
(2015) 12 AHC CK 0149
In the Allahabad High Court
Case No : Writ C. No. 61204 of 2015

Shyam Ferrous Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-12-2015

Acts Referred:

Electricity (Supply) Act, 1948 — Section 60A, 60-A
Electricity Act, 1910 — Section 2(c), 22, 24, 24(1), 42
Electricity Act, 2003 — Section 131(4), 14, 170, 175, 185
General Clauses Act, 1897 — Section 3, 4, 5, 6
Uttar Pradesh Government Electrical Undertakings (Dues Recovery) Act, 1958 —
Section 3, 5, 5A

Citation : (2016) 1 ADJ 425 : (2016) 115 ALR 122

Hon'ble Judges : Vimlesh Kumar Shukla and M.C. Tripathi, JJ.

Bench : Division Bench

Advocate : Manish Goyal and Pankaj Dubey, for the Appellant; Mahboob Ahmad, for the Respondent

Final Decision : Dismissed

Judgement

Vimlesh Kumar Shukla, J.—Shyam Ferrous Limited is a Company incorporated under Indian Companies Act 1956, that has been running its business in the name and style of Shyam Ferrous Limited. Said company has been engaged in the production of Iron product. During the period when the petitioner's company has been carrying out its operation, State Government issued notification on 30.04.1994 (as amended on 21.05.1984) for penalty of violation of peak hour restriction. Said matter travelled upto this Court by means of Civil Misc. Writ Petition No. 41013 of 2000 (M/s. India International Exporters (MBD) Ltd. and another Versus State of U.P. And others) and this Court decided the matter on 25.05.2001 and there has been another judgement also rendered by the High Court of Allahabad, Bench at Lucknow on 19.03.2001 on the same subject matter with contrary view passed in Writ Petition No. 1117 of 2001 with regard to the interpretation of the notification issued on 30.04.1984 and as amended on

21.05.1984.

2. Apex Court by judgement dated 25.07.2006 in the case of U.P. Power Corporation Limited and another v. M/s. Lohia Brass Private Limited and others, took the view that penalty is liable to be imposed for violation of peak hour penalty first, and subsequent to every violation.

3. Petitioner has come up with the case that business in question that was being carried out, was not at all in good shape and accordingly petitioner's company applied for disconnection of electricity on 13.07.2006 and on the said application being moved, Executive Engineer, Vidyut Vitran Khand, Fatehpur issued letter on 31.07.2006 to the Sub Divisional Officer for permanent disconnection of the Electricity connection. Petitioners submit that thereafter pursuant to the letter dated 31.07.2006 electricity connection was permanently disconnected on 03.08.2006. Petitioners are contending that judgement of Apex Court was delivered on 25.07.2006 and electricity connection was disconnected on 03.08.2006 and thereafter, no steps have been undertaken for recovery of the dues against the petitioner's company since 2002 to 2015 for about 13 years and all of sudden on 23.07.2015 a letter was issued by the Electricity Department for recovery of penalty for peak hour violation. Pursuant to the letter dated 23.07.2015, letter was written on 25.07.2015 by the Executive Engineer, Electricity Distribution Division-I, Fatehpur to submit all the requisite information in respect of recovery of seven firms including the petitioner's company. Petitioners submit that thereafter straight way recovery proceedings have been initiated and questioning the recovery proceeding, petitioners are before this Court with the following relief.

"(i) To, issue a writ, order or direction in the nature of certiorari calling for the record and quashing the impugned Citation dated 14.09.2015 as well as stay the effect and operation of the impugned letter dated 25.07.2015 issued by the respondent No. 4 and also stay the effect and operation of the notice dated 28.07.2015 issued by the respondent No. 5 (Annexure Nos. 1,2 and 3 to the writ petition)

(ii) Issue, a writ, order or direction in the nature of mandamus directing the respondent not to take any coercive action against the petitioner.

(iii) To issue any other order or direction which the Hon''ble Court may deem fit and proper in the circumstances of the case.

(iv) To award the cost of the petition to the petitioner."

4. Supplementary affidavit has been filed on behalf of Ramesh Chandra mentioning therein that he is not in possession of the record relating to the period from May, 2002 till October, 2002 which was demand computed by the respondents and all the bills stands weeded out by the petitioners. Petitioners further submit that they have maintained the record as per the statutory requirement for the Sales Tax purpose which is eight year and for Income Tax

purpose which is six years and in such a situation petitioners have stated that there is no bill available with the petitioners, and hence the petitioners are not in a position to place before this Court as to whether the bills that were generated for May, August, September and October, 2002 included the peak hours charge penalty and the quantum of penalty that was imposed in the said bills. It has been sought to be reiterated that staff working with the petitioners at the unit in Fatehpur have been discharged after the closure of the unit and hence the petitioners are not in a position to submit any material with concrete sense of responsibility as to whether the peak hour penalty was included in the bill or not. Further mention has been made that petitioners did not receive notice dated 26.10.2009, 04.02.2009, 17.03.2009 and 20.05.2010, as none of these notices have been served upon the petitioners and no material has been placed before this Court to show that service was effectuated upon the petitioners of the so called notices of demand under Section 3 of the U.P. Government Electrical Undertaking (Recovery of Dues) Act, 1958. It has been further submitted that all these notices were addressed to Shyam Ferrous Malwa, Fatehpur wherein the unit is lying closed since the year 2006 and there is no employee available at the factory except for a Chowkidar. Reiteration has been made that petitioners have not received any intimation either from the Department or from his Chowkidar about receipt of the notice so placed before the Court at the time of hearing of the present writ petition. Details have also been given as to how information has been sought for.

5. Short counter affidavit has been filed wherein it has been mentioned that:--

"(i) in the year 2000 and 2001 several writ petitions were filed before this Court challenging the above mentioned circular and this Bunch of 51 cases were decided by the order of Division Bench vide order dated 25.05.2001.

