

(2009) 03 MP CK 0027
In the Madhya Pradesh High Court

Shobhana Enterprises (P) Ltd.

APPELLANT

Vs

M.P. Paschim Kshetra Vidyut Vitran Co. Ltd. and Others

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Madhya Pradesh Electricity Supply Code, 2004 — Clause 4.17

Citation : AIR 2010 MP 6 : (2009) 2 MPLJ 644

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Judgement

Viney Mittal, J.

The petitioner, M/s. Shobhana Enterprises Pvt. Ltd., (hereinafter referred as the petitioner-company), is a purchaser of the land, building, plant, machinery, furniture and fixtures belonging to one M/s. Tristar Soya Products Ltd. under liquidation, in sale proceedings conducted by the Official Liquidator, attached to this Court, ordered in Company Petition 11 of 2003, vide order dated July 11, 2005. On the aforesaid purchase, having been duly approved by the Company Judge, the possession of the said assets was handed over to the petitioner-company on September 9, 2005.

It appears that the aforesaid company-in-liquidation, M/s. Tristar Soya Products Ltd. was in agreement for supply of electrical energy with M. P. Electricity Board, the predecessor in interest of M. P. Paschim Kshetra Vidyut Vitaran Company Ltd. (hereinafter called as respondent-vitaran company). It is also conceded position between the parties that the company-in-liquidation was a defaulter company, viz-a-viz., the outstanding electricity dues of the respondent-vitaran company. After having purchased the assets of the company-in-liquidation, the petitioner-company filed an application on June 30, 2006 before the respondent-vitaran company, for release of a temporary power connection of 60 HP. A similar request was later made in the prescribed proforma, on the next date. However, through a communication dated July 7, 2006, the Superintending Engineer of the vitaran company, informed the petitioner-company, that action, as per Clause

4.17 of M. P. Electricity Supply Code, 2004 (hereinafter referred as Code), is required to be taken.

The petitioner-company has pleaded that on June 30, 2006 itself, it wrote a communication to the Official Liquidator, through whom the sale in question had been conducted qua the assets, for issuance of the directions to the vitaran company, with regard to the default of the company-in-liquidation. Through a communication dated July 11, 2006, the Official Liquidator took up the matter with the Superintending Engineer of the vitaran company, informing the said authority that in case there were any dues outstanding against the company-in-liquidation, then an appropriate claim petition be filed. Copy of the aforesaid communication dated July 11, 2006 has been appended as Annexure P-4 with the petition. A copy of the said communication was also endorsed to the petitioner-company.

On receipt of the aforesaid communication from the Official Liquidator, the petitioner-company took up the matter with the Superintending Engineer, through a communication dated July 12, 2006. It was maintained that Clause 4.17 of the Code was not applicable to the case of the purchase made by the petitioner-company, since the said purchase had been made by it through a government agency i.e. the Official Liquidator. The aforesaid communication dated July 12, 2006 by the petitioner-company to the Superintending Engineer has been appended as Annexure P-5 with the petition.

According to the petitioner-company, Clause 4.17 of the Code was later on amended, and a gazette notification in this regard was issued on August 25, 2006, appended as Annexure P-6, with the petition.

On realizing that the respondent-vitaran company was adamant in not releasing the connection, and finding that a great financial loss was being incurred by it, the petitioner-company submitted an undertaking and also deposited a sum equivalent to 10% of the outstanding dues from the company-in-liquidation. However, it has been maintained that the outstanding dues and undertaking had been given by it under protest, reserving it a right to raise a challenge. Consequently, a challenge was raised by the petitioner-company by filing a petition before M. P. Regulatory Commissioner. However, since in the meantime, on the basis of the undertaking given by the petitioner-company, and on the basis of the deposit, a fresh connection had been released, the Commission disposed of the said petition with a liberty that for seeking a refund of the recovery of the old arrears, it should approach the Grievance Redressal Forum. A copy of the aforesaid order dated April 4, 2007, passed by the Electricity Regulatory Commission, has been appended as Annexure P-7 with the petition.

According to the petitioner-company, in terms of the said liberty granted, it filed a petition before the Grievance Redressal Forum on July 16, 2007, limiting its prayer for refund of the amount of Rs. 3.06 lacs, being the dues outstanding against the erstwhile consumer, and claiming that the said dues were not payable

by the petitioner-company as per Clause 4.17 of the Code. However, vide an order dated August 13, 2007, appended as Annexure P-8, the Forum held that the protection of Clause 4.17 of the Code was not attracted to the petitioner-company, in as much as, the purchase by it had not been done through any State Government department or any financial institution.

