

TELANGANA STATE SOUTHERN POWER DISTRIBUTION COMPANY LIMITED & ANR. A

v.

M/S SRIGDHAA BEVERAGES

(Civil Appeal No. 1815 of 2020) B

JUNE 01, 2020

[SANJAY KISHAN KAUL AND K. M. JOSEPH, JJ.]

Electricity: Electricity dues – Liability of auction purchaser to pay electricity dues of previous owner of purchased unit – In the instant case, auction notice clearly stated that the unit was being sold on ‘as is where is, what is there is and without any recourse’ basis and that the Authorised Officer carrying out the auction absolved himself of the liability for any charge, lien, encumbrance, property tax dues and electricity dues etc. – Auction purchaser applied to appellant-Electricity Department for sanction of connection for running the unit which was refused on the ground that there were previous electricity dues – The Electricity Department asserted its right to recover the dues from the new purchaser based on clause 5.9.6 and 8.4 of General Terms and Conditions of Supply of Distribution and Retail Supply Licensees in AP – Held: Since in the auction notice, existence of electricity dues was specifically mentioned as a liability of new purchaser and that the sale was on ‘as is where is, what is there is and without any recourse’ basis, the Electricity Department was well within its right to demand dues of the last owner from the respondent purchaser. C D E

Electricity: Electricity dues partake the character of statutory dues under Electricity Act, 2003 r/w General Terms and Conditions of Supply – Therefore, they cannot be waived in view of provisions of the Act itself more specifically s.56 of Electricity Act, 2003 (in pari materia with s.24 of Electricity Act, 1910) and cannot partake the character of dues of purely contractual nature. F G

Allowing the appeal, the Court

HELD: 1.1 The Electricity dues, where they are statutory in character under the Electricity Act and as per the terms and conditions of supply cannot be waived in view of the provisions H

A of the Act itself more specifically section 56 of the Electricity Act, 2003 (in pari materia with section 24 of the Electricity Act, 1910 and cannot partake the character of dues of purely contractual nature. [Para 15A][303-F]

B 1.2 Where, as in case of the E-auction notice in question, the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on “AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS”, there can be no doubt that the liability to pay electricity dues exists on the respondent (purchaser). [Para 15B][303-G; 304-A-B]

C *Hyderabad Vanaspathi Ltd. v. A.P. State Electricity Board & Ors.* (1998) 4 SCC 470 : [1998] 2 SCR 620 – followed.

D *Dakshin Haryana Bijli Vitran Nigam Ltd. v. Paramount Polymers (P) Ltd.* (2006) 13 SCC 101 : [2006] 7 Suppl. SCR 635; *Paschimanchal Vidyut Vitran Nigam Limited & Ors. v. DVS Steels and Alloys Private Limited & Ors.* (2009) 1 SCC 210 : [2008] 15 SCR 766 – relied on

E *Isha Marbles v. Bihar State Electricity Board & Anr.* (1995) 2 SCC 648 : [1995] 1 SCR 847; *Haryana State Electricity Board v. Hanuman Rice Mills, Dhanauri & Ors.*, (2010) 9 SCC 145 : [2010] 10 SCR 217 – distinguished.

F *Southern Power Distribution Company of Telangana Limited (through its CMD) & Ors. v. Gopal Agarwal & Ors.* (2018) 12 SCC 644; *Special Officer, Commerce, North Eastern Electricity Supply Company of Orissa (NESCO) v. Raghunath Paper Mills Private Limited & Anr.* (2012) 13 SCC 479 : [2012] 13 SCR 71 – referred to.

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Case Law Reference

[1995] 1 SCR 847	distinguished	Para 7
(2018) 12 SCC 644	referred to	Para 7
[1998] 2 SCR 620	followed	Para 9

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[2006] 7 Suppl. SCR 635	relied on	Para 10	A
[2008] 15 SCR 766	relied on	Para 12	
[2010] 10 SCR 217	distinguished	Para 14	
[2012] 13 SCR 71	referred to	Para 14	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1815 of 2020. **B**

From the Judgment and Order dated 30.04.2018 of the High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh in Writ Appeal No. 258 of 2018.

P. S. Narasimha, Sr. Adv., Mohd. Bande Ali and Rakesh K. Sharma, Advs. for the Appellants. **C**

Ms. Filza Moonis, G Ramakrishna Prasad, Suyodhan Byrapaneni, Mohd. Wasay Khan and Bharat J. Joshi, Advs. for the Respondent.