(ii) Thereafter in the year 2002 several companies of Fatehpur UPSIDC Industrial Area, namely M/s. Sigma Castings Pvt. Ltd., M/s. Kundan Castings Pvt. Ltd., M/s. Panem Castings Pvt. Ltd., M/s. Sharda Steel Pvt. Ltd., M/s. Global Alloy Pvt. Ltd., M/s. Pravesh Castings Pvt. Ltd. And M/s. Shyam Ferrous Pvt. Ltd. Violated " Peak Hour Restriction" policy and were charged for the same in accordance with the order passed by this Court dated 25.05.2001.

(iii) In the month of November, 2002 all the above mentioned seven consumers approached the concerned Executive Engineer for waiver of penalty, so assessed these cases were presented to Deputy General Manager concerned who in turn directed the Executive Engineer to waive off their penalties. It is relevant to apprise this Court that at that point of time penalties waived off together amounted to approximate 8.25 crores of which approximately 2.3 crores was that of the petitioner's company (Shyam Ferrous Pvt. Ltd.)

(iv) Thereafter in test check of audit of the records of electricity division, Fatehpur, it was discovered that the above mentioned amount assessed as penalty could not be waived off. It may be pointed out here that the only

enabling provision to entertain the bill at that time was clause 7.18 of the Supply Code, 2005 and if the amount in dispute was over 10 lakh the same ought to have been referred to committee at area level as annexure No. 7.2 of the Supply Code, 2005 referred to clause 7.20 of Supply Code, 2005.

(v) The order passed by the Deputy General Manager was illegal and without jurisdiction and he was not empowered with any right of waiver of penalty and thus the bills issued by the Executive Engineer in which the amount of penalty had been waived of were incorrect.

(vi) The petitioner's company was well aware about the violation of peak hour restriction and had also submitted a partial amount under protest as reflected from the office memorandum dated 11.07.2003. Therefore once petitioner is aware of his liability, he is liable to discharge the same by way of payment and cannot take refuge under the doctrine of promissory estoppel.

(vii) The violation of peak hour restriction was done in the year 2002 and the charges payable as penalty were also computed in the same year. Thereafter it is incorrect for the petitioner to allege that the said fixation was never done before the order of Apex Court dated 25.07.2006.

(viii) It is further submitted that the letters which were sent in the year 2009 where displaying the revised amount payable by the petitioner as per the order passed by the Apex Court dated 25.07.2006, and the letter of 2009 can in no way be read as if the penalty was barred levied for the first time.

(ix) Out of the seven company of UPSID Industrial area, Fatehpur, M/s. Sigma Castings Pvt. Ltd. and M/s. Kundan Castings Pvt. Ltd. had filed similar writ petition which were disposed off with the direction to seek alternate statutory remedy under the clause 6.5 of U.P. Electricity Supply Code, 2005.

(x) M/s. Panem Castings Pvt. Ltd. had deposited amount of Rs. 21.6 lakhs under protest and has challenged the Demand Notice by way of filing of writ petition No. 24805 of 2007. This writ petition is pending before this Court.

(xi) The claim of the petitioner that the unit had been lying vacant and closed since 2006 is incorrect because even after PD the petitioner had applied for temporary connection the very next day, it is relevant to point on this stage that on 18.09.2006 the petitioner had written a letter to respondent No. 5 requesting his connection for another six months.

(xii) The relationship of the petitioner and respondent corporation is contractual in nature. Clause 7 of Agreement specifically deal with the dues payable by the consumer. The amount payable in the instant matter is also dealt with under clause 7-d of the Agreement as quoted below.

"d- Any levy such a Sales Tax, Excise Duty, Electricity Duty, or any other charge by whatsoever named called by Central/State Government, or other competent authority, on the electricity supplied to the consumer shall also be paid by the

consumer"

(xiii) The amount to be realised by the petitioner is a penalty for violation of peak hour restriction and not for supply of electricity, Section 56(2) of Electricity Act, 2003 will not be applicable, Section 170 of Electricity Act, 2003 would come in play. It is most humbly submitted before this Court that there is no barrier imposed by the Legislature restricting the respondent for issuing demand notice under Section 3 of Uttar Pradesh Electrical Undertaking (Recovery of Dues) Act, 1958. The barrier imposed under Section 56(2) of Electricity Act, 2003 is not applicable in the present controversy because after permanent disconnection there is no occasion in which the respondent may issue any bills for consumption of electricity. The petitioner shall be treated as consumer within the meaning of consumer as provided in Uttar Pradesh Electrical Undertaking (Recovery of Dues) Act, 1958 as the amount raised was initially levelled during the period when he was running the connection and under the contract/agreement he was bound to make payment of the same, as such Section 5A Uttar Pradesh Electrical Undertaking (Recovery of Dues) Act, 1958, will not be applicable in the instant matter"

6. To the said short counter affidavit, rejoinder affidavit has been filed and therein averment mentioned in the counter affidavit has been sought to be disputed by contending that petitioners were not served with any bill showing peak hour charge and hence the submission of payment under protest does not arise and further respondents may be directed to produce the bill and the payment under protest made by the petitioners and whatever bill was provided to the petitioners was deposited by the petitioners on 29.01.2003 and such payment was not under protest. Dispute has also been sought to be raised that there has been no violation by the petitioners and recovery proceedings are per se bad and not subscribed by law. It has been contended that agreement no longer survive and permanent disconnection is there, and in view of this, dues cannot be recovered as has been sought for. Demand of recovery under Section 170 of the Electricity Act, 2003 is not applicable, as Section 170 applies to the penalties mentioned under the Act and since peak hour restriction is not a penalty prescribed under the Act, the provision of Section 170 of the Electricity Act, 2003 have no application. Moreover source of power to recover is under Electricity Supply Code, 2005 or under the Electricity Supply Code, 2002. Paragraph 6.15 of the Electricity Supply Code, 2005 incorporates the provision of Section 56 of the Electricity Act, 2003 and under these circumstances Section 56 of the Electricity Act, 2003 will be applicable for the purpose of recovery contemplated by paragraph 6.15 of the Electricity Supply Code, 2005. The demand notice could not have been issued under Section 3 of the U.P. Electrical Undertaking (Recovery of Dues) Act, 1958 more so after expiry of 13 years of the alleged violation and the peak hours restriction penalty and in view of this recovery being highly time barred, is beyond the competence and jurisdiction of respondents and accordingly prayer has been made to allow the writ petition.

