

M/S Isha Marbles vs Bihar State Electricity Board on 3 February, 1995

Equivalent citations: 1995 SCC (2) 648, JT 1995 (2) 626

Author: S. Mohan

Bench: S. Mohan, P.B. Sawant, K.S. Paripoornan

PETITIONER:

M/S ISHA MARBLES

Vs.

RESPONDENT:

BIHAR STATE ELECTRICITY BOARD

DATE OF JUDGMENT 03/02/1995

BENCH:

MOHAN, S. (J)

BENCH:

MOHAN, S. (J)

SAWANT, P.B.

PARIPOORNAN, K.S. (J)

CITATION:

1995 SCC (2) 648 JT 1995 (2) 626

1995 SCALE (1) 721

ACT:

HEADNOTE:

JUDGMENT:

1. Leave granted.

2. All these appeals can be dealt with by a common judgment since the issue that arises for our consideration is one and the same, namely, whether the auction purchaser is liable to meet the liability of old consumer or electricity to the premises which is purchased by him in the auction sale from Bihar State Financial Corporation (hereinafter referred to as the Corporation) under Section 29 (1) of the Bihar State Financial Corporation Act, 1951 (hereinafter referred to as the Corporation

Act)? Civil Appeal No. 1418 of 1995 (Arising out of SLP No. 617 of 1992 (M/s.Isha Marbles:

3. In this case, the appellant is a purchaser of the mortgated &wets of M/s. Patel Industries. Daltonganj in an open auction sale held by the Corporation Act. The appellant has paid a substantial sum towards the said transaction and thereafter got the possession of the industry on 31.1.1991. However, the electrical connection of the premises was disconnected when the appellant got possession of the said unit. The appellant was called upon to discharge all the liabilities of the previous consumer. This was challenged in C.W.J.C. No. 1536 of 1991 before the High Court of Patna, Ranchi Bench, Ranchi. The stand taken by the writ petitioner before the High Court was, there is a transfer of a unit; it had not been supplied with electricity; hence, it had no occasion to consume electricity: and as transferee it is not liable for energy consumed before such transfer. The writ petition was dismissed by a Division Bench of the High Court holding that the Bihar State Electricity Board (hereinafter referred to as the 'Board') would be entitled to take action in accordance with law.

4. Aggrieved by the impugned judgment the appellant has come in appeal before this Court.

Civil Appeal No 1420 of 1995 (Arising out of SLP No. 16227 of 1992: Bihar State Electricity Board & Ors vs M/s Waxpol Industries Ltd & Anr.

5. In this case, the facts are slightly different. The Bihar Financial Corporation sanctioned loan to Ws. Neo Chemicals & Metal Products (P) Ltd. for setting up a unit for manufacture of Graphite Beneficiation. The said unit occupied Plot Nos. 1818 and 1820 at P.O. village Boot, District Ranchi, Bihar. For non-payment of electricity bills the electricity was disconnected. They were outstanding to the tune of Rs.2,35,924.78/- against such electricity consumption charges. The Corporation had advanced a sum of Rs. 3,40,000 to M/s Neo Chemicals. To secure this loan, the properties of the company had been hypothecated/mortgaged. In order to realise this sum the properties were sought to be sold under Section 29 of the Corporation Act. The sale was through an advertisement. The Waxpol Industries, the respondent, filed its tender. That was the highest. Therefore, the properties were sold in favour of the respondent for a consideration of Rs.2,97,578.27/-.

6. Waxpol Industries applied for electricity connection to the Board. After the purchase, in that application, Column No. 6 required Waxpol Industries to state whether it would undertake to clear the previous dues. As against this, it was stated "does not apply". Therefore, on 3.1.86, the Board informed waxpol Industries that it was unable to restore electricity as its dues had not been paid either by the consumer or by the subsequent occupant of the said premises.

7. Aggrieved by this, the respondent herein preferred C.W.J.C. No. 25 of 1980. By the impugned judgment, the writ petition was allowed on the ground that the present occupants are free from any encumbrance or liability towards the payment of outstanding electricity dues: Neo Chemicals and waxpol Industries are two distinct companies and of such two legal entities. In view of the judgment in Ram Krishna Choudhary v. Bihar State Electricity Board and others (C.W.J.C.No.204 of 1984

disposed of on 15th October, 1990 unless there is a clause that the auction purchaser shall not only have the assets but also the liability including the liability of the Electricity Board, the latter cannot take the stand that unless the dues of the erstwhile are cleared, no electric connection will be given to the auction purchaser.

