

(1991) 04 AP CK 0020

In the Andhra Pradesh High Court

Case No : Appeal against Order No's. 1545/90, 161, 214, 223 and 224 of 1991, CMP No's. 16555/90, CMP No. 1792/90, CMP No. 2224/91, CMP No. 2247/91 and CMP No. 2248/91 and Oral SCLP

The Andhra Cement Company Ltd., Secunderabad

APPELLANT

Vs

A.P. State Electricity Board and others

RESPONDENT

Date of Decision : 04-04-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3
Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 49
Electricity Act, 1910 — Section 24, 24(1), 24(2), 26, 26(2)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 16(2), 16(4), 17(2)(3), 18(2)

Citation : AIR 1991 AP 269

Hon'ble Judges : Jagannadha Rao, J;Eswara Prasad, J

Bench : Division Bench

Advocate : M/s. T. Anantha Babu, M. Satyanarayana, Mr. R.C. Mishra, The A.G. and Mr. C.V. Nagarjuna Reddy, S.C. for appSEB, for the Appellant;

Judgement

Jagannadha Rao, J.—These five C.M.As. are connected and can be disposed of together. Among them C.M.A. Nos. 1545/ 90, 214/91, 223/91 and 224/91 all arise out of interlocutory applications filed by the plaintiffs in O.S. No. 841/1990 in the Court of the 5th Addl. Judge, City Civil Court. Hyderabad whereas C.M.A. No. 161/91 arises out of an interlocutory application filed in O. S. No. 2/91 on the file of Subordinate Judge's Court, Narasaraopet.

2. O. S. No. 841/90 is a suit filed by the Andhra Cement Company Limited against the A.P. Electricity Board (hereinafter called the Board) and its officers for a declaration that the defendants are not entitled to take any coercive steps like disconnection of power to the plaintiff's factories at Nadikudi, Vijayawada and Visakhapatnam, either under the Indian Electricity Act or under the Electricity Supply Act or under the conditions of supply, pending the settlement of claims between the plaintiff and the Board and in view of the provisions of the Sick

Industrial Companies (Special Provisions) Act, 1985 and for issue of consequential permanent injunction restraining the Board from disconnecting the power supply to the plaintiff's factories at Nadikudi, Vijayawada and Visakhapatnam and also from taking any coercive steps for realisation of the amount due as per the notices until the claims between the plaintiff and the defendant are settled, and until prior permission of the Board for Industrial and Financial Reconstruction (hereinafter called the BIER) is obtained under Sec. 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter called the SIC Act, 1985), The suit was filed in August, 1990. In I.A. No. 743/90 the plaintiff claimed temporary injunction against the Board and its officers for restraining them from adopting any coercive measures against the company including disconnection of power for non-payment of instalments falling due on 30-8-1990 as per its demand notices No. R2/A6/2722/90 dated 16-5-1990, R2/A/2705/1990 dated 16-5-1990, REV/ HT/ D. No. 881 dt. 23-5-1990 and Lr. No.4359/ dated 9-7-1990; No. 5120 dt. 16-8-1990 and No. 1241 dated 23-7-1990 and the Bill dated 26-7-1990 in respect of Nadikudi Unit (DCW). The 5th Addl. Judge, City Civil Court, Hyderabad granted an ad interim injunction on 28-8-1990. I.A. No. 812/90 was filed for temporary injunction in respect of consumption charges for the month of August, 1990 and the arrears of instalments falling due on 15-9-1990. I.A. No. 859/90 was filed in respect of arrears of consumption charges as well as additional charges due on 30-9-1990 and subsequently as fixed by the demand notices. In I. A. Nos. 812/90 and 859/90 notices were ordered. Thereafter counters were filed. The learned 5th Addl. Judge, City Civil Court, Hyderabad, took up I.A. Nos. 743/90, 812/90 and 859/90 together and passed final orders on 14-11-1990.

3. In the I.As., the Court below framed three points for consideration. (1) Whether the petitioners-plaintiffs have shown prima facie case and balance of convenience in their favour; (2) Whether the petitioners/ plaintiffs would suffer irreparable loss if the relief prayed hereunder is not granted; (3) To what relief. Under Point No. 1 it held "For all the aforesaid reasons the petitioner-company fails in all its fronts to establish prima facie case and balance of convenience" (Para 37). On point No. 2 the Court held "I am of the view that the plaintiff-company is not entitled for grant of temporary injunction as prayed for". (Para 38). Under point No. 3 the Court dismissed all the three petitions filed by the plaintiff. Thereafter the lower Court referred to certain materials relating to the case of the plaintiffs being before BIFR and observed that having regard to the present plight of the plaintiff which is under the process of rehabilitation, it felt it desirable to give some accommodation in the payment of dues. It held that the plaintiff-company shall pay arrears of consumption charges (balance instalments) and arrears of additional charges (balance instalments) in six equal monthly instalments commencing from on or before 10th December, 1990. So far as the current consumption charges for the months of July and August, 1990 are concerned it granted 10 equal monthly instalments commencing from 10-12-1990. The respondent-Board is to adjust the amount due under cement

supplied towards arrears. Failure to pay any two instalments would entitle the Board to demand the amount due at a time. There would be no disconnection of power supply during the period of the aforesaid concession in the payment of dues.

4. Not satisfied with the instalments granted, the plaintiff preferred C. M. A. No. 1545/90 in this Court and the learned single Judge of this Court ordered notice before admission on 5-12-1990 and in C.M.P. No. 16555/90 passed an interim order on 5-12-1990 and again modified the same on 7-12-90 granting interim stay of supply of power on condition that the arrears of additional charges and tariff charges due from the plaintiff are paid in 10 equal monthly instalments commencing from 10-1-1991. Likewise, the first instalment of payment of consumption charges for the month of July and August, 1990 should commence from 10-1-1991. The Board preferred C.M.A. Nos. 214, 223 and 224 of 1991 against the above said order in the three I.As. i.e., I.A. Nos. 743, 812 and 859 of 1990. That is how all the four C.M.As. have been taken up together.

5. O. S. No. 2/91 out of which C. M. A. No. 161/91 arises, was filed by the Company in the Sub Court at Narasaraopet. The suit was filed for permanent injunction restraining the Board in disconnecting power supply to the plaintiff factory at Dachepalli in Guntur District for non-payment of consumption charges for the month of December, 1990 as per their bill dated 26-12-1990, in view of the provisions of Sec. 22 of the SIC Act, 1985. The suit was filed in January, 1991. I.A. No. 15/91 was filed by the plaintiff in the said suit for grant of ad interim injunction against the Board and its officers restraining them from disconnecting the power supply to the plaintiffs factory at Dachepalli in Guntur District for non-payment of their consumption bill for the month of December, 1990 dated 26-12-1990 and subsequent bills for further consumption charges. On 17-1-1991 the Additional Subordinate Judge, Narasaraopet observed that there was a prima facie case and also balance of convenience in favour of the plaintiff and that the relief claimed in the application would be defeated if notice was ordered and therefore he granted interim injunction directing that there should not be disconnection of power "till disposal of the suit", and it further directed the plaintiff to pay the consumption charges of December, 1990 in 10 equal monthly instalments, the first instalment to start on 17-3-1991. He posted the matter to 18-2-1991 under Order 39, R. 3, C.P.C. C.M.A. No. 161/91 has been filed by the Board against the above order dated 17-1-1991. C.M.A. No. 1545/90 was filed by the Company. We shall briefly refer to the allegations in the plaint filed in O.S. 841/90, Vth Addl. Judge's Court, Hyderabad.