The petitioner-company has specifically pleaded that the respondent-vitaran company had already filed a claim petition before the Official Liquidator, raising a demand for outstanding dues of Rs. 27,51,601/- against M/s. Tristar Soya Products company-in-liquidation. A copy of the communication issued by the Official Liquidator on November 18, 2007, in this regard, has been appended as Annexure P-9 with the petition.

In the meantime, the petitioner-company again approached the Electricity Regulatory Commission by way of a petition seeking review of the order dated April 4, 2007. However, the said review petition was also dismissed by the Commission vide order dated April 16, 2008, appended as Annexure P-10 with the petition. Through the aforesaid order Annexure P-10, a liberty was granted to the petitioner-company to approach the Ombudsman with grievance raised by it, if so advised.

A notice, dated May 12, 2008, was issued by the Superintending Engineer respondent No. 2, to the petitioner-company on May 12, 2008, requiring it to deposit an amount of Rs. 27,01,001/-, due and outstanding from the erstwhile consumer M/s. Tristar Soya Products Ltd. within three days. The petitioner-company was also informed that in case of a default in deposit, the electricity connection granted to it would be disconnected. A copy of the said notice has been appended as Annexure P-11 with the petition. However, on May 20, 2008, the electricity connection of the petitioner-company was disconnected on account of non-deposit.

Challenging the aforesaid notice dated May 17, 2008, and also the order passed by the Forum on August 13, 2007, Annexure P-8, the petitioner-company approached the Ombudsman through a petition. However, the aforesaid petition filed by the petitioner-company has also been rejected by the Ombudsman vide order dated October 22, 2008. The aforesaid order dated October 22, 2008, passed by the Ombudsman, has been appended as Annexure P-12 with the petition. The petitioner-company claims that during pendency of the proceedings before the Ombudsman, by way of an interim arrangement, it had deposited 50% of the demanded amount under protest, for restoration of the electricity connection. But after the decision of the Ombudsman, through order Annexure P-12, another demand has been raised by respondent No. 2 for depositing the remaining amount of Rs. 15,28,601/-. The aforesaid demand notice dated November 15, 2008 has been appended as Annexure P-13 with the petition.

It is in these circumstances that the petitioner-company has approached this Court through the present petition, raising a challenge to the order of recovery

passed against it by the respondent-vitaran company; raising a challenge to the order dated October 22, 2008, Annexure P-12 passed by the Ombudsman; challenging the recovery notice dated November 15, 2008, Annexure P-13, and also praying for issuance of directions to the respondent-vitaran company, not to effect any recovery of the dues, which were payable by the erstwhile consumer Tristar Soya Products Ltd.. ?

The claim made by the petitioner-company has been contested by the respondents. A reply has been filed on behalf of respondents No. 1 and 2. Although the basic facts have not been disputed, a strong reliance has been placed by the aforesaid respondents on Clause 4.17 of the Code. It has been maintained that since a new electricity connection had been sought by the petitioner-company, therefore, on account of the fact that the erstwhile consumer, occupying the said premises, was in default, and there were outstanding dues, the said dues were payable by the petitioner-company, before even a new connection could be issued in the said premises. The respondents have maintained that the aforesaid outstanding dues to the extent of Rs. 30,57,601/- were dues on the property and premises in question, and unless cleared, no new connection could be released in favour of the petitioner-company. The respondents have also relied upon the provisions of the Electricity Act, 2003, and the notification dated March 27, 2004, to maintain that the Electricity Supply Code, 2004, having come into existence under the provisions of the Act, the provisions of the Code have the force of law, and therefore, as per Clause 4.17 thereof, the petitioner-company is liable in law to clear the outstanding dues of the erstwhile consumer.

I have heard S.C. Bagadiya, learned senior counsel for the petitioner-company and Shri Surjeet Singh, learned senior counsel for respondents No. 1 and 2, and with their assistance, have also gone through the record of the case.