8. The case C.A. No., 1419 of 1995 (Arising out of S.L.P. (C) No. 18244 of 1993: Chairman Bihar State Electricity Board and others vs. Suman Packaging Private Limited) is identical to the case in Civil Appeal No. 1420 of 1995 (arising out of SLP(C) No. 16227 of 1992: Waxpol Industries). The respondent purchased the unit of M/s. Sanjay Packaging Industries in an auction sale held under Section 29 of the Corporation Act for a sum of Rs. 8 lacs. The said Sanjay Packaging Industries had committed default in payment of electricity dues amounting to Rs.87,137.34/-.

9. On 9.6.1992, the respondent (auction purchaser) applied for electricity connection. The appellant-Board called upon the respondent to clear off the dues of Sanjay Packaging Industries. Therefore, the respondent filed C.W.J.C. No.5358 of 1992 for a writ of mandamus to the Board to supply electricity. The case of the respondent as petitioner before the High Court was when the matter was brought to the notice of the Corporation it wrote to the Board to the effect that the writ petitioner was not liable for any dues of the erstwhile owner and application might be favourably considered. Further, the Board had issued a circular on 19.1.72 that in a case of genuine purchase if the old consumer had committed default and the purchaser has no connection with the old consumer it would neither be legal nor proper to insist on the realisation of the arrears due for giving re-connection. The High Court took the view that remedy under Section 24 of the Electricity Act could be to file a suit to recover the dues from a consumer. That Section merely enables the disconnection of electricity if arrears are not paid by the consumer. Therefore, Section 24 cannot apply in a case where, a transferee who had no connection with the original consumer and purchases the property bona fide and in good faith.

10. The Board is under statutory obligation to supply electrical energy to any pawn whenever a requisition is made subject to the fulfilment of conditions under Clause VI of Schedule 1 of the Electricity Act. It is in this background the circular of the Board dated 19.1.72 has to be considered.

11. The Board is a 'State within the meaning of Article 12 of the Constitution. Therefore, its action must pass the test of fairness and reasonableness. A purchaser like the writ petitioner was not expected to make an enquiry from the Board so as to know whether any dues were outstanding to the card from the previous consumer: nor is it possible for auction purchaser to find out the personal liability of the debtor. The Division Bench went on to hold that the previous decisions on the High Court in Isha Marbles v. Bihar State Electricity Board and another in C.W.J.C. No. 1538 of 1991 and Dani Mordhwaj Cold Storage Pvt. Ltd. v. Bihar State Electricity Board and others in C.W.J.C. No.6437 of 1992 must be held to be per incuriam because those decisions had not considered the important legal aspects.

12. Besides, the writ petitioner was a bona fide purchaser under a statutory sale. The agreement entered into between, the consumer and the Board contained personal bond as between the parties to the agreement. In any event, the Board cannot take advantage of its own wrong in allowing the

arrears to get accumulated without either resorting to Section 24 or by calling upon the consumer to furnish additional security. In this view, the writ petition came to be allowed and a writ of mandamus was issued to the Board to provide electricity connection on the terms and conditions laid down in class of Schedule to the Electricity Act.

C.A. No. 1422 of 1995 (arising out of SLP (C) No. 10253:

Bihar State Electricity Board vs. Abhay Kumar and others):

Under identical circumstances, following the earlier decision in C.W.J.C. No. 5358 of 1992 (suman packaging Private Limited) the High Court allowed the writ petition in this case.

13. Similar is the case in Civil Appeal No. 1421 of 1994 (arising out of SLP (c) No. 11806 of 1994.

14. Mr. Gopal Subramaniam, learned counsel for the appellant urges the following:

The appellant is a bona fide purchaser of the assess of the mortgaged assets of Ws. Patel Industries in an auction sale. Such an auction was held under the Corporation Act by the respondent-Corporation. The appellant is neither the transferee nor the successor to the previous owner of the premises. It is an independent buyer under the Bihar Public Demands Recovery (Amendment) Act, 1982. The dues towards the consumption of electricity could be recovered only if the appellant was a consumer. He cannot be held to be a consumer since, factually, the appellant is yet to be given electricity connection.