6. The plaintiff-company in O. S. No. 841/90 manufactures cement in three factories, at Vijayawada, Vishakhapatnam and Nadikudi (Dachepalle). The plaint in the present suit O.S. No. 841/90 seeks a relief (in para 9) in respect of Rs. 103.77 lakhs which are the subject matter of O.S. No. 797/89, Addl. Sub Court, Vijayawada, it is necessary to refer to the details of that suit also. Initially the plaintiff claimed Rs. 2.38 crores and odd towards amounts allegedly refundable,

Rs.23.81 lakhs for cement supplied to the Board under purchase orders dated 27-9-89, 27-10-1989, 27-10-1989 and 23-6-88. The plaintiff also contended that Rs. 66.11 lakhs bill for September, 1989, and Rs. 14.00 lakhs for October, 1989 for consumption charges --and also Rs. 62.00 lakhs (previous outstanding consumption charges) -- all amounting to Rs. 1.37 crores cannot be collected by the Board. It is said that the defendants are also holding consumption deposit of Rs. 2.62 crores. The plaintiff filed O.S. No. 797/89 Sub Court, Vijayawada on 23-11-89 valuing the suit for purposes of jurisdiction at Rs. 1.37 crores and paid a court fee of Rs. 1.39 lakhs. The plaintiff claimed a declaration that it is not liable to pay the bills dated 18-10-89, 27-10-89 and 13-11-89 and sought for a consequential permanent injunction restraining the Board from disconnecting the supply. I. A. No. 5337 of 1989 was filed for temporary injunction and the 2nd Addl. Sub Judge, Vijayawada ordered notice on 24-11-1989. Against the said order directing notice, the plaintiff filed CM.A. No. 1752/1989 on 27-11-89. In the C. M. A. and in C.M.P. No. 17716 of 1989 the learned single Judge issued notice. In the C.M.P. he granted temporary injunction on 27-11-1989 without imposing conditions and later the C.M.A. was disposed of by the same learned Judge on 22-12-1989 "setting aside" the impugned order of the lower Court ordering notice and directing the I.A. No. 5357/1989 to be disposed of in four weeks. No. directions for deposit of any amounts were issued. Later, the direction to dispose of the I.A. in four weeks was deleted by the learned Judge. The I.A. is said to be pending.

7. In the plaint in the present suit O.S. No. 841/90, filed in Guntur, the plaintiff has referred elaborately to (i) the Vijayawada suit O. S. No. 797/89, I. A. No. 5357/89 and C.M.A. No. 1752/89 and to the amount covered therein as Rs. 1.0377 crores. (ii) The plaintiff is claiming Rs. 34.35 lakhs towards supplies of cement; (iii) The plaintiff also referred to W.P. Nos. 16651/87 and 16653/87 filed by it against the Board challenging consumption deposit, the order of the Division Bench dt. 28-4-89 of this Court in the said cases and batch dismissing the W.Ps. and to the SLP No. 4793 and 4794 of 1990 and orders of the Supreme Court dated 19-4-1990 directing the Board to accept consumption deposit for two months in cash. In this Court, the plaintiff seeks refund of Rs. 1.81 crores and stated that in view of certain orders of High Court in C.C. No. 310/90 and C.A. No. 313/90 dt. 15-6-90, adjustment was allowed partly and that still Rs. 42.23 lakhs is to be adjusted, (iv) It is stated that the Trivector-meter at Nadikudi became defective, the disputed amount for October, 1988 to April, 1990 was jointly referred to the arbitrator, the Chief Electrical Inspector of Government and it is said that he granted an order dt. 19-2-90 against disconnection for non-payment of the said disputed consumption charges. On this account, the plaintiff claimed that Rs. 74.40 lakhs was collected in excess and is liable to be refunded, (v) Again in W.P. No. 16947/89, the plaintiff questioned the imposition of 18% interest (in addition to 24% additional charges for belated payment) and it is said that such imposition is stayed. For the back period, the plaintiff claims a refund of Rs. 75.41 lakhs, (vi) Towards the award of low interest at 3% on

consumption deposit, the plaintiff claimed that it is to get Rs. 36.91 lakhs in another pending case in Supreme Court is decided. Thus on these counts (i) to (vi) it is claiming Rs. 3.67 crores. It is also stated in the plaint that the demand notices LR. R2/A6/2722/90 dated 16-5-1990 for Rs. 1.41 crores, LR. R2/A/2705/90 dated 16-5-90 for Rs. 23.77 lakhs, Lr No. REV/ HT/ D No. 881 dated 23-5-90 for Rs. 37 lakhs, in all Rs. 2.02 crores cannot be collected. These amounts are the balance consumption charges payable from 1987 onwards in view of the Division Bench judgment in W.A. dated 2-7-90 and the said amounts are payable in six monthly instalments from 1-8-90. Again, notices dated 9-7-90, 16-8-90, 23-7-90 claiming additional charges of Rs. 10.22, 37.92, 13.44 lakhs have been issued. The plaintiff claims that these amounts are also payable in six monthly instalments from 31-8-1990. It is said that the plaintiff requested -- in respect of these two arrear items -- to adjust them out of the excess consumption deposit available. Therefore, the first instalment is to be treated as paid. The defendants also issued notice for the instalment of Rs. 33.72 lakhs and instalment of additional charges of Rs. 43.99 lakhs as also the July, 1990 consumption charges of Rs. 64.85 lakhs. While so, the plaintiff contending that it has become a sick-industry, applied to the BIFR under the SIC Act, 1985 and the case was registered as Case No. 33/90 and a Special Director was appointed under S. 16(4) for preparing a report and hence S. 22 of that Act applies and therefore coercive steps of disconnection, it is claimed, cannot be resorted to in view of S. 22 of that Act. The plaintiff is also claiming Rs. 1.13 crores in the Vijayawada suit as refund. On these grounds, O.S. No. 841/90 is filed before the Vth Addl. Judge, City Civil Court, Hyderabad valuing the suit at Rs. 1 lakh for purpose of jurisdiction and Court-fee, and the relief, earlier mentioned of declaration and permanent injunction are claimed. We have already set out the reliefs claimed in the three I.As. and as to how the learned Judges, while holding that there was no prima facie case of balance of convenience in favour of the plaintiff, still granted six monthly instalments for payment of the consumption charges (balance instalments) and arrears of additional charges (balance instalments), the first instalment to start from 10-12-1990 and how he also granted 10 equal monthly instalments for the consumption charges for July and August, 1990, the instalments to commence from 10-12-1990. The Electricity Board filed the three C.M.As. 214, 223, 224 of 1991 while the plaintiff filed C.M.A. No. 1545/90. In C.M.P. No. 1655/90 the learned single Judge granted an ex parte order on 5-12-1990 permitting 10 equal monthly instalments commencing from 10-1-1991 for the additional charges.