At the outset, it may be noted that the facts as noticed in detail, in the above portion of the order, are not a matter of any contest between the parties. It is not a matter of any dispute, even by the petitioner-company, that the outstanding dues with regard to the electric supply by vitaran company remained unpaid by M/s. Tristar Soya Products Ltd., the company-in-liquidation. It is also not a matter of any dispute, even by the respondent-vitaran company, that in winding up proceedings initiated against the aforesaid company, the Company Judge of this Court, vide an order dated July 11, 2005 passed in Company Petition No. 11 of 2003, had directed the auction of the assets of the said company. In pursuance to the said orders passed by the Company Judge, an auction was conducted, and the aforesaid assets of the company-in-liquidation were purchased by the petitioner-company. The said sale was confirmed by the Company Judge. The possession of the purchased property was handed over to the petitioner-company on September 9, 2005. It also transpires from the record that the petitioner-company filed an application for fresh connection before the Superintending Engineer. It also took up the matter with the Official Liquidator,

who in turn, issued a communication to the Superintending Engineer, to file its claim against the company-in-liquidation with regard to the outstanding dues. It also appears, that a claim petition had been filed by the respondent-vitaran company before the Official Liquidator, for an amount of Rs. 27,51,601/-, as is apparent from the communication issued by the Official Liquidator on November 18, 2007, Annexure P-9.

The only issue, which arises for consideration before this Court is that the petitioner-company, being not a purchaser of the assets of the erstwhile consumer through any private sale, but having purchased the aforesaid assets in sale conducted by the Official Liquidator, attached with this High Court, could it be said that it was protected under the exceptions provided in Clause 4.17 of the Code, or on the contrary was required to clear the outstanding dues ?

Shri S. C. Bagadiya, learned senior counsel for the petitioner-company, has referred to the provisions of Clause 4.17 of the Code, existing prior to its amendment through notification Annexure P-6, and maintains that as per the then existing provisions of the Code, the petitioner-company, having purchased the property through a government agency, i.e. the Official Liquidator, was not liable to pay the energy dues of erstwhile consumer. However, Shri Bagadiya maintains that even as per the amended provisions of the Code, and newly inserted Clause 4.17, the petitioner-company is covered under the exceptions, and therefore, the said liability of the erstwhile consumer, cannot be fastened upon the petitioner-company, in any manner. In this regard, a strong reliance has been placed by learned senior counsel upon the law laid down by the Apex Court in the case of *Isha Marbles Vs. Bihar State Electricity Board and Another*, and also the observations by the Supreme Court in the case of *Ahmedabad Electricity Co. Ltd. Vs. Gujarat Inns. Pvt. Ltd. and Others*, .

All the aforesaid contentions have been strongly refuted by Shri Surjeet Singh, learned senior counsel appearing for respondent-vitaran company, by placing strong reliance upon the provisions of Clause 4.17 of the Code. According to learned senior counsel, the un-amended Clause 4.17, as well as the amended provisions of the Code, visualized only an exception for the purchase of property of the erstwhile consumer, through a sale conducted by the Income Tax Department/ Commercial Tax Department or any other government agency, and even some financial institutions, but the Official Liquidator was not an authority/ agency covered under any of the exceptions. Thus, according to the learned senior counsel, the sale in favour of the petitioner-company, being not covered under any such exception, it was bound in law to discharge the outstanding liability of the erstwhile consumer. According to Shri Surjeet Singh, the judgments in the cases of *Isha Marbles (supra)* and *Ahmadabad Electricity (supra)*, relied upon by the petitioner-company, had no application to the controversy in the present case, because of the existence of the specific Clause 4.17 in the Code. The learned senior counsel has relied upon the law laid down by the Supreme Court in the case of *Dakshin Haryana Bijli Vitran Nigam Ltd. Vs.*

Paramount Polymers Pvt. Ltd., and also a recent judgment rendered by the Apex Court in the case of Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, .

I have duly considered the rival contentions of learned senior counsel for the parties. I have also gone through the various provisions, as well as the various judgments cited before this Court.

Since, both the learned senior counsel for the parties have referred to provisions of Clause 4.17 of the Code, it would be appropriate to extract the aforesaid provisions of Clause 4.17. unamended and amended, both, at the outside.

Clause 4.17(ii) (Prior to amendment)

4.17(ii): If the property is attached and sold by the Income Tax Department/ Commercial Tax Department or such other Government Department for recovery of their dues, then the purchaser shall not be required to pay the energy dues of erstwhile consumers.