15. The electricity dues by the previous industry is a contractual liability be-

tween the industry and the respondent Board. It is not statutory in nature since electricity is consumed by consumer on the basis of a written contract as prescribed in Form EB-70 approved by Section 26 of the Indian Electricity Act. 1910 (hereinafter referred to as the 'Electricity Act').

16. Section 24 of the Electricity Act has no application since that presupposes an electricity connection which connection the appellant is yet to be given. Therefore, the appellant cannot be held liable for any default committed by the previous consumer. In support of this submission reliance is placed on Sauriyar Luka. v. Kerala Electricity Board AIR 1959 Kerala 199. In that case, the test applied was whether the applicant seeking electricity connection is a legal representative of the defaulter. Further, the payment of arrears due from the defaulting consumer cannot be insisted for the supply of electricity to the premises used by the erstwhile consumer.

17. Similarly, in National Textile Corporation (M.P.) Ltd., Bhopal v. MP. Electricity Board AIR 1980 M.P. 32 it was held that any liability of a former owner of National Textile Undertaking prior to the appointed day cannot be fastened on the successors by mere inference.

18. In Civil Appeal No. 1420 of 1995 (arising out of SLP (C) No. 16227 of 1992 and Civil Appeal No. 1422 of 1995 (arising out of SLP (C) No. 10253 of 1994) the written submissions filed by Mr. Muralidhar, learned advocate on behalf of the respondent No. 1, Abhay Kumar inter alia run as under:

Section 24 of the Electricity Act could be invoked only as against the person to whom energy has been supplied. Under Section 2(C) of the Electricity Act "consumer" means "any person who is supplied with energy" Therefore, the liability to pay electricity dues is obviously fastened only to the consumer.

19. Neither under the scheme of the Electricity Act nor the Electricity (Supply) Act 1948 (hereinafter referred to as the 'Supply Act') is there any concept of the premises of the consumer being liable for the electricity dues de hors the consumer, whose premises it is.

20. No doubt, by reason of the amendment made on 28th April, 1982 to the Bihar and Orissa Public Demands Recovery Act, 1914 electricity dues are recovered by bringing the property of the consumer concerned to sale in certificate proceedings. Such a provision cannot be invoked against a subsequent bona fide auction purchaser of the assets.

21. This Court had held in Bihar State Electricity Board v. Green Rubber Industries 1990 1 SCC 731 that the relationship between the Board and consumer is purely contractual.

22. In so far as this respondent had not consumed electricity, it was merely seeking re-connection and there being no statutory dues towards consumption charges, the Board cannot insist upon the respondent to pay the arrears owing by the erstwhile consumer, is a condition precedent to provide electricity connection. On the contrary, there is an obligation under Section 3(2) (f) and Section 22 of the Electricity Act read with Clause VI of the Scheme 1 thereof to supply electricity. The said Clause VI Schedule 1 contains conditions under which supply can be discontinued. These conditions do not stipulate that the supply will be discontinued if the arrears of the electricity owing by an erstwhile consumer in the premises are not paid first. Such a pre-condition is illegal and ultra vires both the Acts. In Sanjay Dhinora & Anr. vs. M.P Faculty Board, Jabalpur 1990 M.P. LJ 48 the High Court laid stress on a specific clause viz. 22A. Without such a specific provision, it will not be possible to foist any such obligation to pay dues on a subsequent bona fide purchaser of assets like the present respondent.

23. The auction notice issued by the Corporation or even the subsequent transfer by it, did not mention anything about the outstanding electricity dues. Neo Chemicals and Waxpol Industries are two different entities. Therefore, the liability of the previous consumer cannot be fastened to this respondent.

24. In Abhay Kumar's case (SLP (C) No. 12253 of 1994) the further point which is raised is, the Board has initiated certain proceedings against the erstwhile owner of the assets, namely, Allied Paper and Chemical Industries Pvt. Limited under the Bihar and Orissa Public Demands Recovery Act, 1994. By an order dated 2.7.94 the Certificate Officer dismissed the case of the Board. The Board has filed

an ap- peal before the Collector. The said appeal is pending. Hence, the Board is now estopped from demanding that Respondent No. 1 should pay to the Board the dues owing to it by Allied Papers and Chemical Industries Private Limited.