8. It will thus be noticed that even though the Vth Addl. Judge, City Civil Court, Hyderabad held that no prima facie case was made out by the plaintiff in the I.As. in O.S. No. 841/90 and that the balance of convenience was not in favour of the plaintiff and therefore no temporary injunction could be granted, he still granted instalments and granted injunction and this Court in C.M.Ps. further modified the orders granting 10 instalments and postponing the date of commencement of the first instalment. On the other hand, the Addl. Sub Judge,

Narasarao-pet, in the I.A. in O.S. No. 2/91 held that there was also prima facie case and balance of convenience in favour of the plaintiff and "he granted ad interim temporary injunction "pending suit" and posted the I. A. beyond 30 days.

9. In these appeals, the counsel for the appellant Sri T. Atlanta Babu, has contended that in view of the object and purpose of the provisions of the SIC Act, 1985 and in particular S. 22 thereof, the Electricity Board cannot seek to disconnect the supply of power. It is said that the exercise of the power of disconnection falls with the prohibition contained in S.22(1). Reliance is placed for this purpose on the recent judgment of the Supreme Court in The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others, . It is also contended that to the extent of the amount in dispute before the Electrical Inspector under S. 26(4) of the Indian Electricity Act, 1910. there is a bar in S. 24(2) of the said Act, and no action for disconnection of power can be taken under S.24(1). The Electricity Board is barred to supply power under the existing contract. It is contended that the plaintiff has approached the Electricity Board for grant of instalments under Condition 34 of the conditions of supply of power on 20-2-1991 (after the suit) and the same was arbitrarily rejected by an order dated 20-2-1991. The power under Condition 34 is said to be a power coupled with a duty and the same has not been exercised properly. It is also argued that the plaintiff is entitled to adjust the security deposit of one month of Rs. 1.81 crores which is lying with the Electricity Board, in view of the case SLP No. 4793 and 4794 of 1990 pending in the Supreme Court and the orders dated 19-4-90 therein. Plaintiff also claims adjustment for cement supplies amounting to Rs. 34.35 lakhs outstanding on date of suit and also in respect of further supplies of about Rs. 25 lakhs as on date. It is claimed that penal interest which is stayed in W.P. No. 7939/90 is also included in these demands.

10. On the other hand, it is contended by the learned Advocate-General, Sri V. .R. Reddi, and by the, learned Standing counsel, Sri C.V. Nagarjuna Reddi that S 22(1) of the SIC Act, 1985 is not attracted. The Electricity Board has not proposed to take any action or proceeding against the properties of the company and "disconnection" of power almost to a refusal to supply power in future and that the company cannot insist on increasing its liabilities to the Electricity Board on account of further supplies while the company has not paid the arrears due. It is also pointed out that to the extent of the amount in dispute before the Electrical inspector, the prohibition contained in S. 26(2) ceases to apply inasmuch as under the proviso to S. 26(2), the Electricity Board has made a request to the company, on 2-4-1990 for a deposit with the Electrical Inspector in respect of the amount in dispute and for the future demands as they accrue and the company has failed to comply with such a request and has, in fact, resorted to filing Writ Petition No. 4981/90 and also a spate of suits in respect of every future monthly demand on untenable grounds --viz., O.S. No. 841/90, Vth Addl. Court, Hyderabad in respect of arrears outstanding plus July and August, 1990 nearly Rs. 4.02 crores; O.S. No. 1016/90, II Addl. Judge, Hyderabad in respect of September, 1990 demand of Rs. 51 lakhs; O.S. No. 557/90 Sub Court.

Vijayawada in respect of October, 1990 dues of Rs. 60 lakhs; O. S. No. 2/91, Sub Court, Narasaraopet in respect of December, 1990 dues of Rs. 1.02 crores; and O. S. No. 30/91, Addl. Sub Court, Narasaraopet in respect of January, 1991 dues for Rs. 85 lakhs. So far as the application under Condition No. 34 is concerned, it is said that it is rejected by way of an elaborate reasoned order and the refusal to grant instalments is correct and cannot be agitated when the company has obtained stay of imposing penal interest under the same condition and has also obtained various orders from Courts before submitting the application on 20-2-1991. In regard to adjustment for I month's security deposit allegedly of Rs. 1.81 crores, it is argued for the Board that the periodical review by the Board has revealed that the I month's security deposit even after review is adjustable only up to Rs. 1.41 crores and not Rs. 1.81 crores, and that amount has already been adjusted pursuant to directions in C. C. No. 310/90 and C.A. No. 313/90 dated 15-6-1990 and there can be no further adjustment for Rs. 42.43 lakhs as claimed. In other words, according to the Electricity Board, the amount of 1 month security deposit is not Rs. 1.81 crores but only Rs. 1.41 crores and on that basis there is no balance of Rs. 42.23 lakhs remaining to be adjusted. Coming to the cement supplies, the Electricity Board had agreed for adjustment for cement supplies of Rs. 34.35 lakhs. In the later contracts for supply of cement by the company to the Electricity Board, the relevant clause in the contract did not permit a claim for adjustment towards electricity dues but cash, if not paid, had to be separately claimed or sued. Lastly, it is claimed that as a fact, no penal interest of the type stayed in W. P. No. 7939/90 has been included in any of the subsequent bill.

11. On the basis of the above contentions, the following points arise for consideration:

(1) Whether "disconnection" of supply of power by the Electricity Board and consequent refusal to make further supplies of electricity would come within the prohibition under S. 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 ?

(2) Whether, in respect of the particular amount in dispute before the Chief Electrical inspector under S. 26(6) of the Indian Electricity Act, 1910 the prohibition contained in S 24(2) against disconnection applies to the facts of the case and whether the prohibition has ceased to apply under the proviso to S. 24(2) in view of the request in writing made by the Electricity Board to pay the amount in dispute and future demands and in the con-text of the attitude of the Company is not paying the same and in resorting to a spate of suits?

(3) Whether the order of the Electricity Board dated 20-2-1991, passed pending the suit, refusing to grant instalments under Condition 34 of the Conditions of Supply is arbitrary?

(4) Whether the plaintiff is entitled to set off Rs. 42.43 lakhs as stated in plaint towards balance of excess security deposit of one month or whether the one

month deposit works out only to Rs. 1.41 crores and not Rs. 1.81 crores and even Rs.42.43 lakhs do not remain to be adjusted?

(5) Whether the plaintiff is entitled to set off for any amounts over and above Rs. 34.35 lakhs (as conceded for the Board in the court below) towards supply of cement to the Electricity Board ?

(6) Whether any penal interest is covered by the demands impugned in these petitions and is not recoverable in view of stay orders in respect of past penal charges as granted in W.P. No. 7934/1990?