The amended provisions of Clause 4.17 of the Code are as under:

Clause 4.17 : If the consumer, in respect of an earlier agreement executed in his name or the name of a firm or company with which he was associated either as a Partner. Director or Managing Director or as occupier and or owner of the premises, 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 licensee, the requisition for supply may not be entertained by the licensee until the dues are paid in full. However, release of new connection shall not be refused by the Distribution Licensee in following cases:

(i) If the lease deed is cancelled by the State Govt. on account of any reason and allocated to a new party/consumer, then the new party/consumer shall not be required to pay the energy dues of erstwhile consumer.

(ii) If property is attached and sold by Income Tax Department/Commercial Tax Department or such other Govt. Departments for recovery of their dues, then the new purchaser shall not be required to pay the energy dues of erstwhile consumer.

(iii) If the Financial Institutions created under the State Act/Central Act attach and Sale property for recovery of their dues, then the purchaser shall not be required to pay the energy dues of erstwhile consumer.

(iv) On Vacation of Govt. Quarter/Flat on transfer of an employee leaving arrears of energy charges, new occupant shall not be required to pay the energy dues of erstwhile consumer.

(iv) If there is a specific order from a Court for non-recovery of arrears outstanding on the premises.

A bare perusal of Clause 4.17, shows that it has been enacted with a view to

enforce liability, with regard to premises, on account of electricity dues, where a new connection is applied. According to the said Clause, the application made by such an applicant may not be entertained by the Vitran Company, until the dues are paid in full. However, a few exceptions have also been inserted in the said Clause. The first exception is of a situation, where a lease deed is cancelled by the State Government on account of any reason and the premises is allocated to the new party or consumer. In such a situation, the new party/consumer is not required to pay the energy dues of the erstwhile consumer. The second situation is, if a property is attached and sold by the Income Tax Department/Commercial Tax Department or such other Government Department for recovery of the dues, a new purchaser is not required to pay the energy dues of the erstwhile consumer. The third situation is, if the property is sold by a financial institution, created under the State Act/Central Act, for recovery of dues, in that case also, the purchaser of such a property, is not required to pay the energy dues of the erstwhile consumer. There are two more exceptions, which are not relevant to be noticed.

On a thoughtful consideration of the entire language of Clause 4.17, and on conjoint reading of exceptions to the general Rule, it is apparent that a purchaser of sold property, through intervention of the State Government, Tax Departments, or other Government Departments, and even by the Financial Institutions, under the State Act/Central Act, would not be required to pay energy dues of the erstwhile consumer. The intention of the framers, while enacting Clause 4.17, is clearly discernible from the said exceptions. It is clear that a purchaser through the intervention of a Government agency etc. is protected. Such a purchaser, cannot be burdened for the energy dues of the erstwhile consumer. However, any private transaction/transfer, merely, between the erstwhile consumer and a purchaser is not recognized, and no such protection, is made available, to such a purchaser, through a private sale. The intention seems to be to grant sanctity to an official sale, and correspondingly to protect a purchaser, of such an official sale. The said intention is in fact in complete consonance with the Public Policy. The same is also in conformity with the principle that the official acts of a State agency and its Instrumentality cannot be deemed to be prejudicial to a person accepting such acts, and acting thereupon.

It is apparent even from perusal of the unamended Clause 4.17, that a protection was granted to a purchaser of a property in a sale conducted by the Income Tax Department/ Commercial Tax Department, or such other Government Department, for recovery of the dues. In such a situation, a purchaser was not required to pay the energy, dues of the erstwhile consumer. Even in the amended Clause 4.17, the intention of the framers clearly is reflected to grant a sanctity to an official sale, and as such protect the interests of any such purchaser in such a sale. Needless to re-assert that a purchaser of a property of the erstwhile consumer, in a private transaction/transfer, is not protected at all, and by any stretch of imagination, is not covered under the

various exceptions of Clause 4.17, amended, as well as, un-amended.

It is a well settled principle of interpretation of statutes that the intention of the framers must be gathered by reading the provision as a whole and not merely in isolation. Some observations made by the Apex Court in the case of Manik Lal Majumdar and Others Vs. Gouranga Chandra Dey and Others, may be noticed:

8. It is a well-settled principal that the intention of the legislature must be found by reading the statute as a whole and in order to ascertain the meaning of a clause in a statute, the Court must look at the whole statute, at what precedes and what succeeds and not merely the clause itself. 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 the other parts of the law and the setting in which the clause to be interpreted occurs (see State of West Bengal Vs. Union of India, and R.S. Raghunath Vs. State of Karnataka and another, .

