(2015) 07 CAL CK 0102

In the Calcutta High Court

Case No : WP No. 1049 of 2012

Sunirmay Vinimay Private Limited and Others APPELLANT

Vs

CESC Limited and Others RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Electricity Act, 2003 — Section 50

Citation : (2015) 4 CALLT 192 : (2015) 5 CHN 11

Hon'ble Judges : I.P. Mukerji, J

Bench : Single Bench

Advocate : Chyan Gupta and Shouveek Ray, for the Appellant; S. Sanyal, P. Mukherjee and D. Agarwal, Advocates for the Respondent

Judgement

I.P. Mukerji, J—A very interesting question has arisen in this writ. The question is: Whether the writ petitioner company (hereinafter "the writ petitioner") the present owner of a premises can be compelled to pay the electricity dues of the previous owner aggregating to Rs. 8,59,088.99 as a condition precedent to getting supply of electricity?

2. I will first elucidate on the law, before entering into the facts.

3. There are certain liabilities like land revenue and municipal tax which are attached to the property as a charge. They can be recovered from the owner of the property by an action in personam or by sale of the charged property. Outstanding electricity consumption charges is not one of those liabilities which are attached to the property. Electricity supply is made as a result of a pure and simple contractual relationship between the licensee and the consumer of electricity. The relationship is controlled by statute. Normally, only the parties bound by the contract are liable. In other words, electricity dues are recoverable from the consumer of electricity only. The Supreme Court has held in this way in the case of Isha Marbles Vs. Bihar State Electricity Board and Another, (1995) 1 BC 529 : (1995) 2 JT 626 : (1995) 1 SCALE 721 : (1995) 2 SCC 648 : (1995) 1 SCR 847 . The exception to this principle is found in the West Bengal Electricity

Regulatory Commission (Electric Supply Code). It is in clause 3.4.2 thereof which provides that if the licensee is able to establish a "nexus" between the erstwhile owner and the present owner, then they are entitled to recover the dues of the erstwhile owner from the present. Mr. Justice Dipankar Datta in Shree Krishna Paper Mills and Another Vs. The West Bengal State Electricity Distribution Co. Ltd. and Others, (2010) 3 CALLT 151 held that the onus to prove "nexus" was on the respondent licensee. In Rashi Metals Pvt. Ltd. Vs. West Bengal State Electricity Board and Others, (2007) 1 CHN 210 , Mr. Justice Girish Chandra Gupta opined that there may be circumstances when the dues of the erstwhile owner were so very closely known by the present buyer of the property, that the onus of proving there was no "nexus" shifted to the present owner of the property.

4. Mr. Sanyal, learned advocate for the respondent licensee cited a very interesting decision of the Supreme Court in Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, AIR 2009 SC 647 : (2008) ELR 756 : (2008) 12 JT 672 : (2009) 1 SCC 210 . The Supreme Court fully reiterated the principles of law in Isha Marble''s case. It added a new dimension to the issue by pronouncing that the respondent licensee would be at liberty to stipulate in the terms and conditions that the arrears of electricity charges of the erstwhile owner had to be cleared before electricity supply was granted to the applicant. I read paragraphs 12 and 13 of that judgement:

12. 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 the 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.

13. 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 a premises, cannot be terms 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 consumer 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."

5. Mr. Sanyal relying on the correspondence annexed to the affidavit-in-opposition submitted that due notice had been given by CESC Ltd. to the writ petitioner that unless they cleared the outstanding electricity charges electricity connection in their favour would not be given.

6. Now I come to the facts.

7. Long ago there was a famous newspaper by the name of Amrita Bazar Patrika. 14A, Ananda Chatterjee Lane, Kolkata 700 003, at one point of time belonged to this organisation. This property was put up for sale at an auction by the Debts Recovery Tribunal -I Kolkata. The sale was confirmed, I am told by Mr. Sanyal, in favour of Cherisma Properties Pvt. Ltd. of 2 Auckland Place, Kolkata-700 017. Now, by the terms of sale this company was authorised to nominate another person to take the property. Accordingly, as the nominee of Cherisma Properties Pvt. Ltd., the writ petitioner became the purchaser of this property under a registered deed of conveyance dated 23rd August, 2006.

8. Mr. Chayan Gupta, learned advocate appearing for the petitioner submitted that the Debts Recovery Tribunal was fully aware of the electricity dues of Amrita Bazar Patrika Pvt. Ltd. and that is why in its order dated 11th February, 2004 it earmarked 20% of the sale proceeds for payment of creditors. Now, it appears that there were two premises possessed by Amrita Bazar Patrika Pvt. Ltd., 14A & 14B, Ananda Chatterjee Lane, Kolkata-700 003. They used to take high tension supply from the respondent licensee to operate their printing press. Dues for 14A Ananda Chatterjee Lane, Kolkata-700 003 are Rs. 8,59,088.99.