7. Record has also been produced before us.

8. Sri Manish Goyal, learned counsel for the petitioners contented with vehemence that in the present case, by no stretch of imagination, recovery could be effectuated from the petitioner's company for the simple reason that there is already permanent disconnection on account of closure of the Unit, and in such a situation there was no occasion or justification to initiate time barred recovery proceeding to wards peak hour penalty and recovery on the face of it is barred by limitation as notice of demand has never ever been served on petitioners and the notice now supplied same lacks material particulars as is required to be therein in the notice and in view of this recovery in all eventuality is liable to be quashed.

9. Sri S. Safdar Ali Kazmi, Advocate representing U.P. Power Corporation on the other hand contended that petitioners have been well aware of their liability and demand notice has been sent at the addressed maintained by the U.P. Power Corporation by registered post, in view of this, once petitioners are fully well aware of their liability, then petitioners cannot turn their back and say that amount cannot be recovered as claim is time barred, whereas on its face value it is live claim and in consonance with the statutory provision, recovery has been sought to be made, and as such writ petition is liable to be dismissed.

10. After respective argument has been advanced, factual situation that is so emerging in the present case is that State Government had issued notification under Section 29-B of the Indian Electricity Act, 1910, known as U.P. Electricity (Regulation of Supply, Distribution, Consumption and Use) Order, 1977 which was published in the official gazette and said order was amended on 30.04.1984 known as U.P. Electricity (Regulation of Supply, Distribution, Consumption and Use)(Ist Amendment) Order, 1984 by which Clause 9 of 1977 was amended and was substituted by the following:--

"9(1) Without prejudice to the provisions contained in Section 42 of the Indian Electricity Act, 1910, all Chief Zonal Engineers, Superintending Engineers, Executive Engineers, Assistant Executive Engineers and Assistant Engineers of Uttar Pradesh State Electricity Board, the Chief Electrical Inspector, all Deputy Electrical Inspectors and all Assistant Electrical Inspectors to the State Government are authorized to disconnect the supply summarily without notice in relation to such installation as are found upon inspection made by them to have contravened the provisions of this Order. The supply shall remain disconnected for the period specified below:

(a) Contravention first in point of time 5 days

(b) Contravention second in point of time 10 days)

(c) Contravention third in point of time- 20 days

(d) Contravention fourth in point of time-permanently Provided that for the purpose of this clause any contravention prior to May 1, 1984 shall not be taken

into account.

(2) In addition to above, such consumers shall be liable to pay the penalty for each contravention as follows:

(a) Consumers having contracted load upto 100 KVA, at Rs. 50 per KVA on their contracted load.

(b) Consumers having contracted load above 100 KVA and upto 500 KVA at Rs. 30 per KVA on their contracted load subject to minimum of Rs. 5,000.) Consumers having contracted load above 500 KVA at the rate of Rs. 20 per KVA on their contracted load subject to minimum of Rs. 15,000.

The reconnection shall only be done after payment of penalty and expiry of the above specified disconnection period whichever is later."

11. The amended order of 1984 was initially applied from 1.5.1984 to 21.5.1984. The State Government again issued another order known as U.P. Electricity (Regulation of Supply, Distribution, Consumption and Use) (Second Amendment) Order, 1984 on 21.5.1984 and it was made applicable with effect from 1.5.1984. By this Clause III of the first amendment order was substituted and the same was made applicable with effect from 1.5.1984 and was to remain in force until withdrawn. The said order was not withdrawn by the State Government and continued to be in force. The Corporation in order to check the malpractice by the consumers installed electronic meters which were computerized and can be downloaded for 35 days which will show the details of consumption including any violation of peak hours restriction in last 35 days. Thereafter, the Board issued a circular on 15.10.1998 to the effect that penalty for peak hours restrictions will be imposed as per the meter reading inspection report. However, it was pointed out by the communication dated 7.4.1999 that for violation of restriction of peak hours on the basis of meter reading inspection report for the first time, one penalty for one month may be imposed on the bill. However, for the second bill and thereafter, the procedure for penalty will remain the same as mentioned in the circular dated 15.10.1998. In this factual matrix, our Court after reading these two circulars dated 15.10.1998 and 7.4.1999 took the view that in view of the order dated 7.4.1999, the consumer cannot be levied with penalty for each alleged contravention but once only on the basis of alleged meter reading report, meaning thereby that each such report will be treated as one contravention. One meter reading inspection report which stores data for 35 days, shall be treated as one contravention irrespective of the fact that in report number of contraventions might have been made of peak hour restriction but one meter reading inspection report shall be construed as one contravention. Against order dated 25.5.2001 passed by the Division Bench of our Court in Civil Miscellaneous Writ Petition No. 45171 of 2000 special leave petition was filed and on 12.9.2003 leave was granted by Apex Court.

12. Apex Court finally decided the matter dis-approved the Division Bench view of this Court at Allahabad and view taken by Lucknow Bench of this Court has

been affirmed on 25.07.2006. This much fact has also come on record that before the said judgement could come, petitioner's company had applied for permanent disconnection on 13.07.2006 and communication has been sent wherein said disconnection was ordered and same has been given effect to on 03.08.2006. This much fact has also come on record that said action of the Deputy General Manager has not at all been approved and audit objection has been raised in the said direction and enquiry has also been directed to be made in such matter.

13. Pursuant to order passed by Apex Court, bill dated 04.02.2009 had been send by registered post to the factory premises of petitioners, and as same was not responded by petitioner, reminder dated 04.03.2009 was send by Engineer concerned and as no response has been there, then the Prescribed Authority/ Engineer concerned proceeded to issue demand notice under Section 3 of U.P. Government Electrical Undertakings (Dues Recovery) Act, 1058. As payment in question has not been made, for effectuating recovery by coercive method, citation has been send by Tehsil concerned on 28.07.2015.