Applying the aforesaid principle of interpretation of statutes, and on consideration of all the exceptions employed in Clause 4.17, it is apparent that all the sales effected by an official agency, under any law whatsoever, are intended to be recognized, and a corresponding protection has been extended to the purchaser of such a property, from such an agency, and in such a sale, the energy dues of erstwhile consumer cannot be fastened upon the purchaser.

It is not a matter of any dispute that the Official Liquidator, attached to this Court, who sold the property in question, belonging to the erstwhile consumer, to the petitioner-company, is a creation of a statute i.e. the Companies Act, and therefore, in my considered view, is fully covered under the provisions of Clause 4.17.

It would be relevant to extract certain observations made by the Apex Court in Isha Marble's case (supra).

56. From the above it is clear that the High Court has chosen to construe Section 24 of the Electricity Act correctly. There is no charge over the property. Where that premises comes to be owned or occupied by the auction-purchaser, when such purchaser seeks supply of electric energy he cannot be called upon to clear the past arrears as a condition precedent to supply. What matters is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability against the third party. Of course, the bona fides of the sale may not be relevant.

The form of requisition relating to the contract is in Annexure VIII prescribed under Clause VI of the Schedule to the Electricity Act. They cannot make the auction-purchaser liable. In the case of Isha Marbles we have already extracted the relevant clause wherein the consumer was asked to state his willingness to clear off the arrears to which the answer was in the negative. Therefore, the High Court has rightly held that the auction-purchaser, namely, "the writ petitioner

before us is ready and willing to enter into a new contract (sic and) that the auction-purchaser does not intend to obtain the continuance of supply of electrical energy on the basis of the old agreement". It is true that it was the same premises to which reconnection is to be given. Otherwise, with the change of every ownership new connections have to be issued does not appear to be the correct line of approach as such a situation is brought about by the inaction of the Electricity Board in not recovering the arrears as and when they fall due or not providing itself by adequate deposits.

This is case of sale u/s 29 of the Corporations Act. Of course, what the Corporation seeks to recover are the loans advanced by enforcement of a mortgage. Such sale cannot affect the right of the Board to recover its dues. The failure of the Board to recover the dues as and when such dues arose, is a point to be put against it.

With the aforesaid observations, it was held by the Supreme Court, that it was impossible to impose on the purchasers, the liability, which was not incurred by them.

To the similar effect, relying upon the law laid in the case of Isha Marbles, the Apex Court again, in the case of Ahmedabad Electricity Company Limited AIR 2004 SC 2171 (supra), reiterated that in case of a fresh connection, for the premises, an auction purchaser cannot be held liable to clear the arrears, incurred by the previous owners for the power supply to the premises, in the absence of there being a statutory provision in that regard.

Even at the cost of repetition, it may still be noticed, that although the said judgment is sought to be distinguished by the learned senior counsel for the petitioner-Vitran Company, by placing reliance upon Clause 4.17 of the Code, but as discussed above, the said Clause does not come to the protection of the Vitran Company, with regard to the controversy in question.

Before parting with this order, a reliance placed by the learned senior counsel for the Vitran Company on the judgment in Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. Paramount Polymers Pvt. Ltd., may also be noticed.

With a great vehemence, learned senior counsel has relied upon the said judgment and contends that the law laid down in the case of Isha Marbles (supra) and Ahmedabad Electricity Company AIR 2004 SC 2171 (supra) had been duly taken note by the Apex Court in the aforesaid case and it had been noticed that in view of the specific provisions, contained in Clause 21-A of the terms and conditions of supply, inserted by the Dakshin Haryana Bijli Vitran Company, the outstanding dues of earlier occupier and defaulter were recoverable by the Vitran Company from the present occupier/purchaser of the premises. According to the learned Counsel, the provisions of Clause 21-A are identical to Clause 4.17, and therefore, the said law laid down in Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. Paramount Polymers Pvt. Ltd., would govern the controversy, and reliance placed by the Consumer Forum on Isha Marbles

and Ahmedabad Electricity Company's cases was misplaced.