25. Mr. Pramod Swarup, learned counsel for the Board urges as under:

The Board, after giving notice under Section 24 of the Electricity Act to the previous consumer for not receiving payment towards electricity bills in respect of the premises, had disconnected/cut off the supply to the premises. 'Mat premises was sold in auction by the Corporation to the appellant in Isha Marbles case (SLP (C) No.617 of 1992) and the respondents in other cases.

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

27. The Corporation has not given any notice to the Board. The auction purchasers could have easily ascertained the. availability of the electricity to the premises.

28. The bona fides of the purchaser could have no relevance to the issue. Nor again, the circular of the Board could be relied on to find a cause for reconnection When the Division Bench decided the case of Suman Packaging Private Limited (C.W.J.C. No.5358 of 1992) it chose to differ from the ruling in Isha Marbles's case (C.W.J.C.No. 1536 of 1991). It should have referred the matter to a full bench since by the law of precedent previous ruling of the Division Bench was building on it.

29. Electrical connection was already given to the premises in question in each of the cases. Therefore, no new connec- tion could be given under Section 24 of the Act unless the previous arrears had been cleared off. The transferee by purchasing the unit in the auction sale held under Section 29 of the Corporation Act cannot be said to have discharged the liabilities of the transferor who was in arrears of electricity due under the Act. For not making payment for electricity, connection had been cut -off in the premises. It is not correct to urge that the contractual liability between the Board and the previous consumer is sought to be enforced against the third party like the auction purchaser. The Board is exercising a statutory right under Section 24 of the Electricity Act. If the contentions of the Appellant is Isha Marbles (SLP (C) No. 617 of 1992, and the respondents in other cases were to be accepted, as rightly pointed out by the High Court in Isha Marbles (C.W.J.C. No. 1536 of 1991) the previous consumer could always avoid payment of his arrears by transferring the unit in favour of the third party. The proper test is to see whether the arrears are due in relation to the premises to which electricity was supplied.

30. In order to determine the question as to the liability of the auction purchaser (the subsequent transferee) to discharge the arrears of consumption charges in respect of electricity supplied to that premises (the subject - matter of transfer) we, will have to refer to the important provisions of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948.

31. The law relating to electricity is principally contained in these two Acts:

(1) The Electricity Act: This provides for grant of license in relation to supply and electricity and the purchase of the undertakings. It also provides for supply of electricity including the protective clauses. (11) The supply Act: It provides for constitution of State Electricity Boards, the powers and duties of such Boards.

32. Section 2 of the Electricity Act in clause (C) defines a "consumer" thus:

"consumer" means by person who is supplied with energy by a licenses or the Government or by any other person engaged in the business of supplying energy to the public under this Act or any other law for the time being in force, and includes any person whose premises are for time being connected for the purpose of receiving energy with the works of a licensee. the Government or such other person, as the case may be:

(Emphasis supplied)

33. Undoubtedly, this is an inclusive definition. It consists of two parts:

(i) The person who is supplied with energy,, and

(ii) It includes within it any person whose premises are connected for the purpose of receiving energy with the works of a licensee.

34. Rule 2A(f) defines an "occupier" as under:

" " occupier" means the owner or per-

son in occupation of the premises where energy is used or proposed to be used."

35. Section 22 of the Electricity Act runs:

"Obligation on licensee to supply energy:-

Where energy is supplied by a licensee every person within the area of supply shall except in so far as is otherwise provided by the term and conditions of the licensee entitled on application, to a supply on the same as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply.

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration."

36. Section 26 of the supply Act provides that subject to the provisions of this Act, the Board shall, in respect of the whole State, have all the powers and obligation of a licensee under the electricity Act.

37. The requisition for supply to owners or occupiers is contained in Clause VI of Schedule to the Electricity Act. That reads:

VI. Requisition for supply to owners or occupiers in vicinity:-

(Where, (after distributing mains have been laid down under the provisions of Clause VI or Clause V and the supply of energy through those mains or any of them has commenced) a requisition is made by the owner or occupier of any premises situate within (the area of supply) requiring the licensee to supply energy for such premises, the licensee shall, within one month from the making of the requisition, (or within such longer period as the Electrical Inspector may allow), supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply, energy in accordance with the requisition."