12. Learned counsel for the company Sri T. Ananta Babu submitted that though these points arise in the suit, this Court could, in these C.M.As., decide these questions without any reservation and the plaintiff is not raising any objection that these are matters to be decided only in the suit and not in interlocutory proceedings. The said statement is hereby recorded.

13. Point No. 1 :-- This is the main point that is argued for the Company. It is said that "disconnection" of power is one of the modes of recovery of arrears due to the Electricity Board and that it squarely falls within the prohibition contained in S. 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985.

14. It is not in dispute that the Company has filed Form A before the BIFR as required under S. 15 of the SIC Act, 1985, the inquiry was commenced and a case was registered as Case No. 33 of 1990 and the BIFR appointed a Special Director in the Board of Directors of the Company under S. 16(4) of that Act. The BIFR also appointed the I.D.B.I. as the "operating agency" for preparation of a report for suggesting various measures regarding revival/rehabilitation of the unit under the SIC, Act, 1985. The question is whether the plaintiff can take advantage of S. 22(1) of the Act. Section 22(1) reads as follows:

"S. 22 Suspension of Legal Proceedings, Contracts etc.

(1) Where in respect of an industrial company, an inquiry under Sec. 16 is pending or any scheme referred to under S. 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an industrial company is pending, then notwithstanding anything contained in the Companies Act, 1956, or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the a said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof shall lie or be proceeded further, except with the consent of the Board or, as the case may be, the Appellate Authority."

It is contended for the plaintiff by Sri T. Ananta Babu that the above provision must be considered in the light of the preamble and Statement of Objects and Reasons and other provisions in S. 3(1)(b), (n), (o), Ss. 4, 16(2), 17(2)(3), 18(2) (e)(f), Ss. 19, 20 to say that the purpose of the SIC Act, 1985 is to see that the

sick industry is kept running and is not closed. Reference is also made to Ss. 18, 26 and 49 and Cl. IV of the 2nd Schedule as well as to conditions 26.8, 32.3, 33 and 34 of the Conditions of Supply to say that the Board is bound to supply power under the contract, that the power to disconnect supply is a coercive method of recovery of arrears and cannot be resorted to in the face of S. 22(1) of the SIC Act, 1985. It is said that "colloquial words of a statute have not been fixed and artificial content of scientific symbols, they have a penumbra, a dim fringe, a connotation, for they express an attitude or will, into which our duty is to penetrate and which we must enforce when we ascertain it, regardless of imprecision in its expression" (G.P. Singh, Principle of Statutory Interpretation 4th Ed. 1988, quotation from learned Hand J.). Reliance is also placed on the observations of the Supreme Court in *Navnit R. Kamani and Others Vs. R.R. Kamani*, to say that the SIC Act, 1985 is a piece of benevolent legislation meant to provide preventive, ameliorative and remedial measures and should be construed liberally to achieve those purposes. Reliance is also placed on *Union of India V. Filip Tiago De Gama* AIR 1990 SC 981 to say that the court must give effect to a beneficent legislation.

15. It is true that the provisions of the SIC Act, 1985 are a piece of benevolent legislation and are to be construed by the Courts to see that the purposes of the said Act are achieved and are not defeated. But, in this context, two other principles are also to be borne in mind. Firstly, when we come to S. 22(1) of the Act, the provisions thereof of S. 22(1) impose certain restrictions on rights of third parties "in respect of institution or continuation of legal proceedings such as winding up, execution, distress or the like against the properties of the industrial company or by way of appointment of a receiver, Therefore, .the purposes of the Act have also to be harmonised with the legal rights of others and the restrictions imposed on such others have to be limited to the extent intended by the legislature and cannot be extended further. Secondly, the jurisdiction of Courts or other bodies or authorities cannot be unduly curtailed beyond what the legislature has intended. We have therefore to give effect to the benevolent purposes of the Act and at the same time see that the legal rights of third parties against the Company and the jurisdiction of the Courts or other bodies to take action against the company at the instance of third parties are curtailed only to the extent intended by the legislature and not beyond what is actually intended. The principle that liberal construction must flow from the language used does not mean the raising of any presumption that protection of the widest amplitude must be deemed to have been conferred upon those for whose benefit the legislation may have been enacted. *Mangilal Vs. Suganchand Rathi*, . It is also clearly laid down by the Supreme Court in *Yudhishter Vs. Ashok Kumar*, . That the rule of beneficent legislation has to be read reasonably and justly and without interfering with the right to hold property or other rights of other person which may expose it to the vice of unconstitutionality.

16. Bearing these principles of interpretation in mind, we shall have to interpret the scope of S. 22(1) of the SIC Act, 1985. It deals with "Suspension of Legal

Proceedings, Contracts, etc.". It states that if, in respect of an industrial company, certain conditions stated by it are satisfied, then notwithstanding the provisions of the Companies Act, 1956 or any other law or the memorandum and articles of association of the industrial company on any other instrument having effect under the said Act or other law.

"No proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof, shall lie or be proceeded further except with the consent of the Board or, as the case may be, the Appellate Authority."

The question is to what extent the legislature has given protection to the Company and to what extent it has curtailed the rights of third parties or restricted for the jurisdiction or powers of courts or other bodies or authorities.

17. A careful reading of the provisions of sub-clause (1) of Sec. 22 reveals that certain "proceedings for the winding up" and again certain "proceedings for execution, distress or the like" which are taken against any of the properties of the industrial company or "proceedings for appointment of a receiver" are the three types of proceedings specified. These proceedings do not lie nor can they be proceeded with. Here we are not concerned with a winding up proceeding or one for appointment of a receiver. We are concerned with the proposed action of the Electricity Board for "disconnection" of future supply of electricity.

18. If the Electricity Board has resorted to a suit for recovery or execution of a decree or action by distress or the like for recovery of arrears due to it, against the properties of the company, it could be said that S.22(1) is attracted. Non-supply of further goods under a contract cannot, in our view, be equated with the kind of proceeding contemplated by S.22(f). Further, the words "against the properties" of the Company clearly imply that the action must be against the property of the Company. Non-supply of goods in future cannot amount to action against the property of the company.

19. It is argued for the Company that the words "legal proceedings" used in the heading to S. 22 cannot be given much importance and that read with the word "proceeding" used in the body of the section, it would include "disconnection" of electrical supply by the Electricity Board. On the other hand the learned Advocate-General has stressed that the body of the Section uses the words "proceedings" and the words "lie or be proceeded with" and that the proceedings prohibited are necessarily against the properties of the Company. Both sides have placed reliance on several dictionaries as to the meaning of the words "legal proceedings" and "proceedings". We do not think it necessary to refer to those dictionaries. On a plain reading of Section 22, we are of the view stated above, namely, that the section contemplates that no proceedings either for winding up or for execution, distress or the like against any of the properties of the company or for appointment of a receiver in respect thereof shall lie or be

proceeded with and if the Electricity Board, by itself, refuses to supply its product namely, electricity in future, it cannot be brought within the above said prohibition.