14. Recovery sought to be undertaken by the Department has been principally resisted on the premises that same is barred by limitation and in view of this right to effectuate such recovery has already extinguished.

15. The recovery sought to be undertaken by the Respondents relates to the penalty for "Peak Hour Violations" for the months of May, 2002, August, 2002" September, 2002; October, 2002.

16. Submission from the side of petitioners is that Section 56(2) of Electricity Act 2003 read with paragraph 6.15 of Electricity Supply Code 2005 provide for a limitation of two years for the recovery of dues and even under the scheme of Electricity Supply Code, 2002 under paragraph 6.31 the period of recovery of dues was 2 years, accordingly after lapse of 13 years recovery cannot be effectuated as it has been sought to be done in the present case.

17. Submission from the side of Respondents is that the provisions of Electricity Act 2003; Section 56 is neither applicable nor attracted in the facts of case; Section 56 is being misinterpreted and is being read out of context, recovery is being enforced under the old provisions i.e. under Indian Electricity Act, 1910 and recovery is rightly being effectuated.

18. Before we start to answer such an issue, the relevant statutory provision namely Section 24 of the Indian Electricity Act, 1910 is being looked into along with paragraph 6.31.1 and 6.31.2 of Electricity Supply Code, 2002. The same is as follows:--

"24. Discontinuance of supply to consumer neglecting to pay charge:-- (1) Where any person neglects to pay any charge for energy or any 2[sum, other than a charge for energy,] due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days"

notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and re-connecting the supply, are paid, but no longer.

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

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

6.31.1- The payments due to the Licensee shall be recovered as arrears of land revenue as per the provision of the U.P. Government Electrical Undertaking (Dues Recovery) Act, 1958, as amended from time to time.

6.31.2- No sum due from any consumer, on account of default in payment shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied.

Other relevant provisions are:--

Paragraph 6.15 of the U.P. Electricity Supply Code, 2005 is quoted below:--

"6.15. Recovery of Arrears:

(a) The payments due to the Licensee shall be recovered as per provision of Section 56 of the Act, and arrears of land revenue as per the provisions of the U.P. Government Electrical Undertaking (Dues Recovery) Act, 1958, as amended from time to time.

(b) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges of electricity supplied, and the supply of the electricity shall not be disconnected by licensee for this reason.

Explanation.--The date from which such charges becomes ""first due", needs to be correctly interpreted. If as a result of regular meter reading/inspection of installation of consumer, such charges/penalties levied as per this Code or tariff schedule, shall become first due counted from the due date of payment of such a bill, and such bill shall be provided to the consumer not later than two billing

cycle for that category of consumer."

The Electricity Act, 2003 came into force with effect from 10th June, 2003. Section 56 of the 2003 Act, which is relevant for the purpose, is quoted below:--

"56. Disconnection of supply in default of payment.--(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days" notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,

whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

19. Recovery admittedly is of the period prior to 02.06.2003 when the Electricity Act 2003 has come into effect and as per judgement rendered by Apex Court in the case of Kusumam Hotels (P) Ltd. v. Kerala State Electricity Board and others in Civil Appeal No. 101 of 2007, decided on 16.05.2008 in reference of Section 56(2) of the Electricity Act, 2003 wherein plea was taken that bills could not have been issued having regard to sub-section (2) of Section 56 of the Act has been dealt with and accepted in following term. Relevant para Nos. 30 and 31 are being extracted below:--

"30. We, however, are not in a position to accept the contention that the Bills could not have been issued having regard to sub-section (2) of Section 56 of the Act. Appellants herein have incurred liabilities.

Sub-section (5) of Section 185 of the Electricity Act, 2003 reads, thus:

"(5) Save as otherwise provided in sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals."

Whereas the bills are issued only in respect of the dues arising in terms of the law as was applicable prior to the coming into force of 2003 Act. Sub-section (2) of Section 56 shall apply after the said Act came into force. The Board could have even framed a tariff in terms of the provisions appended to Section 61 of the Act. Appellants incurred liability to pay the bill. The liability to pay electricity charges is a statutory liability. The Act provides for its consequences. Unless, therefore, the 2003 Act specifically introduced, the bar of limitation as regards the liability of the consumer incurred prior to coming into force of the said Act. In our opinion, having regard to Section 6 of the General Clauses Act, the liability continues. [See Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others,].

31. We, therefore, are of the opinion that the High Court was not correct in its view to the aforementioned extent. The judgment of the High Court is, thus, set aside to the aforementioned extent. The appeals are allowed with costs. Counsels fee assessed at 25,000/-(Rupees five thousand only) in each appeal."

20. Perusal of judgement of Apex Court would go to show, that it has been clearly mentioned that Sub-Section (2) of Section 56 of the Electricity Act, 2003 shall apply after the Act, 2003 came into force, the bar of limitation as regard the liability of the consumer incurred prior to coming into force of the said Act having regard to Section 6 of the General Clauses Act would not apply. Apex Court with all clarity has concluded that Sub- Section (2) of Section 56 of the Electricity Act, 2003 shall apply after the said Act came into force and bar of limitation as regards the liability of the consumer incurred prior to coming into force of the said Act was not applicable.

21. Once such is the factual situation that is so emerging in the present case that liability in question admittedly is prior to the period when 2003 Act came into force, then sub-section (2) of Section 56 of the Act is neither applicable nor attracted and bar of limitation as regards the liability of the consumer incurred prior to coming into force of the said Act would not apply. Clearly said claim is to be examined on the parameter of the provision that has been in existence prior to enforcement of 2003 Act i.e. under the Indian Electricity Act 1910, the Electricity Supply Act 1948, the Electricity Regulatory Commission Act 1998, Electricity Supply Code 2002, Section 185 of Electricity Act, 2003, read with Section 6 of General Clauses Act, 1897 that clearly saves " any right, privilege, obligation or liability acquired, accrued or incurred under any enactment" so repealed.