(Emphasis supplied) (The rest of Clause VI of the Schedule is omitted as not necessary for our purposes).

38. Section 3(2) (f) of the electricity Act reads:

"the provisions contained in the Schedule shall be deemed to be incorporated with, and to form part of, every licensee granted under this part, save in so far as they are expressly added to, varied or excepted by the license, and shall subject to any such additions, variations or exceptions which the State Government is hereby empowered to make, apply to the undertaking authorised by the licence."

39. In Requisition VI the form prescribed by the Rules is contained in Annexure "A" to the Rules.

40. The Inter-connection between Section 22 of the Electricity Act and Sec-

tion 26 of the Supply Act came to be dealt with by this Court in *State of UP. and others v. Hindustan Aluminium Corporation and others* 1979 (3) SCC 229 at paragraphs 19 to 21 at pages 239-240:

"Clause (h) of Section 2 of the Act defines a "Licensee" to mean any person licensed under Part 11 to supply energy. Section 26 of the Act of 1948 provides. Inter alia, that

subject to the provisions of that Act, the Electricity Board shall in respect of the whole states, have all the powers and obligations of a licensee under the Indian Electricity Act, 1910 and the Act of 1948 'shall be deemed to be the licensee of the Board' for purposes of the Act (of 1910). The first proviso to the section excludes the application of some sections, including Section 22 of the Act, and the second proviso states that the provisions of Clause VI of the Schedule to the Act shall apply to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced.

While, therefore, the UPSEB is a licensee under the Act it will be sufficient, for purpose of the controversy before us, to say that Section 22 of the Act is not applicable to it, and Clause VI of the Schedule is applicable to it subject to the restriction contained in the second proviso Section 26 of the Act of 1948. So even though the Board is a licensee, the obligation under Section 22 of the Act to supply energy to every person within the area of its supply is not fastened on it.

The provisions of the Schedule to the Act are deemed to be incorporated in, and to form part of, every licence granted under Part II. Clause VI of that Schedule states that where after distributing mains have been laid down and the supply of energy through them has commenced, a requisition is made by the owner or occupier of any premises situate within the area of supply requiring the licensee to supply energy for such premises, the licensee shall make the supply and shall continue to do so in accordance with the requisition. But, as has been pointed out, the second proviso to Section 26 of the Act of 1948 places a restriction on that obligation for it says that the provisions of Clause VI shall apply to the Board in respect of that area only "where distribution mains have been laid by the Board and the supply of energy through any of them has commenced."

41. As to the manner for getting electricity supply for premises the following requirements have to be fulfilled. They are succinctly stated in Shiva Gopal's law relating to Electricity Sixth Edition at page 359.

(1) A prospective consumer shall make and sign a requisition in the form prescribed by the rules (Annexure VII to the Rules) for a connection of his premises for the supply of energy.

(2) The licensee shall then serve on the prospective consumer a notice requesting him in writing to tender to him a written contract (in such form as the State Government may have approved).

(3) The prospective consumer shall within 14 days of the receipt of such notice tender the contract duly executed by him with sufficient security, binding him self thereunder to take a supply of energy for not less than two years to such amount as will secure to the licensee at the current rates charged by him in annual revenue not exceeding fifteen per centum of the cost of the service line required to comply with the requisition.

(4) In addition to the security, the licensee may also require the prospective consumer to pay to him the cost of so much of any service line as may be laid down or placed for the purposes of the supply upon the premises required to be connected, and of so much of any service line as may be laid down or placed for the purpose of the supply upon the premises required to be connected and or so much of any services line as it may be necessary for the said purposes to -lay down or place beyond one hundred feet from the licensee's distributing main, although not on that premises.

(5) If the prospective consumer fails to tender the written contract duly executed, fails to give sufficient security and fails to give the cost demanded within the said period of 14 days, the licensee shall be under no obligation to make the connection.

(6) But if these formalities have been complied with the licensee shall be bound to make the supply within one month or such extended time as the. Electrical Inspector may allow, the period to the counted from the date of receipt by the licensee of the requisition.