20. The words "the like" in S. 22(1) cannot also help the Company. The said words only mean "similar" and not the "the same". Stroud's Judicial Dictionary (5th Ed) says that the words "the like" are not equivalent to "the same". "Like" may not import identity as definitely as the use of the word "same" would have done. But, at least, it connotes resemblance in main features -- (Venkataramaia's Law Lexicon, 2nd Ed. quoting words and phrases. Vol. III p. 262). In Ramanatha Aiyar's Law Lexicon (1987) it is said that "like" means "equal to quantity, quality, or degree; exactly corresponding; so that "in like manner" means "with same force or effect". Webster's dictionary is quoted as follows: "While the context determines its significance, the term is generally defined to mean analogous, resembling; having the same, or nearly the same, appearance, qualities, or characteristics, resembling, similar to, equal in quantity, quality, or degree; exactly corresponding".

21. While it is true that the words "the like" do not mean "the same", can it be said that non-supply of electricity in future is an action similar to a proceeding for winding up, execution or distress against the properties of the company or to appointment of receiver? In our opinion, not. Take the case of supply of some other essential goods like steel by a Steel Plant under a contract. If the Steel Plant decides -- in the context of large arrears by the purchasing company -- not to make further supplies of steel in future, it cannot, in our opinion, be said that future non-supply of goods, under the contract is similar to a proceeding for winding up, execution or distress against the properties of the company or to appointment of a receiver.

22. The decision of the Supreme Court in The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others, on appeal from the decision of the Bombay High Court in Shree Vallabh Glass Works Ltd. Vs. State of Maharashtra and others, , strongly relied upon for the company, is clearly distinguishable. There the Gram Panchayat, Salwad, initiated coercive proceedings under S. 129 of the Bombay Village Panchayat Act, 1958 for recovery of Rs. 9,47 lakhs and odd towards property tax and costs of an appeal, due from the Company. If the company did not pay the amounts, the Gram Panchayat was entitled to resort to the provisions of sub-section (7) and sub-section (8) of S. 129 of the Bombay Gram Panchayat Act, 1958. In that context, the Supreme Court observed (see para 11) that it may be against the principles of equity, if the creditors are not allowed to recover their dues from the company, but such creditors may approach the Board for permission to proceed against the company, in our view, the above observations made in the context of recovery of property taxes and other dues by coercive process or recovery against the properties of the company cannot be applied to a case of non-supply of future electricity by the Electricity Board.

23. It has also been alternatively argued by the learned Advocate-General that the words "lie or be proceeded with" would indicate that the proceedings are to be taken before some other body or authority or Court and that action by the third party all by itself to stop future supply of goods may not come within the meaning of the words "proceedings" which are lying before any Court, body or authority. We do not, however, think it necessary to express any final opinion on this alternative submission that proceedings prohibited must necessarily be proceedings which are taken before some other body or authority or Court.

24. A learned single Judge of this Court, Syed Shah Mohd. Quadri, J. has held in *M/s Texmaco Ltd. (Cement Divn.), Hyderabad v. A. P. State Electricity Board*, W. P. No. 12059/90 Dt/-22-8-90, that S. 22 "is not applicable to a case where a facility or service is threatened to be disconnected for nonpayment of charges for the service". The learned single Judge observed : "No action is being taken for the recovery of those arrears by initiating winding-up proceedings or proceedings for execution, distress and the like or by initiating proceedings for appointment of a receiver. Only the supply of electricity is threatened to be disconnected for non-payment of arrears" and "Section 22 has no application". We respectfully agree with the said view of Quadri, J.

25. Now the Electricity Board is supplying electricity to the company under a contract entered into therefor. Supply of electricity is like supply of any other goods essential for the sustenance or existence of the company. The supply is no doubt under the terms and conditions of a contract. The Electricity Board can, if past supply of electricity has not been paid for, decide to stop further supply of electricity to minimise its future losses. Non-supply of electricity has the objective of preventing the recipient company from incurring further liability when it, as a sick industry is not able to pay for its existing liabilities. One of the purposes of stoppage of further supplies is to see that the existing liability of the consumer to the Electricity Board is not further increased. In other words "disconnection" of power is the result of a decision not to make "further supplies" which may increase the liability of the recipient of the goods. Therefore, the contention that non-supply is only a method of recovery of arrears is not correct. It may have the said effect indirectly or simultaneously.

26. For all the above said reasons, we hold that a threat of disconnection or disconnection of supply of power by the Electricity Board and consequent refusal to make further supplies of electricity are not hit by the prohibition contained in S. 22(1) of the SIC Act, 1985. We hold point No. 1 accordingly against the Company and in favour of the Electricity Board.

27. Point No. 2:-- According to the Company, this point regarding defective meter covers Rs. 74.40 lakhs (as per the amended claim from October, 1988 to April, 1990 for 19 months). But, according to the Electricity Board, under S.24 of the Electricity Act, 1910, the dispute cannot exceed six months backwards from the date of testing of the meter i.e., October, 1989 and it will be a mere Rs. 24 lakhs. Be that as it may, in view of the default of the Company pursuant to notice

under the proviso to S. 24(2), the main contention of the Company itself, as shown below, is liable to be rejected.

28. The Company in its letter dt. 14-9-1989 complained that the meter was observed to show excess consumption and requested the Electricity Board to test the meter. The Company states that accordingly the meter was tested on 28-9-1989 and it was found the percentage of error was +3.72 as against the permissible error of + 3% mentioned in the Electricity Rules. The case of the Company was that due to the increase in the permissible error from 1-10-88 (i.e., the date of the previous annual test) to 28-9-1989 (the date on which the meter is tested on complaint), the amount in dispute is liable to be refunded. The Superintending Engineer in his letter dated 22-1-1990 addressed to the Arbitrator, (the Chief Electrical Inspector to Government, Hyderabad) that, the said Trivector meter was tested again on 9-11-1989, that the percentage errors well within limits and that the Company filed W. P. No. 16621/89 and filed an additional affidavit for appointment of a competent Electrical Inspector, that the Company, in its letter dated 16-1-1990 had offered willingness for reference the matter to the Chief Electrical Inspector to Government under S. 26(6) of the Indian Electricity Act, 1910 and that the said Inspector should decide the question by way of arbitration. Thereupon, the said Inspector passed orders on 19-2-1990 under Ss. 26(6) and 24(2) of the Act that he had asked the Board on 31-1-1990 to intimate the convenient date in consultation with the consumer, for testing the meter, that meanwhile the company had submitted an application on 16-2-1990 complaining that when the dispute was still pending, the Board had issued 7 day's notice on 14-2-1990 threatening disconnection for non-payment of Rs. 31 lakhs towards the consumption bill for January, 1990. He therefore directed the Board not to disconnect the power supply for non-payment of consumption charges "in dispute". By letter dated 31-3-1990, the Company wrote to the Inspector saying that the earlier statement included dispute up to 8 December, 1989 and now they are disputing the excess up to March, 1990. The Inspector then stated that under S. 24(2), he was directing the Board not to disconnect the power supply for non-payment of consumption charges "in dispute", until further orders. In his further letter dated 12-6-90, the Inspector informed the Company that the meter was tested on 23-4-1990 in the presence of the parties, that the relevant data is being analysed and asked the Company to send their log book from 10/1988 to 4/1990. On 19-10-1990, the Chief Inspector issued notice under Rule 9 slating that the meter was found to be defective and that the available information was insufficient and further inquiry is necessary and asked the parties to be present on 29-10-1990. There has been no progress thereafter.