22. In this backdrop we proceed to examine the two judgements of our Court in the case of Paliwal Alloys (Pvt) Ltd. Versus U.P. Power Corporation Ltd. and

others 2009 (4) AWC 3746 ; Satya Narayan Vs. U.P. Power Corporation Ltd. and Others, . In the case of Paliwal Alloys Pvt. Ltd. peak hour penalty had been imposed on 27.11.2006 for period starting w.e.f. 24.11.2002 to 08.02.2003. Admittedly the penalty amount was of the period prior to 02.06.2003 and in such a situation as per the judgement of Apex Court in the case of Kusumam Hotels (Supra) decided on 16.05.2008, the provisions of Section 56(2) was neither applicable nor attracted. It appears that the judgement of Apex Court that was delivered prior in time on 16.05.2008 was not brought to the knowledge and notice of Division Bench deciding the case on 31.07.2009. Similarly in the case of Satya Narain, consumer has come up with the case that his electricity connection of shop has been disconnected in the year 1997-1998 and recovery has been sought to be effectuated in the year 2012. In the said backdrop reliance has been placed on Paragraph 6.15 of Electricity Supply Code 2005. Both these judgements would not at all come to the rescue of petitioner, as the claim in question is not to be examined on the parameters of Section 56(2) of Electricity Act 2003 read with Paragraph 6.15 of Electricity Supply Code, 2005.

23. Prior to introduction of Section 56(2) of Electricity Act 2003, Section 24 of Electricity Act 1910 was in vogue. Said section already quoted above would to show, that the said section empowered Board to issue demand and to discontinue supply to consumer who neglects to pay charges, without prejudice to his right to recover such charge or other sum by way of suit. Apex Court in the case of M/s. Isha Marbles v. Bihar State Electricity Board 1995 (SCC) (2) 648 has considered the provisions of Section 24 of Electricity Act, 2010 by mentioning that it confers statutory right to the Board to cut of the supply and for that purpose cut or disconnect any electricity supply line. Relevant paragraph 29 is being extracted below.

"29. Section 24 confers a statutory right to the Board to cut off the supply and for that purpose cut or disconnect any electricity supply line or other works being the property of the licensee (the Board) through which energy may be supplied and may discontinue the supply and surcharge or other sum together with any expenses incurred by him in cutting off and reconnecting the Supply are paid. This right is without prejudice to the right of the Board to file a suit. Therefore, the Board need not necessary file a suit. When the Board has exercised its statutory right under Section 24 it cannot be forced to reconnect supply, unless the entire charges due in respect of the building are paid off to the Board."

24. Apex Court, in the case of M/s. Swastic Industries Vs. Maharashtra State Electricity Board, proceeded to take note of the provisions of Section 24 of Electricity Act, 1910, Section 60-A of Electricity Supply Act 1048 and concluded by observing that right to recover charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it. Right to file suit is a matter of option given to the licensee. Relevant extract of said judgement is as follows.

"2. The admitted position is that the respondent- Electricity Board had issued a

supplementary bill to the petitioner on February 5, 1993 demanding payment of Rs. 3,17,659/-. The petitioner objected to the bill by his letter dated February 16, 1993, However, when letter was issued for payment of the said amount, the petitioner paid it under protest and filed the complaint paid it under protest and filed the complaint before the State Consumers Disputes Redressal Commission. The Commission by order dated May 24, 1995 allowed the complaint and held that the claim was barred by limitation of 3 years. Feeling aggrieved, the Electricity Board filed an appeal. The National Commission relying upon the judgment of a Division Bench of the Bombay High Court in Bharat Barrel and Drum Manufacturing Co. Pvt. Ltd. Vs. The Municipal Corporation of Greater Bombay and Another, has held that there is no limitation for making the demand by way of supplementary bill. Section 24 of the Indian Electricity Act, 1910 gives power to the Board to issue such demand and to discontinue the supply to a consumer who neglects to pay the charges. It is contended by the learned counsel for the petitioner that Section 60A of the Electricity (supply) Act, 1948 prescribes a limitation of 3 years for the Board to institute any suit, after its constitution, for recovery of the arrears. Thereby the limitation of 3 years is required to be observed. The Board in negation of Section 60A of Supply Act cannot be permitted to exercise the power under Section 24 of the Electricity Act, 1910. We find no force in the contention.

3. Section 60-A of the Electricity (Supply) Act, 1948 envisages the enlargement of the period of limitation of certain circumstances, i.e., intervening period of the constitution of the Board, and the right of the State to recover the amount due to the State for consumption of electricity delegating to power to the Board. In that behalf, clauses (i) and (ii) therein operate as under:

"(i) where it has been constituted before the commencement of the Electricity (Supply) Amendment Act, 1966 (3 of 1966) within three years of such commencement; and

(ii) where it has been constituted after such commencement, within three years of its constitution."

4. This is an enabling provision by way of suit. Despite the fact that Section 24 of the Indian Electricity Act clearly empowers the Board to demand and collect any charge from the Consumer and collect the same towards the electrical energy supplied by the Board in the following terms:

"Where any person neglect to pay any charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy, to him, the licensee may, after, giving not less than seven clear days" notice in writing to such person and without prejudice to his right to recover such charge of other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge other sum, together with any expenses incurred by him in

cutting off and reconnecting the supply, are paid, but longer."

5. It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it. The right to file a suit is a matter of option given to the licensee, the Electricity Board. Therefore, the mere fact that there is a right given to the Board to file the suit and the limitation has been prescribed to file the suit, it does not take away the right conferred on the Board under Section 24 to make demand for payment of the charges and on neglecting to pay the same. They have the power to discontinue the supply or cut-off the supply, as the case may be, when the consumer neglects to pay the charges. The intendment appears to be that the obligation are actual. The board would supply electrical energy and the consumer is under corresponding duty to pay the sum due toward the electricity consumed. Thus the Electricity Board, having exercised that power, since admittedly the petitioner had neglect to pay the bill for additional sum, was right in disconnecting the supply without recourse to filing of the suit to recover the same. The National Commission, therefore, was right in following the judgement of the Bombay High Court and allowing the appeal setting aside the order of the State Commission. Moreover, there is no deficiency of service in making supplementary demand for escaped billing. Therefore may be negligence or collusion by subordinate staff in not properly recording the reading or allowing pilferage to the consumers. That would be deficiency of service under the Consumer Protection Act. We do not find any illegality warranting interference."