I have thoughtfully considered the said contention of the learned senior counsel for the petitioner. However, I find myself unable to accept the same. Clause 21-A of the terms and conditions of supply of electric energy, inserted by Dakshin Haryana Bijli Vitran Nigam Limited, has been reproduced in the said judgment, and may be extracted below for ready reference:

21-A (a) When there is transfer of ownership or right of occupancy of a premises, the registered consumer shall intimate the transfer of right of occupancy of the premises within 15 days to the Assistant Engineer/Assistant Executive Engineer concerned. Intimation having been received, the service shall be disconnected unless application for transfer is allowed. If the transferee desires to enjoy the service connection, he shall pay the outstanding dues, if any, to the Nigam and apply for transfer of the service connection within 30 days and execute fresh agreement and furnish fresh security. New consumer number shall be allotted in such cases cancelling the previous number.

(b) Reconnection or new connection shall not be given to any premises where there are arrears on any account due to the Nigam unless these are cleared in advance. If the new owner/occupier/allottee remits the amount due from the previous consumer, the Nigam shall provide reconnection or new connection depending upon where the service remains disconnected/dismantled, as the case may be. The amount so remitted will be adjusted against the dues from the previous consumer. If the Nigam gets the full or partial dues from the previous consumer through legal proceedings or otherwise, the amount remitted by the new owner/occupier to whom the connection has been effected shall be refunded to that extent. But the amount already remitted by him/her shall not bear any interest.

(c) The above proposed provisions of Clauses 21-A(a) and (b) shall be applicable to existing consumers also where defaulting amount exists against premises occupied by such consumer.

It is apparent from the perusal of Sub-clause (a) of said Clause 21-A, that a transfer of ownership of a premises, by the registered consumer, is not considered binding on the Assistant Engineer/Assistant Executive Engineer, but the registered consumer was required to intimate to the authorities the factum of the transfer, and even a right had been conferred upon the authorities, to disconnect the electric supply, unless application for transfer was allowed. The transferee was required to execute a fresh agreement, and furnish fresh security, and as per Clause (b) even a reconnection or a new connection was not to be given to any premises, where there were arrears on any account due and unless the arrears were cleared in advance. While interpreting the aforesaid Clause 21-A, the Apex Court noticed that the observations itself had been made in the case of Isha Marbles, that in the absence of a specific provision authorizing recovery, the purchaser was protected, but in the light of the said Clause 21-A, there being

a specific Clause, the purchaser was not so protected and was liable for the dues of the erstwhile consumer.

However, as discussed above, the provisions of Clause 4.17 of the Code, relied upon by the Vitran Company in the present case, are totally distinguishable, and not even comparable to the provisions of Clause 21-A in the case of *Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. Paramount Polymers Pvt. Ltd.*, . Thus, the said judgment is not applicable to the facts and circumstances of the case in any manner.

It is also pertinent to mention here that an identical controversy had arisen before this Court in W.P. No. 147 of 2009 (*M.P. Paschim Kshetra Vidyut Vitran Company Limited Vs. Electricity Consumer Grievances Redressal Forum and Another*, . In the said writ petition, Shri Surjeet Singh, learned senior counsel; who had appeared for the petitioner-company in the said case as well, had raised identical arguments. However, the said arguments were not accepted by this Court, and Clause 4.17 of the Code was interpreted to mean that exceptions employed in Clause 4.17 were to be attracted on all sales, effected by an official agency, under any law whatsoever, and therefore, it was held that a purchaser of a property, through agency of the Official Liquidator attached to the High Court, would be protected and cannot be fastened with the liabilities of the erstwhile consumer.

At this stage, the reliance placed by Shri Surjeet Singh, learned senior counsel for the respondent-vitran company on the judgment rendered by the Supreme Court in the case of *Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others*, , may also be discussed. The learned senior counsel has referred to paras 11, 12 and 13 of the said judgment, and contends that the controversy involved in the present case is in fact squarely covered by the law laid down by the Apex Court in the said-case, and therefore, the present petition is liable to be dismissed.

Having perused the aforesaid judgment, I find that the facts, In the said case, being totally different and distinguishable, the said judgment has absolutely no application to the controversy in the present petition. To be fair to the learned senior counsel, paras 11,12 and 13 of the said judgment may be extracted in extenso.

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 pre-mises 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.

But the above legal position is not of any practical help to a purchaser of a premises. When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/ occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfilment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, Courts will not interfere with them.

A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishments, provisions similar to Clauses 4.3(g) and (h) of the Electricity Supply Code are necessary to safeguard the interests of the distributor.

It would also be relevant to notice the facts leading to the said controversy before the Apex Court, as detailed in paras 2 to 6 of the said report *Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others*, .