29. When the Board threatened to disconnect supply of electricity for non-payment of consumption charges, pending proceedings before the Inspector, the Company filed a petition before the Chief Inspector and the latter passed another order on 10-12-1990 directing the Board not to disconnect power subject to certain conditions. The Company deposited a sum of Rs. 7 lakhs and odd and

furnished Bank guarantee to the Inspector in a sum of Rs. 27.50 lakhs. Thereafter the Board issued statutory notices on 12-3-1990 and 15-3-1990 and again on 2-4-1990 stating that the furnishing of Bank guarantee does not satisfy the requirements of the proviso to S. 24(1). (vide paras 6, 7 of the Company's affidavit dt. 9-4-90 in W.P. No. 4981/90). Thereupon, the Company filed W.P. No. 4981/90 in April, 1990, questioning the statutory notice dt. 2-4-1990 and sought stay of deposit of consumption charges for January, 1990 and February, 1990 in cash. The writ petition was disposed of at the stage of admission on 10-4-1990 directing the Company to deposit Rs. 27.35 lakhs and the petitioner filed W.P.M.pS. 6929/1990 and 6930/90 for modification for paying the same in instalments. The High Court then passed orders on 23-4-1990 (hearing the counsel for the Board) directing the Company to pay Rs. 7.35 lakhs as first instalment before first week, of May, 1990, and second instalment of Rs. 10 lakhs by demand draft on or before end of May, 1990 and third instalment of Rs. 10 lakhs on or before 15-6-1990.

It is not denied before us by the Company's counsel that only the first instalment dated 1-5-1990 was paid and that the second instalment payable before 31-5-1990 and the 3rd instalment payable by 15-6-1990 were not paid.

30. It is on these facts that we have to consider the question arising under proviso to S. 24(2) and S. 26(6) of the Electricity Act, 1910. It is necessary to refer to these provisions. Section 26 of the Act deals with meters and the errors in their readings and provides for reference to the Electrical Inspector and the

"Inspector shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not in the opinion of such Inspector have been correct,....."

Section 24 deals with "discontinuance of supply to consumer neglecting to pay charge. Sub-section (2) of Sec. 24 and its proviso, read as follows:

"S. 24(2): Where any difference or dispute which by or under the Act is required to be determined by an Electrical Inspector, have 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."

It will be noticed that once the dispute is referred to the Inspector under S. 24 in respect of defects in the meter, the Board cannot exercise the power to disconnect the supply until the Inspector has given a decision as to the defects in

the meter. The proviso to S 24(2) however lifts the ban and states that the prohibition against disconnection does not apply if (i) the Board has made a request in writing to the consumer for a deposit before the Inspector in respect either of the amount in dispute or if the Board has made a request for deposit of the further electricity charges as they accrue and (ii) the consumer has failed to comply with such a request.

31. In the present case, it is admitted as stated above, that the Board has issued the statutory notice under the proviso to S. 24(2) more than once for deposit of the disputed consumption charges before the Inspector. Instead of doing the company filed a writ petition and obtained an order for payment of Rs. 27.50 lakhs in instalments and paid one instalment of Rs. 7.35 lakhs before first week of May, 1990 and committed default of the second and third instalments of Rs. 10 lakhs each, which were to be respectively paid before end of May, 1990 and before 15-6-1990. It is therefore clear that the proviso to S. 24(2) came into operation the moment the Board issued the statutory notices thereunder and the Company failed to deposit the sums in dispute. Therefore the amount in dispute due to alleged error in the meter should have been paid and the Board is entitled to disconnect the power supply for non-fulfilment of the condition of cash deposit by the company as per the proviso to S. 24(2) of the Indian Electricity Act, 1910. Point No. 2, relating to the disputed amount covered by arbitration, is decided accordingly, against the Company and in favour of the Board.

32. Point No. 3:-- The contention under this point is that the Electricity Board's rejection on 20-2-1991 of the request of the company to permit payment of dues in instalments under Condition 34 of the conditions of supply is arbitrary?

33. This point, in fact, does not arise in the suit nor did it arise in the I.As. The suit O.S. No. 841/90 and the I.A. No. 743/90 were, filed in the Court of the 1st Addl. Judge, City Civil Court, Hyderabad in August, 1990. The I.A. was disposed of on 14-11-1990. The suit O.S. No. 2 of 1991 and I.A. No. 15/91 were filed in the Sub Court, Narasaraopet in January, 1991. This I.A. was disposed of on 17-1-1991. It is only thereafter that the Company filed an application before the Board on 20-2-1991 for grant of instalments. The contention is that the Board rejected the application on the same day, that the power to grant instalments is a power coupled with a duty and cannot be exercised arbitrarily. The point is raised for the first time in appeal and without any pleadings, and need not be considered in this appeal. But inasmuch as it has been raised, we shall deal with the same.

34. Condition 34 of the Conditions of Supply issued by the Board in exercise of powers under S. 49 of the Electricity (Supply) Act, 1948 reads thus:

"34: (a) Payment of dues of the Board in instalments. The Board may permit a consumer when he so requests, to pay charges for electricity supplied, consumption deposit or any other charges in instalments provided that, where such request is granted, the consumer shall, in addition to any additional charges

leviable due to belated payment as per the clause 32.2 hereof under the other terms and conditions of supply, pay interest charges at 18% per annum, on the amount outstanding out of the charges allowed to be paid in instalments."

35. In the present case, the company applied by letter dated 20-2-1991, stating that the company has been declared a Sick Unit by the BIFR by order 33/90 dated 23-7-1990, that in view of irregular supplies of coal from WCL and SCCL, due to labour unrest, massive power-cuts, poor realisation of cement and other natural calamities -- such as cyclones/riots etc., the Company has been facing financial difficulties to pay the outstanding dues in lump sum and that hence they have been asking for payment in instalments and were paying instalments promptly.

36. The Company offered a proposal stating that all outstanding dues should be allowed to be cleared by "supply of cement" to the Board to an extent at least of 10,000 tonnes per month if full rakes are made available by the Railways. The second proposal is that the Company will be in a position to pay an amount of Rs. 25 lakhs per month towards outstanding dues, over and above the cement supplies. The third proposal is that the "future consumption charges will be paid in six monthly equal instalments -- each instalment, being paid by the end of every month.