The Judgment of the Court was delivered by **D**

SANJAY KISHAN KAUL, J.

1. The respondent is an auction-purchaser of a unit owned by M/s. SB Beverages Private Limited, which failed to pay its dues, resulting in the auction by Syndicate Bank (Secured Creditor) under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the ‘SARFAESI Act’). The moot point of law, which arises for consideration, is whether the liability towards previous electricity dues of the last owner could be mulled on to the respondent. **E**

2. The unit in question is a mineral water bottling plant situated in land measuring 1 acre 13 *guntas* in Sy. No. 283 at Rampally Village, Keesara Mandal, Medchal District. As mentioned aforesaid, on account of failure to repay a loan, the creditor, Syndicate Bank, brought the property to auction for which an E-auction sale notice dated 25.5.2017 was issued in this behalf, in which the respondent was the successful auction-purchaser. In order to appreciate the controversy before us, it is necessary to reproduce some of the relevant clauses of the auction notice: **F**

“The property described below is being sold on “AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE **G**
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A BASIS” under the rule no.8 & 9 of the Security Interest (Enforcement) Rules (hereinafter referred to as the rules) for the recovery of the dues detailed as under:

B	The total amount due as on 30-04-2017	Rs.13,97,26,258.77 (Rs. Thirteen crores ninety seven lakhs twenty six thousand two hundred fifty eight and paise seventy seven) with future interest & costs till date of payment accounts no 1) 373OSLB140940002 & 2) 30151010006439
C	Details of encumbrances over the property, as known to the bank	For property no.01 Nil For property no.02: The subsequent to our MOD, the following transactions observed in EC 1. As per the doc no 2611/2016 dated 15/06/2016, the mortgager has sold the property to the extent of 540 sq yds., to private party, for worth of Rs.972000/- 2. As per the doc no.657/2015 dated 05/02/2015, the mortgager has sold the property to the extent of 620.83 sq.yds. to The Executive officer Ramapally Gramapanchayat for worth of Rs.1242000/-. 3. As per the doc no 2721/2014 dated 05/08/2014, the mortgager has sold the property to the extent of 204.75 sq yds to The Gramapanchayat Executive officer Ramapally for worth of Rs.248000/-.
D		
E	Details of outstanding dues of Local Government (Property tax, Water sewerage, electricity bills, etc.)	Rs.83,17,152/- (Eighty Three Lakhs Seventeen Thousand One Hundred Fifty Two Only)
F		
G	Reserve Price of Property	For property no.01 Rs.77,63,000/- For property no.02 Reserve Price: Rs.5,83,37,000/- (Rupees five crores eighty three Lakhs thirty seven Thousand Only) Total 28 no of Machineries items reserve price: Rs.3,25,28,000/- (three crores twenty five lakhs twenty eight thousand only)

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TERMS AND CONDITIONS

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21. The successful bidder shall bear the stamp duties, charges including those of sale certificate, registration charges, all statutory dues payable to central/state government, taxes and rates and outgoing, both existing and future relating to the properties. A

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24. The property is sold in “AS IS WHERE IS, WHAT IS THERE IS AND WITHOUT ANY RECOURSE BASIS” in all respects and subject to statutory dues if any. The intending bidders should make discrete enquiry as regards any claim, charges/ encumbrances on the properties, of any authority, besides the bank’s charges and should satisfy themselves about the title, extent, quality and quantity of the property before submitting their bid. For any discrepancy in the property the participating bidder is solely responsible for all future recourses from the date of submission of bid. B C

25. No claim of whatsoever nature regarding the property put for sale, charges/encumbrances over the property or on any other matter etc., will be entertained after submission of the bid/ confirmation of sale. D

26. The Authorised Officer will not be responsible for any charge, lien, encumbrance, property tax dues, electricity dues, etc., or any other dues to the Government, local authority or anybody, in respect of the property under sale.” E