25. Section 24(1) of Electricity Act 2010 thus enables the licensee to discontinue electric supply to a particular consumer who has failed to clear the charges and relieves the licensee of the obligation on him to be found contained in section 22 of the Electricity Act to supply energy.

26. Under U.P. Electricity Reforms Act, 1999 (hereinafter referred to as the "Reforms Act"), U.P. Electricity Regulatory Commission was assigned with functions to regulate the distribution, supply, utilization of electricity, issue licenses to regulate the working of licensees and to set the standards of services for the consumers as well as standards for the electricity industry in the State. While granting licenses to the then three major distribution licensees i.e. UPPCL, KESCO and NPCL, the Commission required that the licensees should prepare distribution codes and submit them to the Commission for approval, as a condition of the supply licence. In pursuance to the Commission's directions, Uttar Pradesh Power Corporation Limited (UPPCL) had submitted a draft distribution code which was approved by the Commission and was made applicable in areas served by UPPCL, Kanpur Electricity Supply Company Limited ("KESCO") and the Noida Power Company Limited ("NPCL") with effect from 1st July, 2002. Same was popularly known as Electricity supply Code 2002.

27. Electricity Act, 2003 was made applicable on 9th June 2003, as a self contained comprehensive legislation, which replaced the existing legislations

while preserving their core feature. Section 14 of the Electricity Act, provided that any supply licensee under Reforms Act shall be deemed to be a licensee under Electricity Act, 2003 for such period as stipulated in the licence and the provisions of the Reforms Act in respect of such licence shall apply for one year from the date of commencement of Electricity Act, 2003 that is up to 9th June, 2004 in absence of any earlier period specified by the Commission, which was not done in the present case. Therefore, complete provisions of Supply Code, as a condition of supply licence, continued to remain in force till 9th June, 2004. Meanwhile, in pursuance of Section 131(4) of the Electricity Act, 2003 and sub-section 4(23) of the Reforms Act, the Uttar Pradesh Power Sector Reforms (Transfer of Distribution Undertakings) Scheme, 2003 was effected on 12th August, 2003, wherein U.P. Power Corporation Limited i.e. one of the aforesaid distribution licensees was broken into four distribution companies viz Preschimanchal Vidyut Vitran Nigam Limited, Poorvanchal Vidyut Vityran Nigam Limited Dakshinanchal Vidyut Vitran Nigam Limited and Madhyanchal Vidyut Vitran Nigam Limited, which have a deemed licensee status in accordance with fifth proviso of Section 14 of Electricity Act, 2003. Therefore, complete provisions of Supply Code 2002 continued to operate on above four distribution companies also till 9th June, 2004, as condition of license. Subsequent to 9th June, 2004, only those provisions of the Reforms Act and accordingly Electricity Supply Code 2002 applied with respect to above six supply licensees, which were not inconsistent with the provisions of the Electricity Act, 2003, along with general application of Section 6 of the General Clauses Act, 1897 with regard to the effect of repeals.

28. Provision of Electricity Supply Code 2002 by means of paragraph 6.31.2 clearly proceeded to mandate the licensee to recover the payments due as arrears of land revenue as per the provisions of U.P. Government Electrical Undertaking (Dues Recovery) Act 1958. Paragraph 6.3.12 on the other hand provided that no sum due from consumer, on account of default in payment shall be recoverable after the period of two years from the date when such sum become first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied. Word "due" has been subject matter of contextual interpretation in the case of Swastic Industries (Supra) and view has been taken that word "due" would clearly warrant wider meaning rather than the narrower meaning as wider meaning would be more in accord with the scheme of statutory provisions as also with commercial honesty.

29. The question as to when electricity charges first became due has been subject matter of consideration and interpretation before the Delhi High Court in the case of MCD v. H.D. Shourie 53 (1994) DLT 1 wherein view has been taken that the electricity charges become due and limitation thereof commences only when the bill thereof has been raised. Liability to pay accrues when liability is quantified and bill is raised. Licensee is entitled to raise the bill and once in compliance of the said bill amount due is not paid then the such sum becomes first due, then the licensee has a right to take recourse to legal procedures for

recovering its due. We are also of the same view that electricity charges become due and the limitation for recovery thereof commences only when the bill thereof has been raised and not paid. Taking any other view would not advance the cause of justice, as has been observed by the Apex Court in the case of Swastic Industries (Supra) that there may be negligence or collusion of staff in allowing creation of such a situation. High Court of Delhi in the case of NDMC v. Karam Chandra Thapar and Brothers Pvt. Ltd. 162 (2009) DLT decided on 16.07.2009, has taken the view that liability to pay electricity charges is a statutory liability, Section 6 of General Clauses Act prescribed that said liability continues and electricity undertaking is entitled to issue the bill ever after three years the electricity has been consumed. Apex Court in the case of Swastic Industries (Supra) has approved the judgement of Bombay High Court in the case of Bharat Barrel and Drum Manufacturing Company v. Municipal Corporation of Greater Bombay AIR 1978 Bombay 369 wherein it has been held that there is no limitation for making the demand by way of supplementary bill and section 24 of Electricity Act 1910 empowers issuance of such demand and there is no limitation provided for making demand by way of supplementary bill. Distribution company would not be said to have abandoned its right to recover the charges which were due to it and which had earlier not been claimed. It has further been held therein that principle of constructive res-judicata would not apply to a case of supplementary demand for misuse charges not claimed earlier.