37. The Board replied, on the same day, i.e., 20-2-1991 stating that firstly, the Board is unable to accept supplies of cement in lieu of electricity dues, since cement of that magnitude is not required by the Board and that, in fact, the Board's requirement of cement is already arranged for, separately. The Board then stated that instalments of Rs. 25 lakhs can be considered only for arrears but not for current consumption charges. So far as current consumption charges are concerned, they have to be paid regularly as they are being used for production of cement. They stated that the arrears as on date amounted to Rs. 8.54 crores and that the Board can consider payment in instalments only if the Company is prepared to furnish Bank Guarantee assuring the due and prompt payment of all these arrears. It is stated that as the Company has not indicated its willingness to provide bank guarantee during the oral hearing, the Board is unable to accept the proposals of the Company.

38. It is this order of the Board that is questioned as being arbitrary. It will be noticed that under condition 34, whenever instalments for existing dues are granted, the consumer will have to pay (a) additional charges under condition 32.2 for belated payment and (b) also interest at 18% per annum, on the amount outstanding.

39. Now, apart from there being not undertaking to pay Additional charges and the further interest at 18%, the company has already gone to Court contending that additional charges and 18% cannot be both collected by the Board and filed W. P. No. 16947/89 and in W.P.M.P. No. 22488/89 an order was passed by a learned single Judge on 6-12-1989 that the Board will not levy or collect

additional charges and interest on the consumption charges for the bills for September, October, 1989 "and future bills", pending writ petition.

40. From the above facts, it is clear that the Company is not allowing the Board to exercise its discretion under condition No. 34 one way or the other but wants that the Board should grant instalments thereunder. It can therefore be argued for the Board legitimately that the Company cannot attack condition No. 34 and at the same time try to fall back upon the same. Nor can the Company seek to have the benefit of the Court's interlocutory orders to some extent and complain of arbitrariness on the part of the Board.

41. The Company has already obtained an order for six instalments from this Court in the judgment of the Division Bench in W.A. No. 1427/89 etc. dated 2-4-1990. The Company filed SLP and by an order dated 2-7-1990, the Supreme Court postponed the date of commencement of the instalments, by one month.

42. In spite of the above orders, the Company is still in arrears accruing with Board in a sum of Rs. 8.54 crores, after taking into account the stay in regard to interest granted in W.P.M.P. No.22488/89 in W.P. No. 16947/89 dated 6-12-89 referred to above. By the time of submission of the application on 20-2-91, for instalments, the Company has filed a spate of suits in respect of monthly bills right from 1989 -- with small gaps -- some at Vijayawada, some at Guntur and Narasaraopet and some at Hyderabad and obtained various orders of unconditional stay or interim orders as to instalments; The present appeals before us arise out of two such suits. These are O.S. No. 797/89, Sub Court; Vijayawada, O.S. No. 557/90 Sub Court, Vijayawada, O.S. No. 1016/90, II Addl, Judge, City Civil Court, Hyderabad, O.S. No. 2/91, Sub Court, Narasaraopet, O.S. No. 30/91, Addl. Sub Court, Narasaraopet, O.S. No. 11/91, Addl. Sub Court, Narasaraopet and C.M.A, No. 1752/89 and C.R.P. No..2133/90. Thus, it will be seen, that the Company has filed a petition under Condition No. 34 before the Board and has also at the same time, filed suits or Writ Petitions covering pan of the subject-matter of the said petition. In fact, O.S. No. 11/91 is peculiar suit filed in Sub Court, Narasaraopet for stay and for supply of power notwithstanding the default of the very 2nd instalment payable according to the orders of the Vth Addl. Judge, City Civil Court, Hyderabad in O.S. No. 841 /1990. In other words, after obtaining an order for payment in instalments from a Court at Hyderabad, the Company has chosen to commit default of the very second instalment and filed another suit at Narasaraopet in Guntur District to ward off the effect of the said default.

43. In the above background, we do not find anything unreasonable or arbitrary on the part of the Board in rejecting the application of the Company filed under Condition No. 34, In the light of the various orders the Company has obtained from this Court in W.As. W.Ps. C.M.As., C.R.Ps. or in the various suits above referred to, the Company cannot commit default even of these orders of instalments granted by the Courts and again move the Board independently, at a later stage for instalments and complain. In the circumstances, - the Board was

justified in saying that no instalments can be granted for current consumption charges and that, so far as arrears are concerned, the Company must furnish Bank guarantee.

44. Surely the Company cannot say, "you go on supplying electricity in future in spite of our arrears of Rs. 8 crores and odd. We shall produce cement, and you take all that cement -- whatever may be your need -- and adjust the same". Nor can they say that they will pay only Rs. 25 lakhs per month in cash for the arrears and that the rest could be paid in instalments. The Company, as already noticed, has obtained stay from the High Court in respect of levy of interest by the Board. We therefore hold that the rejection of the company's letter dated 20-2-91 cannot be treated as arbitrary. Point No. 3 is decided accordingly.

45. Point No. 4:-- The Company filed W.P. No. 16651/87 and W.P. 16653/87, as stated in the plaint in O.S. 841/90 that the demand by the Board for consumption deposit equivalent to three months average consumption charges of 1989-90, is bad. A Division Bench of this Court dismissed the writ petitions and the Company filed S.L.Ps. 4793, 4794 of 1990. The Supreme Court passed an interim order on 19-4-1990, that the Board accept consumption deposit in cash for two months rather than three. Under the terms and conditions of supply, it is said, the Board is bound to review the position each year, in April, as regards the consumption deposit. The Company claims refund of Rs. 1.81 crores under this head but according to the Board, the difference comes only to Rs. 1.41 crores being the amount arrived at on review, and not Rs. 1.81 crores. This, in our view, is a matter to be decided in the suit.

46. In the meantime, the Company obtained certain orders in Contempt Case No. 310/90 and Contempt Application No. 313/90 dated 15-6-1990 seeking adjustment of arrears and it is stated in the plaint in O.S. No. 841/90 that such adjustment was allowed. On the basis that the adjustable amount is Rs. 1.81 crores, the Company contends that still Rs. 42.23 lakhs is to be adjusted. But according to the Board, the adjustable amount is Rs. 1.41 crores and not Rs. 1.81 crores and therefore there is no scope for further adjustment of Rs. 42.23 lakhs. Now the security deposit amount is liable to review by the Board every year in April and the Board stated that on such review, the one month's figure comes only to Rs. 1.41 crores and not Rs. 1.81 crores as contended for by the Company. If it is Rs. 1.41 crores only, the adjustment towards one month's consumption charges -- being the difference between the deposit for 3 months as required by the contract and 2 months, as per orders in the S.L.Ps. -- there will be no further amount to be adjusted. Neither in the plaint, nor in the I.A., nor before us, any attempt has been made to show that prima facie the computation by the Board is not correct. Therefore, this will be a matter to be dealt with in the suit on evidence. For the present, we hold that the Company cannot seek adjustment of any further amounts as contended in the plaint. Point No. 4 is decided accordingly against the Company.

