of a person who is not the owner of the property. Thus, a mortgage, a charge and vendor's lien are all instances of encumbrances. The essence of an encumbrance is that it must bear upon the property directly and indirectly and not remotely or circuitously. It is a right in realiena circumscribing and subtracting from the general proprietary right of another person. An encumbered right, that is a right subject to a limitation, is called servient while the encumbrance itself is designated as dominant."

40. The word "encumbrance", according to its ordinary significance, means any right existing in another to use the land or whereby the use by the owner is restricted. The word "encumbrance" imports within itself every right or interest in the land, which may subsist in a person other than the owner; it is anything which places the burden of a legal liability upon property. The word "encumbrance" in law has to be understood in the context of the provision under consideration but ordinarily its ambit and scope is wide. Seen thus, it is difficult to see why a binding contract entered into between an auction-purchaser and the Government on approval of the highest bid relating to sale

> ***of property, which is part of compensation pool under Section 14 of the 1954 Act followed by provisional possession to the auction-purchaser, should not come within the purview of the word "encumbrance".***

38. The Hon'ble Supreme Court in **K.C. Ninan** (supra) also explained the word encumbrance at paragraph 99 of the judgment as under:

> ***99. An encumbrance means a burden or charge upon property or a claim or lien upon an estate or on the land. Encumbrance must be a charge on the property, which must run with the property. In terms of the first paragraph of Section 100, when an immovable property of one party is pledged as security for the payment of money to another, and the transaction does not constitute a mortgage, the latter would acquire a charge over the property. All provisions that apply to a simple mortgage are applicable to a charge. A charge is neither a sale nor a mortgage because it creates no interest in or over an immovable property but it is only a security for the payment of money.*** *[Dattatreya Shanker Mote v. Anand Chintaman Datar, (1974) 2 SCC 799]* ***In other words, a charge only results in the creation of a right of payment out of the property towards the satisfaction of the debt or obligation in question.***

39. Considering the above, it is clear that the word 'encumbrance' means a burden or charge upon property or a claim or lien upon an estate or on the land. Herein, in the present case, it appears from the Sale Certificate of the immovable property (Annexure-4 to the writ petition), that there are no pending encumbrances on the property. Further, List-I &List-II of the sale certificate also mentioned that the property is free from all encumbrances. Thus, contention of the respondents cannot be accepted as auction sale of the property in the present case does not comes under "as is where is" basis rather the property/premises is "free from all encumbrances".

ADDITIONAL CONSIDERATION WITH RESPECT TO W.P.(C) NO.2639 OF 2025

40. Recovery of dues, due to revision of the tariff for the period erstwhile consumer was in possession, has been challenged in this case. Petitioner has purchased the property in public auction and it is admitted case that the outstanding dues including the subsequent revision relates to the period when the erstwhile consumer (defaulter) was in possession.

41. In view of what has been held in several foregoing paragraphs of this judgment, once it has been held that respondent-DVC is not entitled to recover the outstanding dues from the petitioner, the subsequent demand on account of tariff revision, which also relates to erstwhile consumer (defaulter), is not payable by the petitioner.

CONCLUSION

42. On the facts of this case, when the petitioner is an auction purchaser and the purchase is not based on a direct negotiations between the purchaser and the erstwhile owner (defaulter), rather the same is at the instance of a financial institution, Clause 5.3.3 is not applicable. Instead Clause 6.10(a) of the Regulations is applicable.

43. Clause 6.10(a) of the Regulations bars recovery of the outstanding electricity dues from the petitioner (auction purchaser) on the facts of this case.

44. Considering the findings arrived at in this judgment hereinbefore, it is hereby held that the petitioner being the auction purchaser, having no relationship with the erstwhile owner, neither their Director or any person so having any relation with the erstwhile owner, is not entitled to pay the dues of erstwhile owner.

45. The property was not transferred by auction to the petitioner on **“as is where is”** basis as there is no averment in the auction sale advertisement to suggest that the sale is on **“as is where is”** basis.

46. There was no pending encumbrances also over the property in question as no where in the sale certificate of the property it has been mentioned that there was any encumbrance, rather in List 1 and List 2 of the Sale Certificate, it was mentioned that the property is **“free from all encumbrances”**.

47. The petitioner, in view of its desperate need of electricity connection, had deposited the outstanding dues of the erstwhile owner pursuant to the order dated 23.09.2019 passed in W.P.(C) No.2089 of 2019. However, the said deposit was subject to final outcome of the writ petition. Now at this stage, when it has already been held that the petitioner is not liable to pay the outstanding dues, the said amount needs to be refunded to the petitioner. This refund is the natural consequence of what has been held above, i.e., petitioner is not liable to pay the outstanding dues of the erstwhile owner.

48. So far as W.P.(C) No. 2089 of 2019 is concerned, the Respondent-Damodar Valley Corporation is directed to refund the entire amount, i.e., the outstanding dues of the erstwhile owner [which was deposited by the petitioner in order to secure electric connection] in 5 (five) equal quarterly installments beginning from the first day on expiry of six weeks from today.

49. So far as W.P.(C) No.2639 of 2025 is concerned, the Demand Notice contained in letter No.Coml./arrear/JH/2006-2012/340308 dated 01.02.2025 (Annexure 8) issued by the respondent No.4 is hereby quashed.

50. Both these writ petitions **[W.P.(C) No. 2639 of 2025 and W.P.(C) No.2089 of 2019]** stand allowed. Pending interlocutory applications, if any, also stand disposed of.

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi
Dated 4th August, 2026
Kumar/Cp-02
AFR

Uploaded on 04.08.2026