(7) And after the connection has been made the licensee shall be bound to continue the supply unless he is prevented from doing so by cyclone, floods, storms or other occurrences beyond his control.

42. Next comes the important Section under the Electricity Act, namely, Section 24.

43. Section 24(1) provides where a consumer neglects to pay any charge for energy of any sum other than charge for energy-the licensee, after the requisite noticed shall be entitled to stop supply of electrical energy. Of course, this power of disconnection Is subject to sub-section (2) of the said Section. Thus, Section 24 relieves the licensee of its obligation under section 22 to supply energy if the consumer has not paid to the charges for electricity supplied or where the consumer neglects to pay the name.

44. Now, we will set out, by means of the following tabulated statement, as to what the factual position is:

Date when Date of appli-		Sl. SLP No. Parties filed Date of		
No.	against	discon- nection to the previous consumer	sale/ purchase took	cation for re-connection

1. 617/92 M/s.Isha Judg No conn- 6-1-90 4-3-91 Marbles ment ection vs. dt. at the BSEB 5-9-91 time of in CWJC delivery No1536/91 of possession

2. 16227/92 BSEB dt. 14-7-84 7/8.5.85 after Vs 28.7.92 possession Waxpol in CWJC
3.18224/93 BSWB dt. 17.7.91 29.11.91 9.6.92 Vs. 27.7.93 Suman in CWJC Aging
P.Ltd.

4. 10253/94 BSWB dt. no conne- 5.1.93 5.10.93 vs. 4.2.94 ction Abhay in CWJC

5. 11806/94 BSEB dt. -do- 5.4.91 23.11.91 vs. 29.7.93 North in CWJC fert-

lisers P.Ltd.

----- 45 The indisputable facts are:

- 1.The previous units had the benefit of electricity supply.
- 2.The previous units/owners had borrowed from the corporation.
- 3.To secure those loans they had mortgaged/hypothecated the properties.
4. The electricity arrears in relation to those premises had fallen due since they had neglected to pay
5. By exercise of power under Section 24 of the Electricity Act the electricity supply was disconnected.
- 6.For recovery of the loans the mortgaged/hypothecated Properties were brought to sale under Section 28 of the Corporation Act.

46. The appellant in Isha Marble (SLP(C) No. 617 of 1992) and the respondents in other civil appeals became the auction purchases. They applied for supply of electricity for the same premises to which already electricity was supplied and disconnected for the non-clearance of the dues on account of such supply.

47. We may, by way of a sample, quote the relevent portions of the requisition term filled in by Isha Marbles (SLP (C) 617 of 1992:

"Form No. E.B-70 BIHAR STATE ELECTRICITY BOARD REQUISITION FORM
THE ASSISTANT ELECTRICAL ENGINEER, ELECTRIC SUPPLY SUB-DIVISION
DOLTONGANJ, RURAL NO.1 Sir, I/We hereby require you to supply energy for the
premises owned/occupied by me/us and situated within the area supply of the Bihar
State Electricity Board. I/We further require you to supply me/us with the necessary
meter/meters on hire in terms of Section 26 of the Indian Electricity Act, 191 o. I/We
agree to give YOU such security as may be required for the period of the
meter/meters, whenever called upon to do so.

xxx xxx xxx xxx Particulars of the premises where supply is required.

(a)Holding No. with name of the premises, if any 93/ Plot No.2727 Ward No.x Khara No.2 Mohalla/-Village Bhingarhi P.O. Dottonganj P.S. Dottonganj. Sub Divn. Doltanganj Distt.

Palanpur (Strike out the words not applicable).

xxx xxx xxx xxx (4) whether the applicant undertakes to clear the past liability on the previous connection in these premises No. xxx XXX xxx xxx I/We further hereby as agreed to pay every sum that may be come due from me us for the energy, or other charges of the Board to the officer authorized by the Board to receive it and in the event of nonpayment of the said sum, it shall be recoverable from menus as public demand under the Bihar and Orissa Public Demands Recovery Act. 1914. (Emphasis supplied)

48. It is important to note that though the purchaser asked for electricity connection as a new connection it cannot be regarded as a new connection. It is only a re- connection since the premises had already been supplied with electrical energy. Such a supply had been disconnected owing to the default of the consumer. That consumer had bound himself to the Board to pay the dues. He also agreed to abide by the condition as stipulated in the Act and the Rules including the payment of dues.