2. *Paschimanchal Vidyut Vitaran Nigam Ltd.* the appellant herein holding an electricity distribution licence, is one of the successors-in-interest of the Uttar Pradesh State Electricity Board ("the Board", for short). The third respondent was a consumer receiving electricity supply from the Board to its industrial unit at Ghaziabad. In April 1994, the Board raised supplementary bills for Rs. 105.78 lakhs against the third respondent towards difference in tariff (on the basis of an audit objection that supply ought to have been charged under HV 2 Category instead of HV 1 Category). The third respondent filed civil suits disputing the said claim and obtained an order of injunction restraining the Board from recovering the said supplementary bills amount. The Board challenged the order of the civil Court by filing appeals before the Allahabad High Court. In those appeals, which

are stated to be pending, on 13-12-1996 the High Court stayed the order of injunction granted by the civil Court and thereby permitted recovery of the outstanding dues.

The third respondent closed its unit in the year 1998. In 2001-2002. it sub-divided its industrial plot into 129 smaller plots of different sizes with the permission of the Uttar Pradesh State Industrial Development Corporation. One of those plots (A-7/60-67) was sold by the third respondent to the first respondent.

The first respondent applied to the appellant (who had succeeded U.P. SEB by then) for supply of electricity by sanctioning a load of 3200 kVA for running an induction furnace in the plot purchased by it. The appellant sanctioned the request on 4-9-2004 subject to the condition that it should pay the arrears due by the third respondent, in proportion to the area purchased by it, as a condition precedent for supply of electricity.

The first respondent agreed to the demand and gave an undertaking that the pro rata electricity dues of the third respondent would be paid by them. The appellant thereafter called upon the first respondent to pay Rs. 8,63,451 being the arrears, on pro rata basis, by letter dated 9-9-2004 subject to the following condition:

...the consumer (who) wants to establish its unit, has given an affidavit regarding payment of outstanding dues of M/s. Electro Steel, Ghaziabad installed on that plot that it is agreeable to make payment of outstanding electricity dues on their plot. Therefore, they will deposit the proportionate dues against that unit according to the area of their plot within 15 days.... Otherwise, the order sanctioning the load will be deemed to be automatically cancelled.

Accordingly, on 18-9-2004, the first respondent deposited a sum of Rs. 8,63,451 being the dues of the third respondent, pro rata, subject to the condition that in the event of the pending challenge to the demand being decided in favour of the third respondent, the appellant shall refund the amount deposited by the first respondent.

Several other plot purchasers from the third respondent did not pay the dues of the third respondent. The appellant did not give them electricity supply. Therefore, in November 2005, the third respondent moved an application before the Uttar Pradesh Electricity Regulatory Commission ("the Commission", for short) complaining that the appellant was arbitrarily refusing power connection to the purchasers of the sub-divided plots on the ground that Rs. 105.78 lakhs was due by the third respondent, though the said liability was disputed and was pending adjudication in the Court.

(Emphasis supplied)

It is in the backdrop of the aforesaid facts that the Apex Court determined the issue that if a consumer disposed of its premises, or any portion thereof, without

clearing the dues in regard to the electricity supply to its premises, any transferee seeking a fresh electricity connection or supply of electricity to the premises will have to clear the electricity dues of the previous occupant. (refer to para 10 of the report).

It is thus clear from perusal of the controversy arising in the aforesaid case before the Apex Court, that it was a case of a consumer, who having become a defaulter towards the electricity dues, had sold the said premises through private sales and thereafter, the purchasers, through private transactions, were insisting upon a protection, and were refusing to clear the outstanding dues. It was in those circumstances that the Apex Court had held that such protection was not available to a purchaser of the property from a defaulter consumer, and such a purchaser was required to clear the outstanding dues. The aforesaid proposition of law has infact already been laid by this Court, even in WP No. 147 of 2009 decided on February 6, 2009 (reported in M.P. Paschim Kshetra Vidyut Vitran Company Limited Vs. Electricity Consumer Grievances Redressal Forum and Another,) (referred to above). In that case also, as well as in the present petition, however, the fresh applicant before the vitaran company, for the new connection, is not a private purchaser, but had purchased the property through a government agency i.e. Official Liquidator. Thus, the reliance placed by the learned senior counsel on the observations made by the Apex Court in Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, , is also not relevant.

No other point has been urged before this Court.