3. The aforesaid auction notice shows that the unit was being sold on “as is where is, what is there is and without any recourse basis”, as per Rules 8 & 9 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the ‘said Rules’). The aforesaid clauses of the E-auction sale notice show that the total outstanding dues were much larger, but the reserve price fixed was lower, and the actual sale consideration of the successful auctioneer was Rs. 9,18,65,000, which is approximately Rs.10 lakh more than the minimum reserve price. Clause 24 reproduced aforesaid makes it clear that when the reference is to a sale on “as is where is, what is there is and without any recourse basis”, the same is “in all respects and subject to statutory dues”. This clause was further subject to another Clause 26, where the Authorised Officer carrying out the auction absolved himself of the liability for any charge, lien, encumbrance, property tax dues, **electricity dues**, etc. The purpose F G H

A is to emphasise that a holistic reading of all these clauses left little in doubt that the auction notice provided for a reserve price, with a bid being made about Rs.10 lakh over and above that, and certain nature of charges, lien, encumbrances, including electricity dues were clearly beyond the sale consideration paid.

B 4. We may next turn to the sale deed dated 29.9.2017 executed in pursuance of the auction, which provided for the sale “made free from all encumbrances known to the Secured Creditor.” An indemnity was provided by the vendor to the respondent against “any loss arising out of any defect in the title, including recovery of statutory liabilities taxes, as also litigation expenses arising out of such defects in title.” This indemnity
C was, thus, confined to aspects mentioned in this clause, but relatable to defects in title, and not to other liabilities like electricity dues.

5. The problem for the respondent arose when he applied to appellant No.1 seeking sanction of a 500 KVA connection required for running the bottling plant. This request was denied on the ground that
D there were previous electricity dues to the tune of Rs. 50,47,715, as on 26.10.2017. Appellant No.1 asserted its right to recover this amount even from the new purchaser (i.e. respondent), based on a reading of Clauses 5.9.6 and 8.4 of the General Terms and Conditions of Supply of Distribution & Retail Supply Licensees in AP (for short ‘General Terms
E & Conditions of Supply’), which clauses are reproduced hereinunder:

“5.9.6 **Dismantlement of Service Line after Termination of Agreement:** On the termination of the LT or HT Agreement, the company is entitled to dismantle the service line and remove the materials, Meter, cut out etc. After termination of the Agreement,
F the consumer shall be treated as a fresh applicant for the purpose of giving supply to the same premises when applied for by him provided there are no dues against the previous service connection.”

....

G “8.4 **Transfer of Service Connection**

The seller of the property should clear all the dues to the Company before selling such property. If the seller did not clear the dues as mentioned above, the Company may refuse to supply electricity to the premises through the already existing connection or refuse

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to give a new connection to the premises till all dues to the Company are cleared.” A

6. We may also take note of the fact that the aforesaid dues partake the character of statutory dues under the Electricity Act, 2003 read with the General Terms & Conditions of Supply.

7. A writ petition was filed by the respondent before the High Court of Telangana and Andhra Pradesh seeking quashing of these demands predicated on a reasoning that as a subsequent purchaser, the respondent was not responsible for the dues of the earlier owner, and in that behalf relied upon the judgments of this Court in *Isha Marbles v. Bihar State Electricity Board & Anr.*¹ and *Southern Power Distribution Company of Telangana Limited (through its CMD) & Ors. v. Gopal Agarwal & Ors.*² Reliance on these judgments persuaded the learned single Judge to issue directions quashing the demand of appellant No.1. The appeal filed before the Division Bench against this order was also dismissed on 30.4.2018. B C

8. We have examined the submissions in the contours of the aforesaid controversy, and take note of the fact that in the case of *Isha Marbles*,³ the sale was in pursuance of Section 29(1) of the State Financial Corporations Act, 1951, but the important aspect was that there was no clause specifically dealing with the issue of electricity dues or such other dues, as in the present auction notice. This Court elucidated the position in the context of Section 24 of the Electricity Act, 1910, to emphasise that under Section 2(c) of the Electricity Act, a consumer means any person who is supplied with energy, and since liability to pay electricity dues is fastened only on the consumer, at the relevant time, the purchaser was not the consumer. It has also been stated that in the absence of consumption of electricity, the subsequent purchaser was merely seeking reconnection without there being any statutory dues towards consumption charges. We had specifically posed a question to the learned counsel for the respondent in the order dated 15.11.2019, that whether, in the context of the judicial pronouncements sought to be relied upon, there was a specific clause in the nature of Clause 26 as in the present E-auction sale notice, which absolved the Authorized Officer of various dues including “electricity dues”. On the conspectus of the D E F G

¹ (1995) 2 SCC 648

² (2018) 12 SCC 644

³ (supra)

- A judgments referred to by the respondent, there were no such clauses in the cases in question.