30. The inevitable conclusion is that there is no limitation provided for making demand by the licensee to recover charges that were due to it and had not been claimed and further electricity charges become due and limitation thereof commences only bill when thereof has been raised and not paid within the time frame provided for and not at all prior to it. Even thereafter if such sum has been shown continuously as recoverable as arrears of charges for electricity supplied it would not at all be barred by limitation. It is after the bill is raised and amount is not paid, then licensee has right to take to legal resources which is inclusive of proceedings under U.P. Government Electrical undertaking (Due Recovery) Act, 1958 as mentioned in Paragraph 6.31.1 of Electricity Supply Code 2002. Paragraph 6.31.2 has to be read in conjunction with the provision of Section 24 of the Indian Electricity Act 1910 as well as paragraph 6.31.1 that recovery of arrears due to the Licensee shall be recovered as arrears of land revenue as per the provisions of U.P. Government Electrical Undertaking (Dues Recovery) Act 1958 and no sum due from any consumer, on account of default in payment shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied. Paragraph 6.31.2 of Electricity Supply Code, 2002, only bars recovery in the contingencies provided for by taking recourse to the provisions of U.P. Government Electrical Undertaking (Dues Recovery) Act 1958, but there is no impediment for the licence to recover the amount due by way of suit as is mentioned in Section 24 of Indian Electricity Act, 1910.

31. On these parameters, we proceed to examine the facts of present case. Here what we find that pursuant to the decision of Apex Court in the case of U.P. Power Corporation Versus M/s. Lohia Brass Pvt. Ltd. (Supra) dated 25.07.2006, as per the formula approved therein, in printed form keeping in view the MRI, penalty for the first time has been computed on 04.02.2009 wherein serial number has been given along with respective month; number of default, number of defaults on which penalty is to be charged; amount due; amount paid in the past; balance amount due. Said notice has been send at the address of petitioners company by registered post as per the records produced wherein Executive Engineer has asked petitioner to make payment failing which recovery would be initiated. Thereafter once again on 17.03.2009, registered notice has been given at the petitioner address, therein reference has been of earlier notice dated 04.02.2009 by the Executive Engineer for ensuring payment within fifteen days. Said notice also has not been complied with then proceedings under Section 3 has been taken under U.P. Government Electrical Undertaking (Electrical Dues) Act 1958 by sending notice by registered post and giving therein reference of earlier notice dated 04.02.2009, that a sum of Rs. 38,40,000/- is due payment be made within thirty days, failing which recovery would be effectuated by way of arrears of land revenue.

32. Petitioner very conveniently has stated that at no point of time he has been served with the notice as factory premises has been closed since 2006, and only a chowkidar stays there. The fact stated above would go to show that for the first time for peak hour violation as per the judgement of Apex Court dated 25.07.2006 in the case of U.P. Power Corporation v. M/s. Lohia Brass and others, bill has been prepared on 04.02.2009 and has been send by registered post for ensuring payment within fifteen days at the petitioners premises so recorded in the Licensees record by the Executive Engineer. Said notice has not been honoured accordingly second notice has been given on the same address by the same Executive Engineer by the same mode i.e. registered post and once again there has been no response. On third occasion by registered post notice under Section 3 of the Act has been given specifying the amount due to the tune of Rs. 38,40,000/-. Notice dated 26.10.2009 clearly mentioned for making deposit, within 30 days failing which amount would be recovered as arrears of land revenue. Petitioner is labouring under a totally wrong impression that recovery sought to be undertaken is barred by limitation and that the licensee has extinguished its right to recover.

33. Petitioner has tried to submit that action under Section 5 of U.P. Government Electrical Undertaking (Dues Recovery) Act 1958 and consequential recovery proceedings are per se bad. In order to appreciate such argument, the provision of the U.P. Government Electrical Undertakings (Dues Recovery) Act, 1958 is concern, same provides as follows.

"(3) Notice of demand for dues not paid:-- Where any dues including the amount of security payable under Schedule VI to the Indian Electricity Act, 1910 or under

Section 47-A of the Electricity (Supply) Act, 1948 are payable by a consumer to a Government Electrical undertaking, the prescribed authority may, at any time after thirty days from the date on which such dues accrued, serve or cause to be served upon the person liable a notice of demand stating the name of the person, the amount payable by him and the undertaking in respect of which it is due.

Explanation (1) The sending of the notice by registered post shall be deemed to be sufficient service on the person concerned.

Explanation (2) A sum due to a Government Electricity Undertaking shall be deemed to have accrued on the expiry of the date mentioned in the bill for payment of the dues.

4. Suit to challenge the liability to pay dues(1) Where a notice of demand has been served on the consumer, or his authorised agent under Section 3 , he may, if he denies his liability to pay the dues or any part thereof, and upon deposit thereof with the prescribed authority under protest in writing, institute a suit for the refund of the dues or part thereof so deposited.

The suit referred to in Sub-section (1) may be instituted at any time within six months from the date of deposit with the prescribed authority in the Court having jurisdiction, but subject to the result of the suit the notice of demand shall be conclusive proof of the dues mentioned therein.

(5) Recovery of dues:-- If the dues for which notice of demand has been served are not deposited with the prescribed authority within thirty days from the date of service, or such extended period as the prescribed authority may allow, the same together with cost of recovery as may be prescribed shall be recoverable as arrears of land revenue, anything contained in any other law or instrument or agreement to the contrary notwithstanding."

34. In the present case perusal of the Act would go to show that Prescribed Authority is entitled to issue notice under Section 3 of the Act for demand. Once such demand is raised, then as per statutory provision, at any time, after thirty days from the date when such dues accrued serve upon the person liable to be pay a notice of demand stating the name of person, the amount payable and the undertaking in respect of which it is due. As per Explanation-I sending of notice by registered post has been deemed to be sufficient. As per explanation 2 sum due shall be deemed to have accrued on the expiry of date mentioned. As per Section 4 of the Act incumbent is required to deposit the dues with the Prescribed Authority under protest in writing and may institute a suit for the refund of the dues or part thereof so deposited. Section 5 of the Act thereafter gives liberty for recovery by way of arrears of land revenue. Provisions are thus self contained and on notice of demand being sent, amount has to be deposited and in case dispute is to be raised, then Suit has to be filed.