49. Under Section 79 Clause (i) read with Section of the Supply Act it is open to the Board to make Regulations to stipulate the terms and. conditions of supply of electrical energy. One such stipulation is that the consumption charges must be paid. In Ferro Alloys Corporation Ltd. v. A.P. State Electricity Board and another 1993 Supp (4) SCC 136 at page 171 (to which one of Us was a party) it was held thus.

"..... Under the regulations framed by the Board In exercise of powers of section 49 read with Section 79 (j) the consumer is only entitled and the Board has an obligation to supply energy to the consumer upon such terms and conditions as laid down in the regulations. If therefore the regulations prescribed a security deposit that will have to be complied wit, it also requires to be noticed under Clause VI of the Schedule to the Electricity Act that the requisition for supply of energy by the Board is to be made under proviso (a)after a written contract is duly executed with sufficient security.

50.What then are the remedies of the Board, should the consumer fail to pay? Undoubtedly, resort could be had to Section 24 of the Electricity Act. The provisions of this Section come into play when;

(a) the consumer neglects to pay any charge for energy due from him to a licensee, or

(b)the consumer neglects to pay sums other than a charge for energy due from him to the licensee.

51. In these circumstances, the licensee may after giving the consumer a written notice of not less than seven clear days cut off the supply and continue to keep the supply cut off till the consumer shall have paid the sum or sums due.

52. We want to make it clear that resorting Section 24 is not the only remedy available. The general remedy to file a suit will always be available to the Board.

53. Besides, in the case of Bihar State Electricity Board, by reason of an amendment of Bihar and Orissa Public Demands and Recovery Act, 1914 (46 of 1982) electricity dues could be recovered by bringing the property of the consumer concerned to sale in certificate proceedings. This is because Rule 15 of Schedule I specifically mentions that any money payable to the;

(i)

(ii).....

(iii).....

(iv) Bihar State Electricity Board in respect of which the person liable to pay the same as agreed by a written instrument that it shall be recoverable as public demand.

54. In all the present cases the supply of electricity to a particular premises which had the benefit of enjoying electricity had been disconnected under Section 24 of the Electricity Act. The auction purchasers want reconnection.

The Board says no; unless and until the consumption charges in relation to that property which came to be incurred during the ownership of the previous incumbent are cleared off. Is the stand of the Board correct? The High Court, in the main judgment in Suman Packaging (C.W.J.C. No. 5358 of 1972) gives the following reasons for answering the question against the Board:

1. Section 24 stipulates discontinuance of supply of electrical energy to the consumer in respect of a sum due from him. We are afraid the High Court had not read Section 24 in conjunction with other statutory provisions though they had been noted, namely, Section 26 of the Supply Act;

Section 22 of the Electricity Act and Clause VI of Schedule of the Electricity Act. They clearly postulate the obligation to supply energy for such premises. At the risk of repetition we hold the premises had enjoyed the benefit of electricity. The owner of the premises or even the occupier of the premises, as stated under Rule 2(af) of the Indian Electricity Rules, becomes liable to pay the consumption charges together with other dues, in other words, the liability is in respect of the dues of electricity which came to be supplied pursuant to the contract with the former owner. The discharge of such Liability will be on such owner or occupier.

55. From the above it is clear, the High Court has chosen to construe Section 24 of the Electricity Act correctly. There is no charge over the property. Where that premises comes to be owned or occupied by the auction purchaser, when such purchaser seeks supply of electric energy he cannot be called upon to clear past arrears as a condition precedent to supply.

What matters is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability against the third party. Of course, the bona fides of the sale may not be relevant.

56. The form of requisition relating to the contract is in Annexure VIII prescribed under Clause VI of the Schedule to the Electricity Act. They cannot make the auction purchaser liable. In the case of Isha Marbles we have already extracted the relevant clause wherein the consumer was asked to state his willingness to clear off the arrears to which the answer was in the negative. Therefore, the High Court has rightly held that the auction purchaser, namely, "the writ petitioner before us is ready and willing to enter into a new contract that the auction purchaser does not intend to obtain the continuance of supply of electrical energy on the basis of the old agreement". It is true that it was the same premises to which reconnection is to be given. Otherwise, with the change of every ownership new connections have to be issued does not appear to be the correct line of approach as such a situation is brought about by the inaction of the Electricity Board in not recovering the arrears as and when they fall due or not providing itself by adequate deposits.