9. We may also notice that there have been subsequent judicial pronouncements dealing with this aspect of electricity dues. A three Judge Bench of this Court has held that the dues under the terms and conditions of supply partake the character of statutory dues (*Hyderabad Vanaspathi Ltd. v. A.P. State Electricity Board & Ors.*⁴). The mere fact that agreements were entered into with every consumer only served the purpose of bringing to the notice of the consumer the terms and conditions of supply, but did not make the dues purely contractual in character.

C 10. We can draw strength from the observations of this Court in *Dakshin Haryana Bijli Vitran Nigam Ltd. v. Paramount Polymers (P) Ltd.*,⁵ where there was a similarity as in the present case, of a specific clause dealing with electricity dues. It was observed that in such a scenario if a transferee desires to enjoy the service connection, he shall pay the outstanding dues, if any, to the supplier of electricity and a reconnection or a new connection shall not be given to any premises where there are arrears on account of dues to the supplier unless they are so declared in advance.

E 11. We may also notice that as an auction purchaser bidding in an “as is where is, whatever there is and without recourse basis”, the respondent would have inspected the premises and made inquiries about the dues in all respects. The facts of the present case, as in the judgment aforesaid, are more explicit in character as there is a specific mention of the quantification of dues of various accounts including electricity dues. F The respondent was, thus, clearly put to notice in this behalf.

G 12. The same view in case of a similar clause has been taken in *Paschimanchal Vidyut Vitran Nigam Limited & Ors. v. DVS Steels and Alloys Private Limited & Ors.*⁶ It has been further observed that if any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations so long as such rules and regulations or the terms and conditions are not arbitrary and

⁴ (1998) 4 SCC 470

⁵ (2006) 13 SCC 101 (2 Judges Bench)

H ⁶ (2009) 1 SCC 210 (2 Judge Bench)

unreasonable. A condition for clearance of dues cannot *per se* be termed as unreasonable or arbitrary. A

13. We may notice a slightly contra view in *Haryana State Electricity Board v. Hanuman Rice Mills, Dhanauri & Ors.*,⁷ in a given scenario where the pendency of electricity dues was not mentioned in the terms & conditions of sale, and it was held in those facts that the dues could not be mulled on to the subsequent transferee. B

14. We may notice that in *Special Officer, Commerce, North Eastern Electricity Supply Company of Orissa (NESCO) v. Raghunath Paper Mills Private Limited & Anr.*,⁸ a distinction was made between a connection sought to be obtained for the first time and a reconnection. In that case, no application had been made for transfer of a service connection from the previous owner to the auction-purchaser, but in fact, a fresh connection was requested. In light of the regulations therein, previous dues had to be cleared only in the case of a reconnection. Hence, the respondents were held to be free from electricity liability. This Court in *Southern Power Distribution Company of Telangana Limited (through its CMD) & Ors.*⁹ found that the facts were similar to the *NESCO*¹⁰ case, and thus followed the same line. C D

15. We have gone into the aforesaid judgments as it was urged before us that there is some ambiguity on the aspect of liability of dues of the past owners who had obtained the connection. There have been some differences in facts but, in our view, there is a clear judicial thinking which emerges, which needs to be emphasized: E

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

B. Where, as in cases of the E-auction notice in question, the existence of electricity dues, whether quantified or not, has G

⁷ (2010) 9 SCC 145 (2 Judge Bench)

⁸ (2012) 13 SCC 479 (2 Judge Bench)

⁹ (supra)

¹⁰ (supra)

A been specifically mentioned as a liability of the purchaser and the sale is on “AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS”, there can be no doubt that the liability to pay electricity dues exists on the respondent (purchaser).

B C. The debate over connection or reconnection would not exist in cases like the present one where both aspects are covered as per clause 8.4 of the General Terms & Conditions of Supply.

C 16. In view of the aforesaid legal position, which has emerged, we are of the view that the impugned orders cannot be sustained and are accordingly set aside while opining that appellant No.1 would be well within its right to demand the arrears due of the last owner, from the respondent-purchaser.

 17. The appeal is accordingly allowed, leaving the parties to bear their own costs.

Devika Gujral

Appeal allowed.