47. Point No. 5 :-- Regarding adjustment of amounts due to the Company

towards supplies of cement already made, the position is that, in the lower Court, the Board agreed, as a matter of concession, to adjust Rs. 34.35 lakhs. The Company, however, claimed in this C.M.A. that, on account of further supplies under existing contracts, a further amount of Rs. 25 lakhs has to be adjusted. The Board says that already it has agreed in the lower Court for adjustment of Rs. 34.35 lakhs and that nothing more is adjustable, --the reason being that in the later contracts for purchase of cement by the Board, the relevant clause for adjustment as against consumption charges has been deleted and a new clause, requiring the company to claim and receive cash from the Board has been incorporated, Copies of the earlier purchase order (No. CEP/122/STA-2/P-6970) dated 21-12-1989 and the later purchase order (P.O. No. CEP/122/STB/1/90/P-7207) dated 25-7-1990, have been produced before us by the Board to substantiate this contention. Under the former, it was stated in para 7, that "payment of the bills for the 100% cost of the cement delivered in any month will be adjust-ed against current consumption charges falling due immediately, provided you submit the invoice..." But under the later purchase order, it is now stated in para 7,

"payment: 100% of the due price will be paid within 30 days time after receipt of the goods in good condition certified by the consignee (Form-13) and the receipt of the. supplier"s bills in duplicate whichever is later."

48. There is considerable force in the submission for the Board that the Company cannot, as of right, claim adjustment of amounts due under the head of cement Supplies. However, inasmuch as the Board has accepted before us that the further amounts due to the Company may be to an extent of, Rs. 25 lakhs, we are inclined to direct adjust-ment in respect of a further amount of Rs. 25 lakhs subject to the observation that this direction of ours, will not be treated as a precedent. This direction is also subject to the result of the suit. Point No. 5 is decided accordingly.

49. Point No. 6:-- It is the contention of the Company that the penal interest stayed in W.P.M.P. No. 7939/90 is also included in demands. On the other hand, it is stated by the learned standing counsel for the Board that after the stay orders were granted in W.P.M.P. No. 7939/90, the Board has not included the penal interest in subsequent bills. Learned counsel for the Company has not attempted to demonstrate before us that the above statement on behalf of the Board is incorrect. Point 6 is decided accordingly.

50. In view of the above findings given by us on the various points, we arc of the opinion that the company has not made out any prima facie case whatsoever either for directing further supplies of electricity or for grant of instalments in respect of the arrears already due to the Board. The main point that is urged is with reference to S,22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. We have rejected the Company"s case on this point on merits. We have not also found any substance in the other contentions. We have only directed set off of a further sum of Rs. 25 lakhs under point No. 5.

51. So far as balance of convenience is concerned, the position is as follows: This is a case where the Company is not only seeking stay of collection of arrears due from it but is also seeking positive directions for payment in instalments and a further and more important direction for supply of electricity in future. It is to be noticed that the Company has already obtained certain final orders in its favour regarding instalments granted by the Division Bench in W.A. Nos. 1427/89 and batch. The Bench permitted six instalments, the first instalment to start on 1-6-1990. Their Lordships of the Supreme Court in SLP postponed the commencement of the instalments by one month. The Company obtained stay of interest under Condition No. 34 in W.P.M.P. No. 22448/1989 in W. P. No. 16947/89 on 6-12-1989. The Company's claim that penal interest stayed in W.P. No. 7934/ 90 has been included in the bills, has not been proved. The Company committed default in payment of the instalments granted by this Court in respect of the amount covered by defective meter, as directed in W.P. No. 4961 / 1990 dated 23-4-1990. The Company obtained an order of instalments in O.S. No. 841/90, Vth Addl. Judge, City Civil Court, Hyderabad, committed default of the very second instalment and then, to ward off the consequential effect, filed another suit O.S. No. 11/ 91, Sub Court, Narasaraopet, Guntur District and obtained further orders.

52. The contention for the Company that notwithstanding the huge arrears said to be about Rs. 8 crores it should get further supplies of electricity continuously but that it would pay the arrears and bills for all future supplies in instalments, cannot be accepted. The Court cannot, while considering the problems faced by an industry, fail to consider the difficulties of the Board in having to maintain supply to a Company, which has been a continuous defaulter. The Supreme Court, in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, , has given guidelines in regard to issuance of temporary injunctions against the State or Public Sector. For the reasons given under points 1 to 6, we do not therefore think that the balance of convenience is in directing future supplies of electricity nor for granting instalments for the amounts due as on date.

53. In fact, in I. A. Nos. 743/90, 812/90 and 859/90 in O.S. No. 841/90 the Vth Addl. Judge, City Civil Court, Hyderabad (out of which CM. As. 1545/90, 214/91, 223/91 and 224/91 arise), the Court below has also found that the Company has not made out any prima facie case and that the balance of convenience is also not in favour of granting injunction. But, having said so, the lower Court directed further supply of electricity and ordered instalments. Having held that there is no prima facie case and no balance of convenience, the lower Court ought not to have granted the injunctions.

54. In I.A. No. 161/91 in O.S. No.2/91, the learned Subordinate Judge, Narasaraopet, without giving any valid reasons, granted an ex parte interim order that the plaintiff has prima facie case and that the balance of convenience is in granting injunction for supply of electricity and in granting instalments. For

the elaborate reasons given by us, we set aside the ex parte order and remit the I.A. to the Sub Court, Narasaraopet for disposal in the light of our judgment.

55. For all the aforesaid reasons, the C.M.A. No. 1545/90 preferred by the Company and C.M.P. No. 16555/90 are dismissed. The C.M.A. Nos. 214, 223 and 224 of 1991 filed by the Board are allowed and the orders passed by the lower Court are set aside except the Board shall adjust the sum of Rs. 34.35 lakhs (as agreed to by the Board in the lower Court) and a further sum of Rs. 25 lakhs towards cement supplies. C.M.A. No. 161/ 1991 is allowed and the I.A. No., 15/91 filed by the Company is remitted, to the lower Court, for disposal in the light of this judgment. The C.M.Ps. filed by the Company in all the C.M.As. are also dismissed. There will be no order as to costs in these C.M.As.

56. An oral application has been made by the learned counsel for the Cement Company (plaintiffs) for leave to Appeal to the Supreme Court of India. We are of the view that the appeals do not involve any substantial question of law of general importance which in our opinion, needs to be decided by the Supreme Court of India. The oral application for leave is accordingly rejected.

57. So far as stay sought for is concerned, in view of the findings given by us in the body of the judgment and in view of the conduct of the plaintiffs in filing suits, getting instalments, committing defaults and filing fresh suits to ward off the effect of the said defaults, we do not think that it is a fit case for grant of stay in favour of the plaintiffs. However, in terms of Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, the Electricity Board shall not take any proceedings for winding up of the company nor shall it take any proceedings for execution or distress or the like against any of the properties of the industrial company nor seek appointment of a receiver as explained in the body of the judgment except with the consent of the BIFR or the appellate authority under the Act.

58. So far as further supply of electricity is concerned, we are not issuing any direction to the Board for making future supplies of electricity, but we leave the matter to the Board. The oral application for stay is disposed of accordingly.

59. Order accordingly.