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

58. Turning to the instruction issued by the Chairman of the Board and a Circular dated 19.1.72 on which the High Court had relied, in our considered view, is again to be weighed against the Electricity Board.

59. In view of the above, we hold that the decision in the Souriyar Luka (*supra*) on which reliance is placed by Mr. Gopal Subramaniam is correct. The ruling of National Textile Corporation (M.P.) Ltd., Bhopal (*supra*) rested on the interpretation of the provisions of Sick Textile Undertakings (Nationalisation) Act (57 of 1974). That is not relevant, The question with which we are concerned did not directly arise in Bihar State Electricity Board, Patna and others v. M/s. Green Rubber Industries and others 1990 (1) SCC 73 1. We do not think it is necessary for us to refer to Rant Chandra Prasad Sharma and others v. State of Bihar and another AIR 1967 SC 349 since that case related to co-owner.

60. What we have discussed above appears to be the law gatherable from the various provisions which we have detailed out above. It is impossible to impose on the purchasers a liability which was not incurred by them.

61. No doubt, from the tabulated statement above set out, the auction purchasers came to purchase the property after disconnection but they cannot be 'consumer or occupier' within the meaning of

the above provisions till a contract is entered into.

62. We are clearly of the opinion that there is great reason and justice in holding as above. Electricity is public property. Law, in its majesty, behighly protects public property and behoves everyone to respect public property. But, the law, as it stands, is inadequate to enforce the liability of the previous contracting party against the auction purchaser who is a third party and is in no way connected with the previous owner/occupier. It may not be correct to state, if we hold as we have done above, it would permit dishonest consumers transferring their units from one hand to another, from time to time, infinitum without the payment of the dues to the extent of lacs and lacs of rupees and each one of them can easily say that he is not liable for the liability of the predecessor in interest. No doubt, dishonest consumers cannot be allowed to play truant with the public property but inadequacy of the law can hardly be a substitute for overzealousness. The relevant portions of the details of Directorship of Waxpol Industries and Promoters of Neo Chemical and Metal Products Pvt. Ltd. from 1. 1.83 as on date of purchase of mortgaged assets by Waxpol and thereafter (filed as Annexure 'D' to the counter affidavit on behalf of Waxpol Industries) are extracted below:

Names of promoters Names of Directors of M/s. Neo Chemicals of Waxpol Industries

1. Indu Gupta w/o 1. R.P. Gupta R.P. Gupta
2. Kusum Garg w/o 2.Parmanand Garg Parmanand Garg
3. Smt. S. Natarajan w/o 3. G. Natarajan G. Natarajan

63. Factually, it appears that there is no new entity. Hence, in this case M/s Neo Chemical and Metal Products Pvt. Ltd. would be liable for the past arrears.

64. In view of the foregoing, we upheld the judgment of the High Court in Waxpol Industries (CWJC No. 25 of 1986). However, in view of the peculiar facts, the judgments of the High Court in Suman Packaging (CWJC No. 5358/92), Abhay Kumar (CWJC No. 11330/93) and North East Fertilizers Pvt. Ltd. (CWJC No. 7299 of 1992) are also upheld. 65 As regards M/s. Isha Marbles (CWJC No. 1536 of 1991) we set aside the judgment of the High Court.

66. Civil Appeal No. 1418 of 1995 (arising out of SLP(C) No. 617 of 1992 (Isha Marbles) is allowed accordingly with costs. Civil Appeal Nos. 1420, 1419, 1422 & 1421 of 1995 (arising out of SLP (C) Nos. 16227/92 - Waxpol Industries Pvt. Ltd., SLP (C) No. 18224 of 1993 - Suman Packaging Pvt. Ltd., SLP(C) No. 10253 of 1994 - Abhay Kumar and SLP(C) No. II 806 of 1994 - North East Fertilizers Pvt. Ltd. respectively) are dismissed with costs.