9. After purchase of this property the writ petitioner applied for electricity connection.

10. The respondent licensee refused them connection. They said that the writ petitioner was obliged to clear the dues of Amrita Bazar Patrika Pvt. Ltd. before getting electricity supply. The petitioner was fully aware of these dues at the time of purchase of the property. Amrita Bazar Patrika Pvt. Ltd. was a party to the conveyance Cherisma Properties Pvt. Ltd. was also a party. Hence, according to the respondent licensee a clear case of nexus had been established between the petitioner, Cherisma Properties Pvt. Ltd. and Amrita Bazar Patrika Pvt. Ltd. The petitioner was liable for the dues of Amrita Bazar Patrika Pvt. Ltd.

11. Mr. Sanyal also submitted that both Cherisma and the writ petitioner knew about the dues, admitted them and promised to pay them to the respondent licensee.

12. On 24th February, 2006, some six months before execution of the conveyance, Cherisma wrote to the respondent licensee to intimate them the total dues of the erstwhile owner so that they could clear them before

registration. On 20th June, 2007 the respondent licensee wrote to the writ petitioner that although they had sent them an offer letter dated 4th May, 2007 for supply of electricity, subsequently, they ascertained the dues of Amrita Bazar Patrika Pvt. Ltd. The District Engineer of the respondent licensee said that the dues should be immediately settled to enable the respondent licensee to afford electricity connection to the writ petitioner. They replied on 3rd August, 2011 asking for the bill of outstanding charges to forward them to "the previous owner". On 2nd December, 2011 the District Engineer Calcutta (N) District and CESC Limited directed the writ petitioner to the HT, Commercial Department of the company for settlement of the dues relating to 14A, Ananda Chatterjee Lane. There is no doubt that both Cherisma and the writ petitioner were aware of the outstanding electricity dues of Amrita Bazar Patrika Pvt. Ltd. Cherisma promised to the respondent licensee to clear the dues. As its nominee, the writ petitioner is bound by this promise, prima facie.

13. In regulation 3.4.2 the word "nexus" has been used. The plain and ordinary grammatical meaning of the word nexus according to the Oxford English Dictionary is "a link or connection......network".

14. What has to be shown to fix liability on the writ petitioner is that there was some kind of an unholy alliance or collusion between Amrita Bazar Patrika Pvt. Ltd., Cherisma Properties Pvt. Ltd. and the writ petitioner. What is actually intended by the use of the word "nexus" is some kind of a connection between the past and present owners of a property to wrongfully deprive the licensee of its electricity dues. In other words, suppose there is an electricity connection in favour of A. This electricity line is cut off on the charge of theft of electricity. B is the collaborator of A. B applies for electricity connection in respect of the same premises as an occupant thereof. But in reality he is trying to receive electricity supply on behalf of A. In those circumstances B can be compelled to clear all the outstanding dues of A to get electricity connection.

15. It is true that Cherisma had negotiated with the respondent licensee to settle their dues. It is equally true that after purchase of the property the petitioner also negotiated with CESC Ltd. to settle their dues. I am not inclined to hold that there was a "nexus" between Amrita Bazar Patrika Pvt. Ltd., Cherisma Properties Pvt. Ltd. and the writ petitioner to defraud the respondent licensee. Therefore, on the ground that there was nexus between Amrita Bazar Patrika Pvt. Ltd., the writ petitioner and Cherisma Properties Pvt. Ltd. electricity connection cannot be denied to the writ petitioner.

16. I am unable to apply Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, AIR 2009 SC 647 : (2008) ELR 756 : (2008) 12 JT 672 : (2009) 1 SCC 210 to the facts of this case. In my opinion, an intending purchaser of a property must be told by the respondent licensee by affixing a notice on the premises or by advertisement or by direct communication that the dues of the respondent licensee have to be cleared before electricity can be supplied to him. This procedure is to be followed by suitable amendment of

the Electricity Supply Code by the State Commission, under s. 50 of the Electricity Act, 2003. s.50 is as follows:

"50. The Electricity Supply Code- The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintain electric lines or electrical plants or meter and such other matters."

17. When this condition is set in this manner it is reasonable. The intending purchaser has the option either to buy the property or not. If after purchase of the property a purchaser is told that he has to clear the outstanding dues with which he has nothing to do, it would be unfair to him. In this case the writ petitioner was asked to clear the dues of Amrita Bazar Patrika Pvt. Ltd. as a condition precedent grant of the electric supply, after purchase of the property. For those reasons I direct the respondent license to afford electricity connection to the writ petitioner immediately subject to the right of the respondent licensee to recover this sum of Rs. 8,59,088.99 by suit or through the Debts Recovery Tribunal or any another civil forum.

18. However, since the writ petitioner has prima facie unequivocally admitted the electricity dues of the erstwhile owner of 14A, Ananda Chatterjee Lane, Kolkata-700 003 in the various correspondence as discussed earlier, the respondent licensee is entitled to insist that the writ petitioner furnishes a bank guarantee of a nationalised bank for the sum of Rs. 8,59,088.99, as security before granting electricity connection to the writ petitioner in terms of this order. The bank guarantee has to be kept renewed by the writ petitioner. The respondent licensee will only be entitled to encash the same upon obtaining an appropriate court order to this affect against the writ petitioner. The respondent licensee has to file the suit by 31st August, 2015. In default, the bank guarantee is to be returned to the writ petitioner. The bank guarantee will abide by any order or decree to be passed in the suit.

19. Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