35. In view of this, as far as U.P. Government Electrical Undertakings (Dues

Recovery) Act, 1958 (read with U.P. Government Electrical Undertakings (Dues Recovery) Act, 1958) is concerned, same are self explanatory, and here notice of demand that has been issued has been send by registered post, wherein it has been clearly mentioned qua peak hour penalty i.e. applicable, reference has been given and information has been furnished. A division Bench of our Court in the case of Vishanji Tokarsi v. Collector Kanpur Nagar, 2001(43) ALR 96 has taken the view that keeping in view the Explanation-I of Section 3 of Act, Once notice has been send by registered post, then the stand that it has not been served/ received cannot be accepted and sending of notice of demand by registered post shall be deemed to be sufficient. On this aspect of the matter, even in Palliwal Alloys Pvt. Ltd. v. U.P. Power Corporation Ltd. and others) 2009 (4) AWC 3746, in paragraph 34 sending of notice by registered post has been deemed to be sufficient service on the person concerned. Sending of notice by registered post at the recorded address has to be accepted as sufficient.

36. Submission of petitioners in reference of notice that same has not been sent in the prescribed format, cannot be accepted, inasmuch as peak hour penalty has been reflected by means of MRI and thereafter, based on the same in special format prepared, giving full details, amount as per determination made has been sought to be recovered and therein the amount of Rs. 9 lacs already paid by the petitioners firm has also been adjusted. In view of this, submission that has been so made by the petitioners that recovery is not tenable on account of such procedural lapses, cannot be accepted.

37. From the side of petitioners, it has also been sought to be contended that as on date petitioners has ceased to be consumer, and in view of this, recovery could not be effectuated. Such plea on its face value is un-sustainable for the simple reason that once liability in question is of the period when petitioners has been consumer, then to say that petitioners are not falling within the zone of consumer, cannot be accepted, as liability is to be seen in reference to the period for which demand is being made. At the relevant point of time, as per definition of Consumer, under Section 2(c) of Electricity Act 1910 consumer means, person who is supplied with energy and it includes within it any person whose premises are connected for receiving energy. In view of this, merely because, petitioners have ceased to be consumer on the date when recovery has been sought to be effectuated, cannot be a ground to non suit the claim of electrical undertaking.

38. Before parting we would mention that much emphasis has been laid that Section 56(2) of Electricity Act 2003 has been contextually misinterpreted whereas it has limited application only to the extent of disconnection and this Court in the case of Paliwal Alloys Pvt. Ltd. v. U.P. Power Corporation Ltd. and others has failed to consider the said provision in its correct perspective and for this purpose reliance has been placed on the judgement of Bombay High Court in the case Awadesh S. Pandey Vs. Tata Power Co. Ltd. and Others, . Relevant para Nos. 7 and 8 are being extracted below:--

"7. We then come to the next issue as to whether the demand made by

respondent No. 1 is contrary to the provision of Section 56 of the Electricity Act. We have already narrated the facts. The Electricity Ombudsman by his order of 18th July, 2006 held that the respondent No. 1 is entitled to recover past dues by correcting multiplying factor. The question posed by the Electricity Ombudsman to itself was whether the recovery could be made for the entire period of 26 months i.e. for a period from October, 2003 to November, 2005 and that too belatedly in January, 2006. After considering the various provisions including the regulations, the Ombudsman held, only those charges for a period of two years previous to the demand could be recovered and that the arrears for the consumption in January, 2004 became first due in February, 2004 as supplementary bill was raised in 2006 and these dues having been within two years are recoverable under the provisions of Section 56(2) of the Electricity Act.

Submission of counsel for the petitioner is that the provisions of Section 56 do not empower respondent No. 1 to recover any amount if the period of two years has elapsed no can electricity supply be cut off for nonpayment of those dues. In other words what is sought to be contended is that if the demand or part of the demand is time barred the provisions of Section 56 would not be attracted. We are afraid, we cannot subscribe to that proposition. Section 56(1) is a special provision, enabling the generating company or the licensee to cut-off supply of electricity until such charges or sum as demanded under Section 56(1) is paid. Relying on Sub-section (2), it was strenuously urged that Section 56(1) cannot be resorted to after the period of two years from the date when such demand became first due. In our opinion, Sub-section (2) only provides a limitation, that the recourse to recovery by cutting of electricity supply is limited for a period of two years from the date when such sum became due. As long a sum is due, which is within two years of the demand and can be recovered, the licensee of the generating company can exercise its power of coercive process of recovery by cutting-of electricity supply. This is a special mechanism provided to enable the licensee or the generating company to recover its dues expeditiously. The Electricity Act has provided that mechanism for improvement of supply of electricity and to enable the licensee or generating company to recover its dues. Apart from the above mechanism, independently it can make recovery by way of a suit. In our opinion, therefore, the impugned order passed by the Electricity Ombudsman does not suffer from any error apparent on the face of the record and consequently there is no merit in this petition.

8. For all the aforesaid reasons Rule discharged. In the circumstances of the case, however, there shall be no order as to costs."

39. On the same lines of Bombay High Court; Punjab High Court in L.P.A. No. 605 of 2009 decided on 09.09.2011 has taken the same view. It has also been submitted that Section 56(2) of Electricity Act 2003 is analogous to Section 24 of Indian Electricity Act 1910, and its scope and area of operation can not be extended. Mention has also been made that Section 170 of Electricity Act, 2003 has not at all been noted, that clearly deals with recovery of penalty under this

Act. Mention has also been made of Section 175 of Electricity Act, 2003, that talks of provision of Electricity Act 2003 to be in addition and not in derogation of other laws. As of now, as to what is the scope and ambit of section 56(2) of Electricity Act, 2003 in the context of present case, as already discussed above is purely academic and as to whether Paliwal Alloys has rightly dealt with the provision are issues left open to be decided on subsequent occasion.

40. Consequently, writ petition sans merit and is dismissed. In the peculiar facts of the case, as business has already come to stand still in the year 2006, we are in the year 2015, accordingly six months time is allowed to the petitioner for making deposits of the amount due till the date of deposit. For period of six months recovery proceedings are directed to be kept in abeyance.

41. No order as to cost.